

SENATE No. 939

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the Massachusetts Interstate Depositions and Discovery Act.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

Norfolk and Middlesex

SENATE No. 939

By Ms. Creem, a petition (accompanied by bill, Senate, No. 939) of Cynthia Stone Creem for legislation to establish the Massachusetts Interstate Depositions and Discovery Act. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing the Massachusetts Interstate Depositions and Discovery Act.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 1. The General Laws are hereby amended by inserting after chapter 233 the
2 following new chapter:–

3 Chapter 233A. Massachusetts Interstate Depositions and Discovery Act

4 Section 1. Purpose. This chapter governs depositions and discovery conducted in this
5 commonwealth in connection with a civil action brought in another state.

6 Section 2. Definitions. As used in this chapter, the following words shall, unless the
7 context clearly requires otherwise, have the following meanings:

8 a)“Foreign jurisdiction,” a state other than the Commonwealth of Massachusetts.

9 b)“Foreign subpoena,” a subpoena issued under authority of a court of record in a foreign
10 jurisdiction.

11 c)“Person,” an individual, corporation, business trust, estate, trust, partnership, limited
12 liability company, association, joint venture, public corporation, government, or governmental
13 subdivision, agency or instrumentality, or any other legal or commercial entity.

14 d) “State,” a state of the United States, the District of Columbia, Puerto Rico, the
15 United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular
16 possession subject to the jurisdiction of the United States.

17 e)“Subpoena,” a document, however denominated, issued under authority of a court of
18 record requiring a person to:

19 i.attend and give testimony at a deposition;

20 ii.produce and permit inspection and copying of designated books, documents, records,
21 electronically stored information, or tangible things in the possession, custody, or control of the
22 person; or

23 iiipermit inspection of premises under the control of the person.

24 Section 3. Issuance of Subpoena for Interstate Depositions and Discovery.

25 a)To request issuance of a subpoena under this chapter, a party or an attorney shall
26 submit a foreign subpoena or court order from the foreign jurisdiction to a clerk of court in the
27 county in this commonwealth in which discovery is sought to be conducted, along with (i) a
28 Commonwealth of Massachusetts subpoena for signature by the clerk; (ii) a list of all counsel, or
29 unrepresented parties, in the foreign action and their addresses and phone numbers, and (iii) the
30 required filing fee to be designated and published by the Court in which the foreign subpoena or
31 court order from the foreign jurisdiction is submitted. A request for the issuance of a subpoena

32 under this act does not constitute an appearance in the courts of this commonwealth. An
33 unrepresented party may request issuance of a subpoena pursuant to this chapter, but may sign
34 the foreign subpoena only if such signing is authorized by the rules of the foreign jurisdiction.

35 b)When a party submits a foreign subpoena to a clerk of court in this commonwealth, the
36 clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service
37 upon the person to which the foreign subpoena is directed.

38 c)A subpoena under subsection (b) shall:

39 i. incorporate the terms used in the foreign subpoena;

40 ii .contain or be accompanied by the names, addresses, and telephone numbers of all
41 counsel of record in the proceeding to which the subpoena relates and of any party not
42 represented by counsel; and

43 iii. advise the person to whom the subpoena is directed that such a person has a right to
44 move in the Massachusetts court, in compliance with the applicable rules of discovery, for an
45 order to quash or modify the subpoena.

46 d)Notwithstanding subsection (a), if a party to an out-of-state proceeding retains an
47 attorney licensed to practice in this commonwealth, and that attorney receives the original or a
48 true copy of an out-of-state subpoena, the attorney may issue a subpoena under this section.

49 Section 4. Service of Subpoena

50 A subpoena issued by a clerk of court under Section 3(a), or by an attorney licensed to
51 practice in this commonwealth under Section 3(d), shall be served in compliance with Rule 45(c)
52 of the Massachusetts Rules of Civil Procedure.

53 Section 5. Deposition, Production, and Inspection.

54 Subparts (a), (b), (c), (d), (f), and (g) of Rule 45 of the Massachusetts Rules of Civil
55 Procedure shall apply to subpoenas issued under Section 3.

56 Section 6. Application to Court.

57 An application to the court for a protective order or to enforce, quash, or modify a
58 subpoena issued under Section 3 shall comply with Rules 26(c) and 45(d)(1) of the
59 Massachusetts Rules of Civil Procedure and be submitted to the applicable court in the county in
60 which discovery is to be conducted.

61 Section 7. Reciprocity.

62 If the foreign jurisdiction has not enacted provisions substantially similar to this chapter,
63 the foreign subpoena shall comply with the requirements of Section 11 of Chapter 223A of the
64 General Laws.

65 Section 2. Effective Date. This act shall take effect on January 1, 2024, and shall apply to
66 requests for discovery in cases pending as of that date.