

SENATE No. 00704

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. 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 passage of the accompanying bill:

An Act making corrective changes in certain general and special laws.

PETITION OF:

NAME:

Cynthia S. Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 00704

By Ms. Creem, petition (accompanied by bill, Senate, No. 704) of Creem for legislation to make corrective changes in certain general and special laws [Joint Committee on the Judiciary].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act making corrective changes in certain general and special laws.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to make corrective changes in certain general and special laws, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

□

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. Section 1-401 of chapter 190B of the General Laws, as inserted by
2 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase “or in a
3 newspaper designated by the register of probate in a county identified by the court” after the
4 word “pending” in subsection (a)(3).

5 SECTION 2. Section 1-401 of chapter 190B of the General Laws, as inserted by
6 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the sentence: “If the
7 objecting party is a Respondent as defined under section 5-101(23.5), the Respondent or the

8 Respondent's appointed counsel shall file a written affidavit of objections to the proceeding,
9 stating the specific facts and grounds upon which the objection is based within 30 days after the
10 return date." to the end of subsection (e).

11 SECTION 3. Section 1-404 of chapter 190B of the General Laws, as inserted by
12 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (a) to
13 read: "(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected
14 persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor,
15 a protected person, an incapacitated person or a person not ascertained or not in being may be or
16 may become interested in any property, real or personal, or in the enforcement or defense of any
17 legal rights, the court in which any action, petition or proceeding of any kind relative to or
18 affecting any such estate or legal rights is pending may, upon the representation of any party
19 thereto, or of any person interested, appoint a suitable person to appear and act therein as
20 guardian ad litem or next friend of such minor, protected person, incapacitated person or person
21 not ascertained or not in being; and a judgment, order or decree in such proceedings, made after
22 such appointment, should be conclusive upon all persons for whom such guardian ad litem or
23 next friend was appointed."

24 SECTION 4. Section 1-404 of chapter 190B of the General Laws, as inserted by
25 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence of
26 subsection (d) to read: "Unless the spouse, heir or devisee is represented by someone other than
27 the petitioner or is under guardianship or conservatorship by someone other than the petitioner,
28 the Court shall appoint a guardian ad litem who shall receive notice of all proceedings."

29 SECTION 5. Section 2-114 of chapter 190B of the General Laws, as inserted by
30 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following
31 sentence at the end of subsection (b): “The court may decree that the rights of succession to
32 property under this section (or under former section 7 of chapter 210 of the General Laws) shall
33 vest in an adopted individual as of the date of the filing of the petition for adoption.”

34 SECTION 6. Section 2-603 of chapter 190B of the General Laws, as inserted by
35 section 9 of chapter 521 of the Acts of 2008, is hereby amended by replacing the words “by
36 representation” with the words “per capita at each generation”.

37 SECTION 7. Section 2-702 of chapter 190B of the General Laws, as inserted by
38 section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “except
39 for purposes of part 3 of article VI [Uniform TOD Security Registration Act] and” from
40 subsection (a) and by deleting the phrase “and except for a security registered in beneficiary
41 form (TOD) under part 3 of Article VI, Uniform TOD Security Registration Act” from
42 subsection (b).

43 SECTION 8. Section 2-706 of chapter 190B of the General Laws, as inserted by
44 section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by
45 renumbering subsections (b), (c) and (d) as (a), (b) and (c) respectively; and by changing the
46 words “by representation” to read “per capita at each generation” wherever they appear.

47 SECTION 9. Section 2-707 of chapter 190B of the General Laws, as inserted by
48 section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by
49 renumbering subsections (b) and (c) as (a) and (b) respectively; and by changing the words “by
50 representation” to read “per capita at each generation” wherever they appear.

51 SECTION 10. Section 2-801 of chapter 190B of the General Laws, as inserted by
52 section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase “receives
53 without objection a benefit from such interest,” from subsection (h)(4) the second time it
54 appears, and by changing subsection (j) to read as follows: “(j) Except for the provisions of
55 subsection (h), this section shall not abridge the right of any person to disclaim, waive, release,
56 renounce or abandon any interest in property under any other statute or rule of law.”

57 SECTION 11. Section 3-108 of chapter 190B of the General Laws, as inserted by
58 section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

59 Section 3-108. [Probate, Testacy and Appointment Proceedings; Ultimate Time
60 Limit.]

61 No informal probate or appointment proceeding or formal testacy or appointment proceeding,
62 other than a proceeding to probate a will previously probated at the testator’s domicile and
63 appointment proceedings relating to an estate in which there has been a prior appointment, may
64 be commenced more than 3 years after the decedent’s death, except (1) if a previous proceeding
65 was dismissed because of doubt about the fact of the decedent’s death, appropriate probate,
66 appointment or testacy proceedings may be maintained at any time thereafter upon a finding that
67 the decedent’s death occurred prior to the initiation of the previous proceeding and the applicant
68 or petitioner has not delayed unduly in initiating the subsequent proceeding; (2) appropriate
69 probate, appointment or testacy proceedings may be maintained in relation to the estate of an
70 absent, disappeared or missing person at any time within 3 years after the death of the person can
71 be established; (3) a proceeding to contest an informally probated will and to secure appointment
72 of the person with legal priority for appointment in the event the contest is successful, may be

73 commenced within the later of 12 months from the informal probate or 3 years from the
74 decedent's death; (4) an informal appointment or a formal testacy or appointment proceeding
75 may be commenced thereafter if no proceedings concerning the succession or estate
76 administration has occurred within the 3 year period after the decedent's death, but the personal
77 representative has no right to possess estate assets as provided in Section 3-709 beyond that
78 necessary to confirm title thereto in the successors to the estate and claims other than expenses of
79 administration may not be presented against the estate; and (5) a formal testacy proceeding may
80 be commenced at any time after 3 years from the decedent's death for the purpose of establishing
81 an instrument to direct or control the ownership of property passing or distributable after the
82 decedent's death from one other than the decedent when the property is to be appointed by the
83 terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its
84 transfer is otherwise to be controlled by the terms of the decedent's will. These limitations shall
85 not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases
86 under (1) or (2) above, the date on which a testacy or appointment proceeding is properly
87 commenced shall be deemed to be the date of the decedent's death for purposes of other
88 limitations provisions of this chapter which relate to the date of death.

89 SECTION 12. Section 3-203 of chapter 190B of the General Laws, as inserted by
90 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (e) to
91 read as follows: "(e) Appointment of a person with priority, a person who is nominated pursuant
92 to subsection (c) of this section, or a person whose entitlement to appointment results from
93 renunciation by another person with priority may be made in either formal or informal
94 proceedings. Before formal appointment of one without priority, the court must determine that

95 those having priority, although given notice of the proceedings, have failed to request
96 appointment or to nominate another for appointment, and that administration is necessary.

97 SECTION 13. Section 3-301 of chapter 190B of the General Laws, as inserted by
98 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in
99 subsection (a)(6) to “section 3-610(c)” to read “section 3-610” and by changing the words “and
100 describe the priority of the petitioner” to “describe the priority of the nominee”.

101 SECTION 14. Section 3-605 of chapter 190B of the General Laws, as inserted by
102 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first three
103 sentences to read as follows: “Any person apparently having an interest in the estate worth in
104 excess of \$5000, or any creditor having a claim in excess of \$5000, may make a written demand
105 that a personal representative give sureties on his bond. The demand shall be filed with the court
106 and a copy mailed to the personal representative, if appointment and qualification have occurred.
107 Thereupon, sureties shall be required, but the requirement ceases if the person demanding
108 sureties ceases to be interested in the estate, or if sureties are excused as provided in section 3-
109 604.”

110 SECTION 15. Section 3-610 of chapter 190B of the General Laws, as inserted by
111 section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

112 Section 3-610. [Resignation by Personal Representative]

113 A personal representative may resign his position by filing a written statement of resignation
114 with the court after he or she has given at least 15 days written notice to the persons known to be
115 interested in the estate. If no one applies or petitions for appointment of a successor
116 representative within the time indicated in the notice, the filed statement of resignation is

117 ineffective as a termination of appointment and in any event is effective only upon the
118 appointment and qualification of a successor representative and delivery of the assets to him or
119 her.

120 SECTION 16. Section 3-617 of chapter 190B of the General Laws, as inserted by
121 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding after subsection (b)
122 the following subsection (c): “(c) Unless otherwise ordered by the court, the authority of any
123 personal representative previously appointed by the court or magistrate is suspended as long as a
124 special personal representative has authority.”

125 SECTION 17. Section 3-706 of chapter 190B of the General Laws, as inserted by
126 section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:
127 Section 3-706. [Duty of Personal Representative; Inventory and Appraisalment.]

128 (a) Within 3 months after appointment, a personal representative, who in
129 not a successor to another representative, shall prepare an inventory of the property owned by the
130 decedent at the time of death, listing it with reasonable detail, and indicating as to each listed
131 item, its fair market value as of the date of death, and the type and amount of any encumbrance
132 that may exist with reference to any item.

133 (b) Within 3 months after appointment, a successor personal representative
134 shall prepare an inventory of the property of the estate listing it with reasonable detail, and
135 indicating as to each listed item, its fair market value as of the date of his or her appointment,
136 and the type and amount of any encumbrance that may exist with reference to any item.

137 (c) The personal representative shall file with the court or mail to all
138 interested persons whose addresses are reasonably available a copy of the inventory. The
139 personal representative may also file the original of the inventory with the court.

140 SECTION 18. Section 3-1201 of chapter 190B of the General Laws, as inserted by
141 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “If an
142 inhabitant of the commonwealth” in the first paragraph to read, “If a person domiciled in the
143 commonwealth”.

144 SECTION 19. Section 5-101 of chapter 190B of the General Laws, as inserted by
145 section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting: “(23.5)
146 “Respondent”, an individual for whom the appointment of a guardian or conservator or other
147 protective order is sought.” after subsection (23).

148 SECTION 20. Section 5-105 of chapter 190B of the General Laws, as inserted by
149 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “in the
150 case of a nomination of by the will of a parent or spouse” in paragraph (2) of subsection (a) to
151 read, “in the case of a nomination by the will of a parent or spouse”.

152 SECTION 21. Section 5-106 of chapter 190B of the General Laws, as inserted by
153 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the sentence
154 “Counsel for any indigent ward, incapacitated person or person to be protected shall be
155 compensated by the commonwealth.” in subsection (a) to read, “Counsel for any indigent ward,
156 incapacitated person or person to be protected shall be compensated by the commonwealth or the
157 petitioner as the court may order.”

158 SECTION 22. Section 5-107 of chapter 190B of the General Laws, as inserted by
159 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “ill
160 person” to read “protected person” wherever it appears.

161 SECTION 23. Section 5-204 of chapter 190B of the General Laws, as inserted by
162 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term “over the
163 age of 14 years” in subsection (d) to read “14 or more years of age”.

164 SECTION 24. Section 5-206 of chapter 190B of the General Laws, as inserted by
165 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the words “A
166 minor” in subsection (a) to read, “A minor 14 or more years of age”.

167 SECTION 25. Section 5-303 of chapter 190B of the General Laws, as inserted by
168 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase “the
169 petitioner shall attach a copy” in paragraph (9) of subsection (b) to read, “the petitioner shall file
170 with the petition”.

171 SECTION 26. Section 5-303 of chapter 190B of the General Laws, as inserted by
172 section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “registered” before
173 the word “physician”, and by inserting “, certified psychiatric nurse clinical specialist, nurse
174 practitioner” after the word “physician” in subsection (c).

175 SECTION 27. Section 5-303 of chapter 190B of the General Laws, as inserted by
176 section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsection (e)
177 as (f) and adding the following subsection (e) after subsection (d): “(e) The court may require
178 additional medical or psychological testimony as to the mental and physical condition of the
179 person alleged to be incapacitated or disabled and may require him to submit to examination. It

180 may also appoint one or more persons expert in incapacity or disability, to examine such person
181 and report their conclusions to the court.”

182 SECTION 28. Section 5-304 of chapter 190B of the General Laws, as inserted by
183 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first clause of
184 subsection (a) to read: “(a) In a proceeding for the appointment of a guardian or conservator or
185 for protective order, notice shall be given by the petitioner to:”

186 SECTION 29. Section 5-304 of chapter 190B of the General Laws, as inserted by
187 section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting “, if 14 or more
188 years of age,” after the word “protected” in subsection (a)(1).

189 SECTION 30. Section 5-305 of chapter 190B of the General Laws, as inserted by
190 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing paragraph (1) of
191 subsection (c) to read, “(1) the spouse of the incapacitated person or a person nominated
192 pursuant to section 5-301(b);”.

193 SECTION 31. Section 5-306A of chapter 190B of the General Laws, as inserted by
194 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding to the end of
195 subsection (a) the following: “When approving and authorizing an antipsychotic medication
196 treatment plan by order or decree, the court shall consider the testimony or affidavit of a licensed
197 physician or certified psychiatric nurse clinical specialist regarding such plan.”, adding the words
198 “minor or” before the words “incapacitated person” in subsection (c) each place where they
199 appear, and by changing the first clause of subsection (d) to read, “(d) A minor 14 or more years
200 of age or an incapacitated person is required to attend any hearing relative to authority to consent
201 to treatment for which a substituted judgment determination is required, unless the court finds

202 that there exist extraordinary circumstances requiring the absence of the minor or incapacitated
203 person in which event the attendance of his counsel shall suffice;”.

204 SECTION 32. Section 5-309 of chapter 190B of the General Laws, as inserted by
205 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase: “of
206 incapacitated persons” after the word “guardianships” in subsection (c).

207 SECTION 33. Section 5-309 of chapter 190B of the General Laws, as inserted by
208 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (g) to
209 read: “(g) No guardian shall have the authority to admit an incapacitated person to a nursing
210 facility except upon a specific finding by the court that such admission is in the incapacitated
211 person's best interest or unless: (1) the admission is for 60 days or less, (2) any person authorized
212 to sign a Medical Certificate recommends such admission, (3) all interested persons and the
213 incapacitated person do not object, 4) on or before such admission a written Notice of Intent to
214 Admit the Incapacitated Person to a Nursing Facility for Short Term Services has been filed by
215 the guardian in the appointing court and a copy has been served in hand on the Incapacitated
216 Person and provided to the Nursing Facility and 5) the Incapacitated Person is represented by
217 counsel or counsel is appointed forthwith. The Notice of Intent to Admit the Incapacitated
218 Person to a Nursing Facility for Short Term Services shall be on a form promulgated and
219 approved by the Chief Justice of the Probate and Family Court.”

220 SECTION 34. Section 5-404 of chapter 190B of the General Laws, as inserted by
221 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (b)(11)
222 to read: “(11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a
223 statement:

224 (A) that a medical certificate conforming to the provisions of section 5-303(c) dated
225 and the examination having taken place within 30 days of the filing of the petition or, in the case
226 of a person alleged to be mentally retarded, a clinical team report dated within 180 days of the
227 filing of the petition, is in the possession of the court or accompanies the petition; or

228 (B) of the nature of any circumstance which makes it impossible to obtain a medical
229 certificate or clinical team report which shall be supported by affidavit or affidavits meeting the
230 requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court
231 may waive or postpone the requirement of filing of a medical certificate or clinical team report.

232 SECTION 35. Section 5-407 of chapter 190B of the General Laws, as inserted by
233 section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsections
234 (b)(5), (b)(6) and (b)(7) as (b)(6), (b)(7) and (b)(8) respectively; and by adding after subsection
235 (b)(4) the following subsection (b)(5): “(5) any required clinical team report is dated and the
236 examinations have taken place within 180 days prior to the filing of the petition;”

237 SECTION 36. Section 5-411 of chapter 190B of the General Laws, as inserted by
238 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in
239 subsection (a) to “sections 5-208, 5-305 and 5-410” to read “sections 5-208, 5-307 and 5-410.”

240 SECTION 37. Section 5-413 of chapter 190B of the General Laws, as inserted by
241 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence to
242 read, “The court may order that such compensation be paid by any party or parties as it shall
243 determine.”

244 SECTION 38. Section 5-418 of chapter 190B of the General Laws, as inserted by
245 section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following

246 sentence at the end of subsection (e): “Such discharge shall forever exonerate the conservator
247 and his sureties from all liability under such decree unless his account is impeached for fraud or
248 manifest error.”

249 SECTION 39. Section 5-423 of chapter 190B of the General Laws, as inserted by
250 section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering the second
251 subsection (c) as subsection (d).

252 SECTION 40. Section 5-429 of chapter 190B of the General Laws, as inserted by
253 section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the word
254 “incapacitated” in subsection (b) to read, “disabled”.

255 SECTION 41. Section 15 of chapter 521 of the Acts of 2008 is changed to read as follows:
256 “Sections 1-8, inclusive, of chapter 196 of the General Laws are hereby repealed.”

257 SECTION 42. The following new section 27A is added after section 27 of chapter
258 521 of the Acts of 2008: “SECTION 27A: Section 3 of chapter 203A of the General Laws is
259 hereby amended by deleting the third sentence (beginning with the word ‘Application’ and
260 ending with the word ‘six.’).”

261 SECTION 43. Section 39 of chapter 521 of the Acts of 2008 is hereby changed to
262 read as follows: “Section 7 of chapter 210 of the General Laws is hereby repealed.”

263 SECTION 44. The following new section 39A is added after section 39 of chapter
264 521 of the Acts of 2008: “SECTION 39A. Section 8 of chapter 210 of the General Laws is
265 hereby repealed.”

266 SECTION 45. The following new section 40A is added after section 40 of chapter
267 521 of the Acts of 2008: “Section 21 of chapter 246 of the General Laws is hereby repealed.”

268 SECTION 46. Clause 1 of section 43 of chapter 521 of the Acts of 2008 is hereby
269 changed to read as follows: “1. this act shall apply to pre-existing governing instruments, except
270 that, subject to the provisions of clause 5 below, none of its provisions other than Article VII
271 (and provisions incorporated through Article VII) shall apply to governing instruments that
272 became irrevocable prior to the effective date of this act;”.