SENATE DOCKET, NO. 1167 FILED ON: 1/18/2013

SENATE . . . . . No. 661

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*

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SENATE . . . . . No. 661

By Ms. Creem, a petition (accompanied by bill, Senate, No. 661) of Cynthia S. Creem for legislation to make corrective changes in certain general and special laws. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *704* OF 2011-2012.]

The Commonwealth of Massachusetts

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 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:

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

SECTION 2. Section 1-401 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the sentence: "If the objecting party is a Respondent as defined under section 5-101(23.5), the Respondent or the Respondent's appointed counsel shall file a written affidavit of objections to the proceeding, stating the specific facts and grounds upon which the objection is based within 30 days after the return date." to the end of subsection (e).

SECTION 3. Section 1-404 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (a) to read: "(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, or otherwise, a minor, a protected

15 person, an incapacitated person or a person not ascertained or not in being may be or may
16 become interested in any property, real or personal, or in the enforcement or defense of any legal
17 rights, the court in which any action, petition or proceeding of any kind relative to or affecting
18 any such estate or legal rights is pending may, upon the representation of any party thereto, or of
19 any person interested, appoint a suitable person to appear and act therein as guardian ad litem or
20 next friend of such minor, protected person, incapacitated person or person not ascertained or not
21 in being; and a judgment, order or decree in such proceedings, made after such appointment,
22 should be conclusive upon all persons for whom such guardian ad litem or next friend was
23 appointed."

24 SECTION 4. Section 1-404 of chapter 190B of the General Laws, as inserted by section
25 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 section
30 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following sentence at the
31 end of subsection (b): "The court may decree that the rights of succession to property under this
32 section (or under former section 7 of chapter 210 of the General Laws) shall vest in an adopted
33 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 section
35 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 section
38 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase "except for
39 purposes of part 3 of article VI [Uniform TOD Security Registration Act] and" from subsection
40 (a) and by deleting the phrase "and except for a security registered in beneficiary form (TOD)
41 under part 3 of Article VI, Uniform TOD Security Registration Act" from subsection (b).

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

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

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

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

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

59 No informal probate or appointment proceeding or formal testacy or appointment
60 proceeding, other than a proceeding to probate a will previously probated at the testator's
61 domicile and appointment proceedings relating to an estate in which there has been a prior
62 appointment, may be commenced more than 3 years after the decedent's death, except (1) if a
63 previous proceeding was dismissed because of doubt about the fact of the decedent's death,
64 appropriate probate, appointment or testacy proceedings may be maintained at any time
65 thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous
66 proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent
67 proceeding; (2) appropriate probate, appointment or testacy proceedings may be maintained in
68 relation to the estate of an absent, disappeared or missing person at any time within 3 years after
69 the death of the person can be established; (3) a proceeding to contest an informally probated
70 will and to secure appointment of the person with legal priority for appointment in the event the
71 contest is successful, may be commenced within the later of 12 months from the informal
72 probate or 3 years from the decedent's death; (4) an informal appointment or a formal testacy or
73 appointment proceeding may be commenced thereafter if no proceedings concerning the
74 succession or estate administration has occurred within the 3 year period after the decedent's
75 death, but the personal representative has no right to possess estate assets as provided in Section
76 3-709 beyond that necessary to confirm title thereto in the successors to the estate and claims
77 other than expenses of administration may not be presented against the estate; and (5) a formal
78 testacy proceeding may be commenced at any time after 3 years from the decedent's death for
79 the purpose of establishing an instrument to direct or control the ownership of property passing
80 or distributable after the decedent's death from one other than the decedent when the property is
81 to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the
82 decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.
83 These limitations shall not apply to proceedings to construe probated wills or determine heirs of
84 an intestate. In cases under (1) or (2) above, the date on which a testacy or appointment
85 proceeding is properly commenced shall be deemed to be the date of the decedent's death for
86 purposes of other limitations provisions of this chapter which relate to the date of death.

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

95 SECTION 13. Section 3-301 of chapter 190B of the General Laws, as inserted by section
96 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection
97 (a)(6) to "section 3-610(c)" to read "section 3-610" and by changing the words "and describe the
98 priority of the petitioner" to "describe the priority of the nominee".

99 SECTION 14. Section 3-605 of chapter 190B of the General Laws, as inserted by section
100 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first three sentences to
101 read as follows: "Any person apparently having an interest in the estate worth in excess of
102 $5000, or any creditor having a claim in excess of $5000, may make a written demand that a
103 personal representative give sureties on his bond. The demand shall be filed with the court and a
104 copy mailed to the personal representative, if appointment and qualification have occurred.
105 Thereupon, sureties shall be required, but the requirement ceases if the person demanding
106 sureties ceases to be interested in the estate, or if sureties are excused as provided in section 3-
107 604."

108 SECTION 15. Section 3-610 of chapter 190B of the General Laws, as inserted by section
109 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

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

111 A personal representative may resign his position by filing a written statement of
112 resignation with the court after he or she has given at least 15 days written notice to the persons
113 known to be interested in the estate. If no one applies or petitions for appoint¬ment of a
114 successor representative within the time indicated in the notice, the filed statement of resignation
115 is ineffective as a termi-nation of appointment and in any event is effective only upon the
116 appointment and qualification of a successor representative and delivery of the assets to him or
117 her.

118 SECTION 16. Section 3-617 of chapter 190B of the General Laws, as inserted by section
119 9 of chapter 521 of the Acts of 2008, is hereby amended by adding after subsection (b) the
120 following subsection (c): "(c) Unless otherwise ordered by the court, the authority of any
121 personal representative previously appointed by the court or magistrate is suspended as long as a
122 special personal representative has authority."

123 ECTION 17. Section 3-706 of chapter 190B of the General Laws, as inserted by section
124 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:

125 Section 3-706. [Duty of Personal Representative; Inventory and Appraisement.]

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

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

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

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

142 SECTION 19. Section 5-101 of chapter 190B of the General Laws, as inserted by section
143 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting: "(23.5) "Respondent", an
144 individual for whom the appointment of a guardian or conservator or other protective order is
145 sought." after subsection (23).

146 SECTION 20. Section 5-105 of chapter 190B of the General Laws, as inserted by section
147 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase "in the case of a
148 nomination of by the will of a parent or spouse" in paragraph (2) of subsection (a) to read, "in the
149 case of a nomination by the will of a parent or spouse".

150 SECTION 21. Section 5-106 of chapter 190B of the General Laws, as inserted by section
151 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the sentence "Counsel for
152 any indigent ward, incapacitated person or person to be protected shall be compensated by the
153 commonwealth." in subsection (a) to read, "Counsel for any indigent ward, incapacitated person
154 or person to be protected shall be compensated by the commonwealth or the petitioner as the
155 court may order."

156 SECTION 22. Section 5-107 of chapter 190B of the General Laws, as inserted by section
157 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term "ill person" to
158 read "protected person" wherever it appears.

159 SECTION 23. Section 5-204 of chapter 190B of the General Laws, as inserted by section
160 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the term "over the age of
161 14 years" in subsection (d) to read "14 or more years of age".

162 SECTION 24. Section 5-206 of chapter 190B of the General Laws, as inserted by section
163 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the words "A minor" in
164 subsection (a) to read, "A minor 14 or more years of age".

165 SECTION 25. Section 5-303 of chapter 190B of the General Laws, as inserted by section
166 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the phrase "the petitioner
167 shall attach a copy" in paragraph (9) of subsection (b) to read, "the petitioner shall file with the
168 petition".

169 SECTION 26. Section 5-303 of chapter 190B of the General Laws, as inserted by section
170 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting "registered" before the
171 word "physician", and by inserting ", certified psychiatric nurse clinical specialist, nurse
172 practitioner" after the word "physician" in subsection (c).

173 SECTION 27. Section 5-303 of chapter 190B of the General Laws, as inserted by section
174 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsection (e) as (f) and
175 adding the following subsection (e) after subsection (d): "(e) The court may require additional
176 medical or psychological testimony as to the mental and physical condition of the person alleged
177 to be incapacitated or disabled and may require him to submit to examination. It may also
178 appoint one or more persons expert in incapacity or disability, to examine such person and report
179 their conclusions to the court."

180 SECTION 28. Section 5-304 of chapter 190B of the General Laws, as inserted by section
181 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first clause of
182 subsection (a) to read: "(a) In a proceeding for the appointment of a guardian or conservator or
183 for protective order, notice shall be given by the petitioner to:"

184 SECTION 29. Section 5-304 of chapter 190B of the General Laws, as inserted by section
185 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting ", if 14 or more years of
186 age," after the word "protected" in subsection (a)(1).

187 SECTION 30. Section 5-305 of chapter 190B of the General Laws, as inserted by section
188 9 of chapter 521 of the Acts of 2008, is hereby amended by changing paragraph (1) of subsection
189 (c) to read, "(1) the spouse of the incapacitated person or a person nominated pursuant to section
190 5-301(b);".

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

202 SECTION 32. Section 5-309 of chapter 190B of the General Laws, as inserted by section
203 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase: "of incapacitated
204 persons" after the word "guardianships" in subsection (c).

205 SECTION 33. Section 5-309 of chapter 190B of the General Laws, as inserted by section
206 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (g) to read: "(g)
207 No guardian shall have the authority to admit an incapacitated person to a nursing facility except
208 upon a specific finding by the court that such admission is in the incapacitated person's best
209 interest or unless: (1) the admission is for 60 days or less, (2) any person authorized to sign a
210 Medical Certificate recommends such admission, (3) all interested persons and the incapacitated
211 person do not object, 4) on or before such admission a written Notice of Intent to Admit the
212 Incapacitated Person to a Nursing Facility for Short Term Services has been filed by the guardian
213 in the appointing court and a copy has been served in hand on the Incapacitated Person and
214 provided to the Nursing Facility and 5) the Incapacitated Person is represented by counsel or
215 counsel is appointed forthwith. The Notice of Intent to Admit the Incapacitated Person to a
216 Nursing Facility for Short Term Services shall be on a form promulgated and approved by the
217 Chief Justice of the Probate and Family Court."

218 SECTION 34. Section 5-404 of chapter 190B of the General Laws, as inserted by section
219 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (b)(11) to read:
220 "(11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a statement:

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

225 (B) of the nature of any circumstance which makes it impossible to obtain a medical
226 certificate or clinical team report which shall be supported by affidavit or affidavits meeting the

227 requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court
228 may waive or postpone the requirement of filing of a medical certificate or clinical team report.

229 SECTION 35. Section 5-407 of chapter 190B of the General Laws, as inserted by section
230 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsections (b)(5),
231 (b)(6) and (b)(7) as (b)(6), (b)(7) and (b)(8) respectively; and by adding after subsection (b)(4)
232 the following subsection (b)(5): "(5) any required clinical team report is dated and the
233 examinations have taken place within 180 days prior to the filing of the petition;"

234 SECTION 36. Section 5-411 of chapter 190B of the General Laws, as inserted by section
235 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection
236 (a) to "sections 5-208, 5-305 and 5-410" to read "sections 5-208, 5-307 and 5-410."

237 SECTION 37. Section 5-413 of chapter 190B of the General Laws, as inserted by section
238 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence to read,
239 "The court may order that such compensation be paid by any party or parties as it shall
240 determine."

241 SECTION 38. Section 5-418 of chapter 190B of the General Laws, as inserted by section
242 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following sentence at the
243 end of subsection (e): "Such discharge shall forever exonerate the conservator and his sureties
244 from all liability under such decree unless his account is impeached for fraud or manifest error."

245 SECTION 39. Section 5-423 of chapter 190B of the General Laws, as inserted by section
246 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering the second subsection
247 (c) as subsection (d).

248 SECTION 40. Section 5-429 of chapter 190B of the General Laws, as inserted by section
249 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the word "incapacitated" in
250 subsection (b) to read, "disabled".

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

253 SECTION 42. The following new section 27A is added after section 27 of chapter 521 of
254 the Acts of 2008: "SECTION 27A: Section 3 of chapter 203A of the General Laws is hereby
255 amended by deleting the third sentence (beginning with the word 'Application' and ending with
256 the word 'six.')."

257 SECTION 43. Section 39 of chapter 521 of the Acts of 2008 is hereby changed to read
258 as follows: "Section 7 of chapter 210 of the General Laws is hereby repealed."

259 SECTION 44. The following new section 39A is added after section 39 of chapter 521 of
260 the Acts of 2008: "SECTION 39A. Section 8 of chapter 210 of the General Laws is hereby
261 repealed."

262 SECTION 45. The following new section 40A is added after section 40 of chapter 521 of
263 the Acts of 2008: "Section 21 of chapter 246 of the General Laws is hereby repealed."

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