SENATE No. 704

The Commony	vealth of Massachusetts	
PF	RESENTED BY:	
Cyn	nthia S. Creem	
To the Honorable Senate and House of Representat Court assembled:	tives of the Commonwealth of Massachusetts in General	
The undersigned legislators and/or citizens	s respectfully petition for the passage of the accompanying:	
An Act making corrective changes in certain general and special laws.		
An Act making corrective ch	anges in certain general and special laws.	
	enges in certain general and special laws. PETITION OF:	

SENATE No. 704

By Ms. Creem, a petition (accompanied by bill, Senate, No. 704) of Cynthia S. Creem for legislation to make corrective changes in certain general and special laws. The Judiciary.

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).

4 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 person, an incapacitated person or a person not ascertained or not in being may be or may become interested in any property, real or personal, or in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto, or of any person interested, appoint a suitable person to appear and act therein as 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."
- SECTION 4. Section 1-404 of chapter 190B of the General Laws, as inserted
- 25 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the last sentence
- 26 of subsection (d) to read: "Unless the spouse, heir or devisee is represented by someone other
- 27 than the petitioner or is under guardianship or conservatorship by someone other than the
- 28 petitioner, the Court shall appoint a guardian ad litem who shall receive notice of all
- 29 proceedings."
- 30 SECTION 5. Section 2-114 of chapter 190B of the General Laws, as inserted
- 31 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following
- 32 sentence at the end of subsection (b): "The court may decree that the rights of succession to
- 33 property under this section (or under former section 7 of chapter 210 of the General Laws) shall
- 34 vest in an adopted individual as of the date of the filing of the petition for adoption."
- 35 SECTION 6. Section 2-603 of chapter 190B of the General Laws, as inserted
- 36 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by replacing the words "by
- 37 representation" with the words "per capita at each generation".
- 38 SECTION 7. Section 2-702 of chapter 190B of the General Laws, as inserted
- 39 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase
- 40 "except for purposes of part 3 of article VI [Uniform TOD Security Registration Act] and" from
- 41 subsection (a) and by deleting the phrase "and except for a security registered in beneficiary
- 42 form (TOD) under part 3 of Article VI, Uniform TOD Security Registration Act" from
- 43 subsection (b).
- SECTION 8. Section 2-706 of chapter 190B of the General Laws, as inserted
- 45 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by
- 46 renumbering subsections (b), (c) and (d) as (a), (b) and (c) respectively; and by changing the
- 47 words "by representation" to read "per capita at each generation" wherever they appear.
- 48 SECTION 9. Section 2-707 of chapter 190B of the General Laws, as inserted
- 49 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting subsection (a); by
- 50 renumbering subsections (b) and (c) as (a) and (b) respectively; and by changing the words "by
- 51 representation" to read "per capita at each generation" wherever they appear.
- SECTION 10. Section 2-801 of chapter 190B of the General Laws, as inserted
- 53 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by deleting the phrase
- "receives without objection a benefit from such interest," from subsection (h)(4) the second time
- 55 it appears, and by changing subsection (j) to read as follows: "(j) Except for the provisions of

- 56 subsection (h), this section shall not abridge the right of any person to disclaim, waive, release,
- 57 renounce or abandon any interest in property under any other statute or rule of law."
- 58 SECTION 11. Section 3-108 of chapter 190B of the General Laws, as inserted
- 59 by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as
- 60 follows:

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

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

91 SECTION 12. Section 3-203 of chapter 190B of the General Laws, as 92 inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing 93 subsection (e) to read as follows: "(e) Appointment of a person with priority, a person who is

purposes of other limitations provisions of this chapter which relate to the date of death.

- 94 nominated pursuant to subsection (c) of this section, or a person whose entitlement to
- 95 appointment results from renunciation by another person with priority may be made in either
- 96 formal or informal proceedings. Before formal appointment of one without priority, the court
- 97 must determine that those having priority, although given notice of the proceedings, have failed
- 98 to request appointment or to nominate another for appointment, and that administration is
- 99 necessary.
- SECTION 13. Section 3-301 of chapter 190B of the General Laws, as inserted
- 101 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in
- 102 subsection (a)(6) to "section 3-610(c)" to read "section 3-610" and by changing the words "and
- describe the priority of the petitioner" to "describe the priority of the nominee".
- SECTION 14. Section 3-605 of chapter 190B of the General Laws, as inserted
- 105 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the first three
- 106 sentences to read as follows: "Any person apparently having an interest in the estate worth in
- 107 excess of \$5000, or any creditor having a claim in excess of \$5000, may make a written demand
- 108 that a personal representative give sureties on his bond. The demand shall be filed with the court
- and a copy mailed to the personal representative, if appointment and qualification have occurred.
- 110 Thereupon, sureties shall be required, but the requirement ceases if the person demanding
- 111 sureties ceases to be interested in the estate, or if sureties are excused as provided in section 3-
- 112 604."
- SECTION 15. Section 3-610 of chapter 190B of the General Laws, as inserted
- by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as
- 115 follows:
- Section 3-610. [Resignation by Personal Representative]
- A personal representative may resign his position by filing a written statement of
- 118 resignation with the court after he or she has given at least 15 days written notice to the persons
- 119 known to be interested in the estate. If no one applies or petitions for appoint—ment of a
- 120 successor representative within the time indicated in the notice, the filed statement of resignation
- 121 is ineffective as a termi-nation of appointment and in any event is effective only upon the
- 122 appointment and qualification of a successor representative and delivery of the assets to him or
- 123 her.
- 124 SECTION 16. Section 3-617 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 after subsection
- 126 (b) the following subsection (c): "(c) Unless otherwise ordered by the court, the authority of any
- 127 personal representative previously appointed by the court or magistrate is suspended as long as a
- 128 special personal representative has authority."

129 130 131	SECTION 17. Section 3-706 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended to read in its entirety as follows:
132	Section 3-706. [Duty of Personal Representative; Inventory and Appraisement.]
133 134 135 136 137	(a) Within 3 months after appointment, a personal representative, who in not a successor to another representative, shall prepare an inventory of the property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of death, and the type and amount of any encumbrance that may exist with reference to any item.
138 139 140 141 142	(b) Within 3 months after appointment, a successor personal representative shall prepare an inventory of the property of the estate listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of his or her appointment, and the type and amount of any encumbrance that may exist with reference to any item.
143 144 145	(c) The personal representative shall file with the court or mail to all interested persons whose addresses are reasonably available a copy of the inventory. The personal representative may also file the original of the inventory with the court.
146 147 148 149	SECTION 18. Section 3-1201 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 the phrase "If an inhabitant of the commonwealth" in the first paragraph to read, "If a person domiciled in the commonwealth".
150 151 152 153	SECTION 19. Section 5-101 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting: "(23.5) "Respondent", an individual for whom the appointment of a guardian or conservator or other protective order is sought." after subsection (23).
154 155 156 157	SECTION 20. Section 5-105 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 the phrase "in the case of a nomination of by the will of a parent or spouse" in paragraph (2) of subsection (a) to read, "in the case of a nomination by the will of a parent or spouse".
158 159 160 161 162 163	SECTION 21. Section 5-106 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 the sentence "Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth." in subsection (a) to read, "Counsel for any indigent ward, incapacitated person or person to be protected shall be compensated by the commonwealth or the petitioner as the court may order."

- SECTION 22. Section 5-107 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 the term "ill person" to read "protected person" wherever it appears.

 SECTION 23. Section 5-204 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 the term "over
- SECTION 24. Section 5-206 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 the words "A minor" in subsection (a) to read, "A minor 14 or more years of age".

the age of 14 years" in subsection (d) to read "14 or more years of age".

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- SECTION 25. Section 5-303 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 the phrase "the petitioner shall attach a copy" in paragraph (9) of subsection (b) to read, "the petitioner shall file with the petition".
- SECTION 26. Section 5-303 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting "registered" before the word "physician", and by inserting ", certified psychiatric nurse clinical specialist, nurse practitioner" after the word "physician" in subsection (c).
- SECTION 27. Section 5-303 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsection (e) as (f) and adding the following subsection (e) after subsection (d): "(e) The court may require additional medical or psychological testimony as to the mental and physical condition of the person alleged to be incapacitated or disabled and may require him to submit to examination. It may also appoint one or more persons expert in incapacity or disability, to examine such person and report their conclusions to the court."
- SECTION 28. Section 5-304 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 the first clause of subsection (a) to read: "(a) In a proceeding for the appointment of a guardian or conservator or for protective order, notice shall be given by the petitioner to:"
- SECTION 29. Section 5-304 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by inserting ", if 14 or more years of age," after the word "protected" in subsection (a)(1).
- SECTION 30. Section 5-305 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 paragraph (1) of subsection (c) to read, "(1) the spouse of the incapacitated person or a person nominated pursuant to section 5-301(b);".

199	SECTION 31. Section 5-306A of chapter 190B of the General Laws, as
200	inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding to the end
201202	of subsection (a) the following: "When approving and authorizing an antipsychotic medication treatment plan by order or decree, the court shall consider the testimony or affidavit of a licensed
203	physician or certified psychiatric nurse clinical specialist regarding such plan.", adding the words
204	"minor or" before the words "incapacitated person" in subsection (c) each place where they
205	appear, and by changing the first clause of subsection (d) to read, "(d) A minor 14 or more years
206	of age or an incapacitated person is required to attend any hearing relative to authority to consent
207	to treatment for which a substituted judgment determination is required, unless the court finds
208	that there exist extraordinary circumstances requiring the absence of the minor or incapacitated
209	person in which event the attendance of his counsel shall suffice;".
210	SECTION 32. Section 5-309 of chapter 190B of the General Laws, as inserted
211	by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the phrase: "of
212	incapacitated persons" after the word "guardianships" in subsection (c).
213	SECTION 33. Section 5-309 of chapter 190B of the General Laws, as inserted
214	by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection (g) to
215	read: "(g) No guardian shall have the authority to admit an incapacitated person to a nursing
216	facility except upon a specific finding by the court that such admission is in the incapacitated
217	person's best interest or unless: (1) the admission is for 60 days or less, (2) any person authorized
218	to sign a Medical Certificate recommends such admission, (3) all interested persons and the
219	incapacitated person do not object, 4) on or before such admission a written Notice of Intent to
220	Admit the Incapacitated Person to a Nursing Facility for Short Term Services has been filed by
221	the guardian in the appointing court and a copy has been served in hand on the Incapacitated
222	Person and provided to the Nursing Facility and 5) the Incapacitated Person is represented by
223	counsel or counsel is appointed forthwith. The Notice of Intent to Admit the Incapacitated
224	Person to a Nursing Facility for Short Term Services shall be on a form promulgated and
225	approved by the Chief Justice of the Probate and Family Court."
226	SECTION 34. Section 5-404 of chapter 190B of the General Laws, as inserted
227	by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing subsection
228	(b)(11) to read: "(11) except for a conservatorship of a minor filed pursuant to section 5-401(b),
229	a statement:
230	(A) that a medical certificate conforming to the provisions of section 5-303(c)
231	dated and the examination having taken place within 30 days of the filing of the petition or, in
232	the case of a person alleged to be mentally retarded, a clinical team report dated within 180 days
233	of the filing of the petition, is in the possession of the court or accompanies the petition; or
234	(B) of the nature of any circumstance which makes it impossible to obtain a
235	medical certificate or clinical team report which shall be supported by affidavit or affidavits

- 236 meeting the requirements set forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or postpone the requirement of filing of a medical certificate or clinical 238 team report. 239 SECTION 35. Section 5-407 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering subsections 240 (b)(5), (b)(6) and (b)(7) as (b)(6), (b)(7) and (b)(8) respectively; and by adding after subsection 241 242 (b)(4) the following subsection (b)(5): "(5) any required clinical team report is dated and the 243 examinations have taken place within 180 days prior to the filing of the petition;" 244 SECTION 36. Section 5-411 of chapter 190B of the General Laws, as inserted 245 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by changing the reference in subsection (a) to "sections 5-208, 5-305 and 5-410" to read "sections 5-208, 5-307 and 5-410." 247 SECTION 37. Section 5-413 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 the last sentence 248 249 to read, "The court may order that such compensation be paid by any party or parties as it shall 250 determine." 251 SECTION 38. Section 5-418 of chapter 190B of the General Laws, as inserted 252 by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding the following sentence at the end of subsection (e): "Such discharge shall forever exonerate the conservator 254 and his sureties from all liability under such decree unless his account is impeached for fraud or 255 manifest error." 256 SECTION 39. Section 5-423 of chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by renumbering the second 257 subsection (c) as subsection (d). 258 259 SECTION 40. Section 5-429 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 the word 260 "incapacitated" in subsection (b) to read, "disabled". 262 SECTION 41. Section 15 of chapter 521 of the Acts of 2008 is changed to read as follows: "Sections 1-8, inclusive, of chapter 196 of the General Laws are hereby repealed." 263 264 SECTION 42. The following new section 27A is added after section 27 of 265 chapter 521 of the Acts of 2008: "SECTION 27A: Section 3 of chapter 203A of the General Laws is hereby amended by deleting the third sentence (beginning with the word 'Application' 267 and ending with the word 'six.')."
- SECTION 43. Section 39 of chapter 521 of the Acts of 2008 is hereby changed to read as follows: "Section 7 of chapter 210 of the General Laws is hereby repealed."

270	SECTION 44. The following new section 39A is added after section 39 of
271	chapter 521 of the Acts of 2008: "SECTION 39A. Section 8 of chapter 210 of the General Laws
272	is hereby repealed."
273	SECTION 45. The following new section 40A is added after section 40 of
274	chapter 521 of the Acts of 2008: "Section 21 of chapter 246 of the General Laws is hereby
275	repealed."
276	SECTION 46. Clause 1 of section 43 of chapter 521 of the Acts of 2008 is
277	hereby changed to read as follows: "1. this act shall apply to pre-existing governing
278	instruments, except that, subject to the provisions of clause 5 below, none of its provisions other
279	than Article VII (and provisions incorporated through Article VII) shall apply to governing
280	instruments that became irrevocable prior to the effective date of this act."