SENATE DOCKET, NO. 1353 FILED ON: 1/21/2011

SENATE . . . . . No. 918

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 to establish employment leave and safety remedies to victims of domestic violence, stalking and sexual assault.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	☐ *[District]* ☐
Ruth B. Balser	*12th Middlesex*
Gloria L. Fox	*7th Suffolk*
Frank I. Smizik	*15th Norfolk*
Denise Andrews	*2nd Franklin*

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SENATE . . . . . No. 918

By Ms. Creem, a petition (accompanied by bill, Senate, No. 918) of Cynthia S. Creem, Ruth B. Balser, Gloria L. Fox, Frank I. Smizik and others for legislation to establish employment leave and safety remedies to victims of domestic violence, stalking and sexual assault. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *2405* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to establish employment leave and safety remedies to victims of domestic violence, stalking and sexual assault.

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. Chapter 149 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 52D the following section:-

Section 52E. (1) For purposes of this section, the following words shall have the following meanings, unless the context clearly indicates otherwise:-

"Abuse", shall include: (i) attempting to cause or causing physical harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations by force, threat or duress or engaging or threatening to engage in sexual activity with a dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; (v) depriving another of medical care, housing, food or other necessities of life; and (vi) restraining the liberty of another.

"Abusive behavior", any behavior constituting domestic violence, stalking in violation of section 43 of chapter 265, sexual assault which shall include any violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B of chapter 265 and sections 3 and 35A of chapter 272 and kidnapping in violation of the third paragraph of section 26 of chapter 265.

16 "Domestic violence" abuse against an employee or the employee's family
17 member by: (i) a current or former spouse of the employee or the employee's family member;
18 (ii) a person with whom the employee or the employee's family member shares a child in
19 common; (iii) a person who is cohabitating with or has cohabitated with the employee or the
20 employee's family member; (iv) a person who is related by blood or marriage to the employee;
21 or (v) a person with whom the employee or employee's family member has or had a dating or
22 engagement relationship.

23 "Family member", shall include: (i) persons who are married to one another;
24 (ii) persons in a substantive dating or engagement relationship and who reside together; (iii)
25 persons having a child in common regardless of whether they have ever married or resided
26 together; (iv) a parent, step-parent, child, step-child, sibling, grandparent and grandchild; and (v)
27 persons in a guardianship relationship.

28 (2)(a) An employer shall permit an employee to take up to 15 days of leave from
29 work in any 12 month period, with or without pay, if:

30 (i) the employee, or a family member of the employee, is a victim of
31 abusive behavior; and

32 (ii) the employee is using the leave from work to: seek or obtain
33 medical attention, counseling, victim services or legal assistance, secure housing, obtain a
34 protective order from a court, appear in court or before a grand jury, meet with a district attorney
35 or other law enforcement official, attend child custody proceedings or address other issues
36 directly related to the abusive behavior against the employee or family member of the employee;
37 and

38 (iii) the employee is not the perpetrator of the abusive behavior
39 against such employee's family member.

40 (b) This section shall apply to employers who employ 50 or more employees. As
41 used in this paragraph, "employees" shall mean individuals who perform services for and under
42 the control and direction of an employer for wages or other remuneration.

43 (3)(a) Except in cases of imminent danger to the health or safety of an
44 employee, an employee seeking leave from work pursuant to this section shall provide his or her
45 employer with the appropriate advance notice of such leave as may be required by the employer's
46 leave policy. If, however, there exists a threat of imminent danger to the health or safety of an
47 employee or the employee's family member, the employee shall not be required to provide
48 advanced notice of such leave but such employee shall notify the employer within 5 workdays of
49 such leave that the leave was taken or is being taken pursuant to this section. Such notification
50 may be communicated to the employer by the employee, a family member of the employee or
51 the employee's counselor, social worker, health care worker, member of the clergy, shelter

52 worker, legal advocate or other professional who has assisted the employee in addressing the
53 effects of the abusive behavior on the employee or the employee's family member. If an
54 unscheduled absence occurs, an employer shall not take any negative action against the
55 employee if the employee, within 30 days from the unauthorized absence or within 30 days from
56 the last unauthorized absence in the instance of consecutive days of unauthorized absences,
57 provides any of the documentation described in clauses (i) to (vi), inclusive, of paragraph (b).

58 (b) An employer may require that an employee provide documentation
59 evidencing that the employee or a family member of the employee has been a victim of abusive
60 behavior and that the purpose of the leave is to satisfy any 1 of the purposes enumerated in
61 clauses (i) to (iii), inclusive, of paragraph (a) of subsection (2); provided, however, that an
62 employer shall not require an employee to show evidence of an arrest, conviction or other law
63 enforcement documentation for such abusive behavior. An employee shall provide such
64 documentation to the employer within a reasonable period after the employer requests
65 documentation relative to the employee's absence. An employee shall be deemed to have
66 satisfied this documentation requirement by providing any 1 of the following to the employer
67 thereof:

68 (i) a protective order, order of equitable relief, or other documentation
69 issued by a court of competent jurisdiction as a result of abusive behavior against the employee
70 or employee's family member, or proximately related thereto;

71 (ii) a police report or statement of a victim or witness, including a
72 police incident report, documenting the abusive behavior complained of by the employee or the
73 employee's family member;

74 (iii) documentation that the perpetrator of the abusive behavior against
75 the employee or family member of the employee: has admitted to sufficient facts to support a
76 finding of guilty of, has been convicted of, or has been adjudicated a juvenile delinquent by
77 reason of any offense constituting abusive behavior and which is related to that abusive behavior
78 which has necessitated the leave under this section;

79 (iv) medical documentation of treatment as a result of the abusive
80 behavior complained of by the employee or employee's family member;

81 (v) a sworn statement, under the pains and penalties of perjury,
82 provided by a counselor, social worker, health care worker, member of the clergy, shelter
83 worker, legal advocate or other professional who has assisted the employee or the employee's
84 family member in addressing the effects of the abusive behavior thereon; or

85 (vi) a sworn statement, provided under the pains and penalties of
86 perjury, from the employee attesting to having been the victim of abusive behavior or being a
87 family member of a victim of abusive behavior. Any documentation provided to an employer

88 pursuant to this section may be maintained by the employer in the employee's employment
89 record but only for as long as required for the employer to make a determination as to whether
90 such employee is eligible for leave under this section.

91 (c) All information related to the employee's leave pursuant to this section shall be
92 kept confidential by the employer and shall not be disclosed, except to the extent that disclosure
93 is:

94 (i) requested or consented to, in writing, by the employee; or

95 (ii) otherwise required by applicable federal or state law.

96 (d) An employee seeking leave pursuant to this section shall exhaust any and all
97 annual or vacation leave, personal leave and sick leave available to the employee, prior to
98 requesting or taking leave pursuant to this section, unless the employer waives this requirement.

99 (4)(a) It shall be unlawful for an employer to coerce, interfere with, restrain or
100 deny the exercise of, or any attempt to exercise, any rights provided under this section or to make
101 leave requested or taken hereunder contingent upon whether or not the victim maintains contact
102 with the alleged abuser.

103 (b) It shall be unlawful for an employer to discharge or in any other manner
104 discriminate against an individual for exercising his or her rights under this section. The taking
105 of leave under this section shall not result in the loss of any employment benefit accrued prior to
106 the date on which the leave taken pursuant to this section commenced. Upon the employee's
107 return from such leave, the employee shall be entitled to restoration to the employee's original
108 job or to an equivalent position.

109 (5) The attorney general shall enforce this section and may seek injunctive relief
110 or other equitable relief to enforce this section.

111 (6) Employers with 50 or more employees shall notify each employee of the
112 rights and responsibilities provided by this section including those related to notification
113 requirements and to confidentiality. As used in this subsection, "employees" shall mean
114 individuals who perform services for and under the control and direction of an employer for
115 wages or other remuneration.

116 SECTION 2. Section 150 of said chapter 149, as so appearing, is hereby
117 amended by inserting after the word "33E", in line 20, the following word:- , 52E.