SENATE DOCKET, NO. 963 FILED ON: 1/20/2011

SENATE . . . . . No. 974

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 protect social workers from work related injuries..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven A. Tolman	
	☐ *[District]*
	☐

SENATE DOCKET, NO. 963 FILED ON: 1/20/2011

SENATE . . . . . No. 974

By Mr. Tolman, petition (accompanied by bill, Senate, No. 974) of Tolman for legislation to protect social workers from work related injuries [Joint Committee on Labor and Workforce Development].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *727* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to protect social workers from work related injuries..

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 2006 Official Edition, is hereby amended by inserting the following section:-

Section 52E. (1)(a) An employer shall allow an employee to take up to fifteen days of leave from work in any twelve month period, with or without pay, if the employee, or a family member of the employee, including persons in a substantive dating or engagement relationship who reside together in the same household, is a victim of domestic violence as defined in section 1 of chapter 151A, a victim of stalking as defined in section 43 of chapter 265, or a victim of sexual assault. For the purposes of this section, sexual assault shall include any one of the following: indecent assault and battery on a child under 14 under section 13B of chapter 265, indecent assault and battery on a mentally retarded person under the first paragraph of section 13F of chapter 265, indecent assault and battery on a person who has attained the age of 14 under section 13H of chapter 265, rape under section 22 of chapter 265; rape of a child under 16 with force under section 22A of chapter 265; rape and abuse of a child under section 23 of chapter 265; assault with intent to commit rape under section 24 of chapter 265; assault of a child under 16 with intent to commit rape under section 24B of chapter 265; kidnapping a child under the age of 16 under section 26 of chapter 265; drugging persons for sexual intercourse under section 3 of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said chapter 272.

19 This section shall only apply if an employee is using the leave from work to address
20 issues arising from the domestic violence, stalking, or sexual assault in order to seek or obtain a
21 court order of protection, medical attention, counseling, victim services, legal assistance, secure
22 housing, or to appear in court as a witness, attend child custody proceedings, consult with a
23 district attorney or other law enforcement official, or other issues directly related to the domestic
24 violence, stalking or sexual assault.

25 (b) The provisions of this section shall only apply to employers who employ fifty or more
26 employees. The employer shall notify all employees of their rights, including those related to
27 confidentiality, under this section.

28 (2)(a) Except in cases of imminent danger to the health or safety of the employee, an
29 employee seeking leave from work pursuant to this section shall provide his or her employer
30 with the appropriate advance notice of such leave as may be required by the employer's policy.
31 When an unscheduled absence occurs, the employer may not take any action against the
32 employee if the employee, within a reasonable period after the absence, provides certification
33 under subsection (b).

34 (b) The employer may require the employee to provide certification to the employer that
35 the employee or the employee's family member is a victim of domestic violence, stalking, or
36 sexual assault and that the leave is for one of the purposes enumerated in subsection 1(a);
37 provided that in no circumstances shall it be necessary for the employee to show evidence of a
38 conviction of the underlying offense. The employee shall provide such certification to the
39 employer within a reasonable period after the employer requests certification. An employee may
40 satisfy the certification requirement of this section by providing one of the following for review
41 by the employer:

42 (1) a restraining order or other documentation of equitable relief issued by a court of
43 competent jurisdiction; (2) a police record documenting the domestic violence, stalking or sexual
44 assault; (3) documentation that the perpetrator of the domestic violence has been convicted of 1
45 or more of the offenses enumerated in chapter 265 where the victim was a family or household
46 member; (4) medical documentation of the domestic violence, stalking, or sexual assault; (5) a
47 statement provided by a counselor, social worker, health worker, member of the clergy, shelter
48 worker, legal advocate or other professional who has assisted the individual in addressing the
49 effects of the domestic violence, stalking or sexual assault on the individual or the individual's
50 family; or (6) a sworn statement from the individual attesting to the domestic violence, stalking
51 or sexual assault.

52 A listing of any evidence provided to the employer may be maintained by the employer
53 in the employee's employment record. However, in no instance shall any other document or
54 copies of documents used to demonstrate eligibility for leave under this section remain in the

55 possession of the employer beyond the period needed for the employer to make an eligibility
56 determination.

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

59 (i) Requested or consented to, in writing, by the employee;

60 (ii) Otherwise required by applicable federal or state law.

61 (d) An employee seeking leave pursuant to this section, prior to receiving such leave,
62 shall exhaust any and all annual or vacation leave, personal leave, and sick leave, if applicable,
63 that may be available to the employee, unless the employer waives this requirement.

64 (3)(a) It shall be unlawful for any employer to coerce, interfere with, restrain, or deny the
65 exercise of or any attempt to exercise any rights provided under this section. Provided further,
66 that employers may not make the leave contingent upon whether or not the victim maintains
67 contact with the alleged abuser.

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

73 (4) Any person claiming to be aggrieved by a violation of this section may file a civil
74 action against the employer to enforce the provisions under this section. Such person may seek
75 appropriate relief, including but not limited to restoration to his original job or to an equivalent
76 position. In addition, such person may seek and be granted damages including all wages and
77 benefits that would have been due to the person, including reasonable attorney fees and costs.

78 SECTION 2. The Violence Prevention Program Director of the Commonwealth shall,
79 in consultation with Associated Industries of Massachusetts, Jane Doe, Inc, and Employers
80 Against Domestic Violence, share and develop model workplace safety policy, training
81 curriculum and workplace safety procedures and protocols for employers in order to increase
82 awareness, minimize workplace risks, and help employers properly respond to employees who
83 disclose domestic violence, stalking, and sexual assault in the workplace. Training delivery
84 resources, including a strategic training delivery plan will be developed by Jane Doe, Inc, and the
85 Commonwealth's Violence Prevention Program.