

SENATE No. 853

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 adoption of the accompanying bill:

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

First Middlesex and Norfolk

Tom Sannicandro

7th Middlesex

SENATE No. 853

By Ms. Creem, a petition (accompanied by bill, Senate, No. 853) of Cynthia S. Creem and Tom Sannicandro 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. 918 OF 2011-2012.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
—————

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:

1 SECTION 1. Chapter 149 of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by inserting after section 52D the following section:-

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

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

11 “Abusive behavior”, any behavior constituting domestic violence, stalking in violation of
12 section 43 of chapter 265, sexual assault which shall include any violation of sections 13B,
13 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B of chapter 265 and sections
14 3 and 35A of chapter 272 and kidnapping in violation of the third paragraph of section 26 of
15 chapter 265.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

83 (vi) a sworn statement, provided under the pains and penalties of perjury, from the
84 employee attesting to having been the victim of abusive behavior or being a family member of a
85 victim of abusive behavior. Any documentation provided to an employer pursuant to this section
86 may be maintained by the employer in the employee's employment record but only for as long as

87 required for the employer to make a determination as to whether such employee is eligible for
88 leave under this section.

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

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

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

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

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

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

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

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

112 (7) This section shall not be construed to exempt an employer from complying with
113 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights
114 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
115 or special law.

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