

SENATE No. 1173

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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 relative to employment protections for victims of abusive behavior.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/2/2021</i>
<i>Carmin Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/2/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/2/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/4/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/10/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/10/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/15/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/15/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/5/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/26/2021</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>5/10/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>5/17/2021</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>6/14/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>7/6/2021</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>	<i>1/24/2022</i>

SENATE No. 1173

By Ms. Creem, a petition (accompanied by bill, Senate, No. 1173) of Cynthia Stone Creem, Patricia D. Jehlen, Carmine Lawrence Gentile, James B. Eldridge and other members of the General Court for legislation relative to employment protections for victims of abusive behavior. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to employment protections for victims of abusive behavior.

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. Section 1 of Chapter 151B of the General Laws is hereby amended by
2 inserting the following terms: -

3 24. The term “victim of abusive behavior” in subsections 1 through 3 of section 4 of this
4 chapter, including section 1F, means a person who is experiencing or has experienced abusive
5 behavior.

6 25. The term “abusive behavior” in this section and subsections 1 through 3 of section 4
7 of this chapter, including section 1F, means (i) any behavior constituting domestic violence; (ii)
8 stalking in violation of section 43 of chapter 265; (iii) sexual assault, which shall include a
9 violation of sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B,
10 26D, 50 or 51 of chapter 265 or sections 2, 3, or 35A of chapter 272; or (iv) kidnapping in
11 violation of the third paragraph of section 26 of chapter 265.

12 26. The term “domestic violence” in this section means abuse against a person by (i) the
13 person’s current or former spouse; (ii) someone with whom the person shares a child in common;
14 (iii) someone with whom the person is or was cohabitating; (iv) someone with whom the person
15 is related by consanguinity, adoption, or marriage; (v) someone with whom the person has or had
16 an intimate, sexual, or romantic relationship or to whom the person is or was engaged to be
17 married; and (vi) someone with whom the person is in a guardianship relationship.

18 27. The term “abuse” in this section means (i) attempting to cause or causing physical
19 harm; (ii) placing another in fear of imminent serious physical harm; (iii) causing another to
20 engage involuntarily in sexual relations by force, threat, or duress or engaging or threatening to
21 engage in sexual activity with a dependent child; (iv) engaging in psychological, emotional, or
22 mental abuse; (v) depriving another of health care, housing, food, or other necessities of life; (vi)
23 engaging in harassment as defined in section 1 of chapter 258E; or (vii) restraining the liberty of
24 another.

25 28. The term “psychological, emotional, or mental abuse” in this section means a pattern
26 of threatening, humiliating, or intimidating actions that is designed to induce or likely to induce
27 fear or terror or to restrict another person’s ability to exercise free will or autonomy, including
28 but not limited to unreasonably engaging in any of the following as part of such a pattern:

29 (i) Isolating another person from friends, family, and other sources of support;

30 (ii) Limiting another person’s access to or use of family or personal money or financial
31 resources;

32 (iii) Controlling, regulating, or monitoring the another person’s activities, movements,

- 33 communications, daily behavior, finances, economic resources, or access to services;
- 34 (iv) Belittling, degrading, or demeaning another person;
- 35 (v) Threatening to harm or kill another or another person's family member;
- 36 (vi) Threatening to publish personal or false information about another person or to make
37 false reports to law enforcement authorities about another person;
- 38 (vii) Damaging another person's property or household goods; and
- 39 (viii) Forcing another person to take part in criminal activity or child abuse.

40 29. The term "family member" in subsection 1F of section 4 of chapter 151B means (i) a
41 spouse of the employee or prospective employee; (ii) a person with whom the employee or
42 prospective employee has a child in common; (iii) a person with whom the employee or
43 prospective employee has a substantive intimate, romantic, or sexual relationship and with whom
44 the employee or prospective employee is cohabitating; (iv) a person to whom the employee or
45 prospective employee is engaged to be married; (v) a parent, step-parent, child, step-child,
46 sibling, step-sibling, grandparent, step-grandparent, grandchild, or step-grandchild of the
47 employee or prospective employee; or (vi) a person with whom the employee or prospective
48 employee is in a guardianship relationship.

49 SECTION 2. Section 4 of Chapter 151B of the General Laws is hereby amended, in
50 subsection (1), after the word "ancestry" by inserting the following: - "status as a victim of
51 abusive behavior,".

52 SECTION 3. Section 4 of Chapter 151B of the General Laws is further amended, in
53 subsection (2), after the word "information," by inserting the following: - "pregnancy or a

54 condition related to said pregnancy including, but not limited to, lactation or the need to express
55 breast milk for a nursing child, status as a victim of abusive behavior,”.

56 SECTION 4. Section 4 of Chapter 151B of the General Laws is further amended, in
57 subsection (3), before the phrase “or status as a veteran”, by inserting “status as a victim of
58 abusive behavior” and before the phrase “status as a veteran” by inserting “status as a victim of
59 abusive behavior,”.

60 SECTION 5. Section 4 of Chapter 151B of the General Laws is further amended by
61 inserting the following subsection: -

62 1F. (a) For an employer, by itself or its agent, not to provide a reasonable accommodation
63 to an employee or prospective employee who is experiencing or has experienced abusive
64 behavior, or whose family member is experiencing or has experienced abusive behavior, if the
65 employee or prospective employee requests an accommodation related to the abusive behavior;
66 provided, however, that an employer is not required to provide an accommodation if the
67 employer can demonstrate that the accommodation would impose an undue hardship on the
68 employer’s business. It shall also be an unlawful practice under this subsection for an employer,
69 by itself or its agent, to

70 (i) discriminate against an employee or prospective employee who requests or uses a
71 leave, or otherwise exercises rights, under this section, including, but not limited to, discharging
72 the employee, refusing to hire the prospective employee, failing to reinstate the employee to the
73 original employment status or to an equivalent position with equivalent pay and accumulated
74 seniority, retirement, fringe benefits and other applicable service credits when the leave ceases
75 taking leave under this section;

76 (ii) deny an employment opportunity to an employee or prospective employee if the
77 denial is based on the need of the employer to make a reasonable accommodation under this
78 subsection;

79 (iii) require an employee who requests an accommodation under this subsection to accept
80 an accommodation that the employee chooses not to accept;

81 (iv) require an employee or prospective employee who requests an accommodation under
82 this subsection to take leave if a reasonable accommodation may be provided that permits the
83 employee or prospective employee to perform the essential functions of the job without undue
84 hardship to the employer's business.

85 d(b) As used in this subsection, the following words shall have the following meanings
86 unless the context clearly requires otherwise:

87 "Reasonable accommodation" may include, but shall not be limited to: (i) more frequent
88 or longer paid or unpaid breaks; (ii) transfers, reassignments, or schedule changes; (iii) changing
89 a work phone number and/or email address or any other electronic or communication work
90 contact; (iv) installing or changing locks or access mechanisms; (v) assisting with
91 documentation; (vi) safety procedures; (vii) prohibiting the perpetrator of the abusive behavior
92 from being on the workplace property; or (ix) any other adjustment to a job structure, workplace
93 facility or work requirement; provided, however, that an employer shall not be required to
94 discharge or transfer an employee with more seniority or promote an employee who is not able to
95 perform the essential functions of the job with or without a reasonable accommodation.

96 “Undue hardship” shall mean an action requiring significant difficulty or expense;
97 provided, however, that the employer shall have the burden of proving undue hardship; provided
98 further, that in making a determination of undue hardship, the following factors shall be
99 considered: (i) the nature and cost of the needed accommodation; (ii) the overall financial
100 resources of the employer; (iii) the overall size of the business of the employer with respect to
101 the number of employees and the number, type and location of its facilities; and (iv) the effect on
102 expenses and resources or any other impact of the accommodation on the employer’s business.

103 (c) Upon the employer’s receipt of a request from an employee or prospective employee
104 for an accommodation under this subsection, the employee or prospective employee and the
105 employer shall engage in a timely, good faith, and interactive process to determine an effective,
106 reasonable accommodation to enable the employee or prospective employee to perform the
107 essential functions of the job.

108 (d) An employer will provide written notice to its employees of the right to be free from
109 discrimination due to status as a victim of abusive behavior, including the right to reasonable
110 accommodations related to the abusive behavior. The notice may be provided in a handbook,
111 pamphlet, or other means of notice regularly used by the employer and shall, in addition, be
112 provided to (i) new employees at or prior to the commencement of employment and (ii) an
113 employee who notifies the employer that the employee or a family member of the employee is
114 experiencing or has experienced abusive behavior not more than five days after such notification.

115 (e) Subject to appropriation, the commission shall develop courses of instruction and
116 conduct public education efforts as necessary to inform employers, employees and employment
117 agencies

118 about the rights and responsibilities established under this subsection not more than 180
119 days after the appropriation.

120 (f) This subsection shall not be construed to preempt, limit, diminish, or otherwise affect
121 any other law relating to abusive behavior, including, but not limited to, leave for victims of
122 abusive behavior under section 52E of chapter 149.

123 (g) An employer may require any employee or prospective employee requesting an
124 accommodation under this subsection to provide documentation evidencing that the employee,
125 the prospective employee, or a family member of the employee or the prospective employee is
126 experiencing or has experienced abusive behavior; provided, however, an employer shall not
127 require the employee or prospective employee to show evidence of an arrest, conviction, or other
128 law enforcement documentation for such abusive behavior. The employee or prospective
129 employee shall provide such documentation to the employer within a reasonable period after the
130 employer requests such documentation. The employee or prospective employee shall satisfy this
131 documentation requirement by providing any one of the following documents to the employer,
132 and it shall be the choice of the employee or prospective employee which type of documentation
133 to provide. An employer may not require, but may consider, documentation concerning the type,
134 scope or duration of the reasonable accommodation. The employer must provide a reasonable
135 accommodation in a timely manner and may not delay providing reasonable accommodation
136 until the documentation is provided. The provision of any documentation provided to an
137 employer under this paragraph does not waive or diminish the confidential or privileged nature
138 of communications between a victim of abusive behavior and one or more individuals named in
139 this paragraph. Any documentation provided to an employer under this paragraph may be
140 maintained by the employer in an employee file but only for as long as required for the employer

141 to make a determination as to whether the employee is entitled to a reasonable accommodation
142 under this paragraph.

143 SECTION 6. Section 52E of Chapter 149 of the General Laws is hereby amended by
144 striking out subsection (a) in its entirety and thereby replacing it with the following subsection:

145 (a)For purposes of this section, the following words shall have the following meanings,
146 unless the context clearly indicates otherwise:

147 “Abuse,” (i) attempting to cause or causing physical harm; (ii) placing another in fear of
148 imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations
149 by force, threat, or duress or engaging or threatening to engage in sexual activity with a
150 dependent child; (iv) engaging in psychological, emotional, or mental abuse; (v) depriving
151 another of health care, housing, food, or other necessities of life; (vi) engaging in harassment as
152 defined in section 1 of chapter 258E; or (vii) restraining the liberty of another.

153 “Abusive behavior,” (i) any behavior constituting domestic violence; (ii) stalking in
154 violation of section 43 of chapter 265; (iii) sexual assault, which shall include a violation of
155 sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51
156 of chapter 265 or sections 2, 3, or 35A of chapter 272; or (iv) kidnapping in violation of the third
157 paragraph of section 26 of chapter 265.

158 “Domestic violence,” abuse against a person by (i) the person’s current or former spouse;
159 (ii) someone with whom the person shares a child in common; (iii) someone with whom the
160 person is or was cohabitating; (iv) someone with whom the person is related by consanguinity,
161 adoption, or marriage; (v) someone with whom the person has or had an intimate, sexual, or

162 romantic relationship or to whom the person is or was engaged to be married; or (vi) someone
163 with whom the person is in a guardianship relationship.

164 “Employees”, individuals who perform services for and under the control and direction of
165 an employer for wages or other remuneration.

166 “Family member,” (i) a spouse of the employee or prospective employee; (ii) a person
167 with whom the employee or prospective employee has a substantive intimate, romantic, or sexual
168 relationship and with whom the employee or prospective employee is cohabitating; (iii) a person
169 to whom the employee or prospective employee is engaged to be married; (iv) a person with
170 whom the employee or prospective employee has a child in common; (v) a parent, step-parent,
171 child, step-child, sibling, step-sibling, grandparent, step-grandparent, grandchild, or step-
172 grandchild of the employee or prospective employee; or (vi) a person with whom the employee
173 or prospective employee is in a guardianship relationship.

174 “Psychological, emotional, or mental abuse,” a pattern of threatening, humiliating, or
175 intimidating actions that is designed to induce or likely to induce fear or terror or to restrict
176 another person’s ability to exercise free will or autonomy, including but not limited to
177 unreasonably engaging in any of the following as part of such a pattern:

178 Isolating another person from friends, family, and other sources of support;

179 (i) Isolating another person from friends, family, and other sources of support;

180 (ii) Limiting another person’s access to or use of family or personal money or financial
181 resources;

- 182 (iii) Controlling, regulating, or monitoring the another person’s activities, movements,
183 communications, daily behavior, finances, economic resources, or access to services;
- 184 (iv) Belittling, degrading, or demeaning another person;
- 185 (v) Threatening to harm or kill another or another person’s family member;
- 186 (vi) Threatening to publish personal or false information about another person or to make
187 false reports to law enforcement authorities about another person;
- 188 (vii) Damaging another person’s property or household goods; and
- 189 (viii) Forcing another person to take part in criminal activity or child abuse.

190 SECTION 7. Subsection (b)(ii) of Section 52E of Chapter 149 of the General Laws is
191 hereby amended, after the word “attention”, by inserting the following: - “or other health care,”.

192 SECTION 8. Subsection (d) of Section 52E of Chapter 149 of the General Laws is hereby
193 amended by inserting, in the first sentence, after the phrase “safety of an employee”, the
194 following phrase: - “or family member of the employee,” and by striking out the figure “(7)” and
195 thereby replacing it with the figure “(8)”.

196 SECTION 9. Subsection (e) of Section 52E of Chapter 149 of the General Laws is hereby
197 amended by striking out the subsection in its entirety and replacing it with the following
198 subsection: -

199 (e) An employer may require an employee or prospective employee requesting leave
200 under this section to provide documentation evidencing that the employee, prospective
201 employee, or family member of the employee or prospective employee is a victim of abusive

202 behavior and that the leave taken is consistent with the conditions of clauses (i) to (iii), inclusive,
203 of subsection (b);

204 provided, however, that an employer shall not require an employee or prospective
205 employee to show evidence of an arrest, conviction or other law enforcement documentation for
206 such abusive behavior. An employee or prospective employee shall provide such documentation
207 to the employer within a reasonable period after the employer requests documentation relative to
208 the employee's absence. An employee or prospective employee shall satisfy this documentation
209 requirement by providing any 1 of the following documents to the employer.

210 (1) A protective order, or order of equitable relief or other documentation, issued by a
211 court of competent jurisdiction as a result of abusive behavior, including but not limited to an
212 order issued pursuant to chapter 209A or chapter 258E.

213 (2) A document under the letterhead of the court, public agency, or social service, health
214 care, or other service provider which the victim of the abusive behavior attended for the purposes
215 of acquiring assistance as it relates to the abusive behavior.

216 (3) A police report or statement of a victim or witness provided to police, including a
217 police incident report, documenting the abusive behavior.

218 (4) Documentation that the perpetrator of the abusive behavior has been convicted of, has
219 been adjudicated a juvenile delinquent by reason of, or has admitted to sufficient facts to support
220 a finding of guilt of any offense constituting such abusive behavior

221 (5) Documentation of health care treatment as a result of the abusive behavior.

222 (6) A sworn statement, signed under the penalties of perjury, provided by a counselor,
223 social worker, health care worker, member of the clergy, shelter worker, legal advocate or other
224 professional who has assisted the victim of the abusive behavior in addressing the effects of the
225 abusive behavior.

226 (7) A sworn statement, signed under the penalties of perjury, from the victim of the
227 abusive behavior attesting to the abusive behavior.

228 (8) Any other form of documentation or relevant evidence that reasonably corroborates or
229 certifies that the employee, prospective employee, or family member of the employee or
230 prospective employee is a victim of abusive behavior.

231 Any documentation provided to an employer under this section may be maintained by the
232 employer in an employee file but only for as long as required for the employer to make a
233 determination as to whether the employee is eligible for leave under this section. The provision
234 of any documentation to an employer under this paragraph does not waive or diminish the
235 confidential or privileged nature of communications between the victim of the abusive
236 behavior and any of the categories of professionals listed in this paragraph.

237 An employee or prospective employee requesting leave under this section is not required
238 to produce any documentation to, or discuss any information with, the employer that would in
239 any way compromise the safety of the victim of the abusive behavior, and an employer is
240 prohibited from requiring any such production or disclosure.

241 SECTION 10. Subsection (f)(i) of Section 52E of Chapter 149 of the General Laws is
242 hereby amended by inserting, after the word “employee”, the words “or prospective employee;”.

243 SECTION 11. Subsection (g) of Section 52E of Chapter 149 of the General Laws is
244 hereby amended by striking the word “taking” and thereby replacing it with the word “seeking”.

245 SECTION 12. Subsection (h) of Section 52E of Chapter 149 of the General Laws is
246 hereby amended by inserting, after the word “victim”, the phrase “of the abusive behavior”.

247 SECTION 13. Subsection (i) of Section 52E of Chapter 149 of the General Laws is
248 hereby amended by inserting, after the word “section”, the phrase “or refuse to hire, or in any
249 other manner discriminate against a prospective employee for exercising the prospective
250 employee’s rights under this section.”