HOUSE DOCKET, NO. 1464 FILED ON: 1/15/2025

HOUSE . . . . . No. 4113

The Commonwealth of Massachusetts

PRESENTED BY:

Tram T. Nguyen and Christine P. Barber

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 addressing higher education sexual misconduct.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tram T. Nguyen	*18th Essex*	*1/15/2025*
Christine P. Barber	*34th Middlesex*	*1/15/2025*

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HOUSE . . . . . No. 4113

By Representatives Nguyen of Andover and Barber of Somerville, a petition (accompanied by bill, House, No. 4113) of Tram T. Nguyen and Christine P. Barber relative to addressing sexual misconduct by certain higher education employees. Higher Education.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act relative to addressing higher education sexual misconduct.

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. Subsection (a) of section 168E of chapter 6 of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting before the definition "Institution" the following 4 definitions:-

"Applicant", a person applying for employment as faculty, instructor, staff, advisor, counselor, coach, athletic department staff and any position in which the applicant will likely have direct ongoing contact with students in a supervisory role or position of authority. An applicant shall not include: (i) enrolled students who are applying for temporary student employment with the institutions, unless the student is a graduate student applying for a position in which the graduate student will have a supervisory role or position of authority over other students; and (ii) a person applying for employment as medical staff or for employment with an affiliated organization, entity or extension of an institution, unless the applicant will have a supervisory role or position of authority over students.

"Association", a scholarly or professional organization or learned society that sponsors activities or events for the benefit of individuals affiliated with institutions, with a code of conduct forbidding sexual misconduct at such activities or events, and established investigative procedures for allegations that the code of conduct has been violated.

"Employee", a person receiving or has received wages as an employee from the institutions and includes current and former workers, whether the person is classified as an employee, independent contractor or consultant, and is in or had, a position with direct ongoing contact with students in a supervisory role or position of authority. An employee shall not include: (i) a person who was employed by the institution in temporary student employment while the person was an enrolled student unless the student, at the time of employment, is or was a graduate student in a position in which the graduate student has or had a supervisory role or authority over other students; and (ii) a person employed as medical staff or with an affiliated organization, entity or extension of an institution, unless the employee has or had a supervisory role or position of authority over students. Under this section, a person who would be considered an employee shall remain an employee even if the person enrolls in classes under an institution's employee tuition waiver program or a similar program that allows faculty, staff or other employees to take classes.

"Employer", includes institutions in the commonwealth.

SECTION 2. Said subsection (a) of said section 168E of said chapter 6, as so appearing, is hereby further amended by inserting after the definition "Institution" the following definition:-

"Investigation", a procedure initiated in response to a formal complaint, as defined in 34 C.F.R. 106 provided, that the procedure fully complies with the provisions of said 34 C.F.R. 106.

SECTION 3. Said subsection (a) of said section 168E of said chapter 6, as so appearing, is hereby further amended by striking out the definition “Sexual misconduct” and inserting in place thereof the following 3 definitions:-

“Sexual misconduct”, an incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment, stalking, unwelcome sexual contact, unwelcome sexual advances, requests for sexual favors, other unwelcome verbal, nonverbal, electronic or physical conduct of a sexual nature and any misconduct of a sexual nature that is in violation of an institution's policies or has been determined to constitute sex discrimination pursuant to state or federal law.

“Student”, a person enrolled at an institution and for whom educational records are maintained.

“Substantiated findings”, a written determination regarding responsibility as described in 34 C.F.R. 106 prepared at the conclusion of an investigation, as amended by any appeals process.

SECTION 4. Said section 168E of said chapter 6, as so appearing, is hereby further amended by adding the following 8 subsections:-

(s)(1) Prior to an official offer of employment to an applicant, an institution shall request the applicant to sign a statement that:

(i) declares whether the applicant is: (A) the subject of any substantiated findings of sexual misconduct in any current or former employment or by any association with which the applicant has or has had, a professional relationship; or (B) currently being investigated for or

has left a position during an investigation into a violation of any sexual misconduct policy at the applicant's current and past employers and if so, an explanation of the situation;

(ii) authorizes the applicant's current and past employers or relevant associations to disclose to the hiring institution any sexual misconduct committed by the applicant and making available to the hiring institution copies of all documents in the previous employer's personnel, investigative or other files relating to sexual misconduct, including sexual harassment by the applicant; and

(iii) releases the applicant's current and past employers or relevant associations and employees acting on behalf of that employer or association from any liability for providing information described in clause (ii).

(2) An institution may not hire an applicant who does not sign the statement described in paragraph (1).

(t) Prior to an official offer of employment to an applicant, an institution shall:

(i) request in writing, electronic or otherwise, that the applicant's current and past institution employers, or relevant associations when a finding has been declared by the applicant, provide the information, if any, described in clause (ii) of paragraph (1) of subsection (s);

(ii) request in writing, electronic or otherwise, that the applicant's current and past institution employers, or relevant associations when a finding has been declared by the applicant, provide, if any, a copy of a declaration and statement signed by the applicant under of paragraph (1) subsection (s); and

(iii) ask the applicant if the applicant is the subject of any substantiated findings of sexual misconduct, or is currently being investigated for, or has left a position during an investigation into, a violation of any sexual misconduct policy at the applicant's current and past employers, and, if so, an explanation of the situation.

(u)(1) If an institution does not have existing procedures for disclosing information requested under this subsection, the institution must establish procedures to begin implementing the disclosure requirements of this subsection.

(2) Pursuant to paragraph (1), after receiving a request under clause (i) of subsection (t), an institution shall provide the information requested and shall make available to the requesting institution copies of documents in the applicant's personnel record relating to substantiated findings of sexual misconduct.

(3) Pursuant to paragraph (1), if an institution has information about substantiated findings of a current or former employee’s sexual misconduct in the employee's personnel file or employment records, unless otherwise prohibited by law, the institution shall disclose that information to any employer conducting reference or background checks on the current or former employee for the purposes of potential employment, even if the employer conducting the reference or background check does not specifically ask for such information.

(v)(1) A institution or an employee acting on behalf of the institution, who discloses information under subsections (s) to (z), inclusive, shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for the disclosure of information.

(2) An institution shall not be liable for any cause of action arising from nondisclosure of information by an employee without access to official personnel records who is asked to respond to a reference check.

(3) The duty to disclose information under subsections (s) to (z), inclusive, shall be the responsibility of the institution to respond to a formal request for personnel records relating to a current or prior employee when requested by another employer.

(w) When disclosing information under subsections (s) to (z), inclusive, the institution shall keep personal identifying information of the complainant and any witnesses confidential, unless the complainant or witnesses agree to disclosure of their identifying information pursuant subsection (c) of clause Twenty-sixth of section 7 of chapter 4. Institutions shall share best practices with all faculty and staff who are likely to receive reference check requests about how to inform and advise requesters to contact the institution's appropriate official office for personnel records.

(x) Information received under subsections (s) to (z), inclusive, may be used by an institution only for the purpose of evaluating an applicant's qualifications for employment in the position for which the person has applied.

(y) Subsections (s) to (z), inclusive, shall not restrict expungement from a personnel file or employment records of information about alleged sexual misconduct that has not been substantiated.

(z) The department of higher education shall convene a work group and prepare a report regarding the ability of institutions to consider if applicants or current employees have committed sexual misconduct at meetings or conferences of academic and professional

associations and any recommendations on how institutions may encourage adoption of policies and procedures regarding sexual misconduct committed at such association events. Not later than Dec 31, 2026, the department of higher education shall submit the report to the chairs of the joint committee of higher education and the clerks of the house of representatives and senate.