

HOUSE No. 2018

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone and Nika C. Elugardo

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:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/19/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/26/2021</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>2/19/2021</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>2/23/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/23/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/24/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/24/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/24/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/26/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/26/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>2/26/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/3/2021</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>3/8/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/5/2021</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>	<i>3/2/2021</i>

<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>3/10/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/15/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>3/15/2021</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>3/26/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>4/1/2021</i>

HOUSE No. 2018

By Representatives Livingstone of Boston and Elugardo of Boston, a petition (accompanied by bill, House, No. 2018) of Jay D. Livingstone, Nika C. Elugardo and others 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 subsection 1F, means (i) any behavior constituting domestic violence;
8 (ii) 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; or (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, or 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; or
- 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, or a
44 dependency relationship, and with whom the employee or prospective employee resides; (iv) a
45 person to whom the employee or prospective employee is engaged to be married; (v) a parent,
46 step-parent, child, step-child, sibling, step-sibling, grandparent, step-grandparent, grandchild, or
47 step-grandchild of the employee or prospective employee; or (vi) a person with whom the
48 employee or prospective 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
63 accommodation to an employee or prospective employee who is experiencing or has experienced
64 abusive behavior, or whose family member is experiencing or has experienced abusive behavior,
65 if the employee or prospective employee requests an accommodation related to the abusive
66 behavior; provided, however, that an employer is not required to provide an accommodation if
67 the employer can demonstrate that the accommodation would impose an undue hardship on the
68 employer’s business.

69 (b) For an employer, by itself or its agent, to (i) discharge, or in any other manner
70 discriminate against, an employee for exercising the employee’s rights under this subsection,
71 including requesting or using an accommodation under this subsection; (ii) refuse to hire, or in
72 any other many discriminate against, a prospective employee for exercising the prospective
73 employee’s rights under this subsection, including requesting or using an accommodation under
74 this subsection; (iii) require an employee or prospective employee who requests an
75 accommodation under this subsection to accept an accommodation that the employee or

76 prospective employee chooses not to accept; (iv) require an employee to take leave if a
77 reasonable accommodation may be provided that permits the employee to perform the essential
78 functions of the job without undue hardship to the employer’s business; or (v) make
79 preemployment inquiry of a prospective employee as to whether the prospective will require a
80 reasonable accommodation under this subsection.

81 (c) As used in this subsection, the following words shall have the following meanings
82 unless the context clearly requires otherwise:

83 “Accommodation” means an adjustment to a job structure or schedule, workplace
84 facility, or work requirement that enables an employee who is a victim of abusive behavior, or
85 whose family member is a victim of abusive behavior, to be safe or to address issues directly
86 related to the abusive behavior, including but not limited to (i) more frequent or longer paid or
87 unpaid breaks; (ii) transfers, reassignments, or schedule changes; (iii) changing a work phone
88 number, email address, or any other work contact, electronic or otherwise; (iv) installing or
89 changing locks or work access mechanisms; (v) assisting with documentation of the abusive
90 behavior; (vi) implementing safety procedures; or (vii) prohibiting the perpetrator of the abusive
91 behavior from being on the workplace property or limiting the perpetrator’s access to the
92 workplace property or portion thereof where the employee works; provided, however, that an
93 employer shall not be required as part of providing a reasonable accommodation to discharge or
94 transfer another employee or promote an employee who is not able to perform the essential
95 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) any other
102 impact of the reasonable accommodation on the employer's business.

103 (d) 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.

107 (e) All employers will provide written notice to their employees of the right to be free
108 from discrimination due to status as a victim of abusive behavior and of the right to a reasonable
109 accommodation related to the abusive behavior. Such notice may be provided in a handbook,
110 pamphlet, or other means of notice regularly used by the employer. In addition, all employers
111 will provide such notice to (i) all new employees at the beginning of their employment and (ii)
112 any employee or prospective employee who informs the employer that the employee, or
113 prospective employee or family member of the employee or prospective employee, is a victim of
114 abusive behavior not more than five days after the employer is so informed.

115 (f) 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, and, to the extent possible, the general population, about the rights and responsibilities
118 established under this subsection not more than 180 days after the appropriation.

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

122 (h) An employer may require any employee or prospective employee requesting an
123 accommodation under this subsection to provide documentation evidencing that the employee,
124 the prospective employee, or a family member of the employee or the prospective employee is a
125 victim of abusive behavior; provided, however, that an employer may not require the employee
126 or prospective employee to produce, but may consider, documentation concerning the reasonable
127 accommodation itself, including its type, form, scope, or duration; provided further, that an
128 employer shall not require the employee or prospective employee to show evidence of an arrest,
129 conviction, or other law enforcement documentation for such abusive behavior. The employee
130 or prospective employee shall provide such documentation to the employer within a reasonable
131 period after the employer requests such documentation. The employer must provide a reasonable
132 accommodation in a timely manner and may not delay providing reasonable accommodation
133 pending receipt of the documentation; provided that if the employee or prospective employee
134 requests that the accommodation begin before such documentation can be provided, the
135 employee or prospective employee shall provide the documentation to the employer within 30
136 days of requesting the accommodation. 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.

140 The employer may maintain any documentation provided under this paragraph in an
141 employee file but only for as long as required for the employer to make a determination as to
142 whether the employee is entitled to a reasonable accommodation under this subsection.

143 The employee or prospective employee shall satisfy the documentation requirement by
144 providing any one of the following documents to the employer concerning the abusive behavior
145 against the employee, prospective employee, or family member of the employee or prospective
146 employee, and the employer may not require the employee or prospective employee to provide a
147 specific type of documentation from among the following documents:

148 (1) A protective order, or an order of equitable relief or other documentation, issued by a
149 court of competent jurisdiction as a result of such abusive behavior, including but not limited to
150 an order issued pursuant to chapter 209A or chapter 258E;

151 (2) A document under the letterhead of a court, public agency, or social service, health
152 care, or other service provider that the victim of such abusive behavior attended for the purposes
153 of acquiring assistance as it relates to the abusive behavior;

154 (3) A police report or statement of a victim or witness provided to police, including a
155 police incident report, documenting such abusive behavior;

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

159 (5) Documentation of health care treatment as a result of such abusive behavior;

160 (6) A sworn statement, signed under the penalties of perjury, provided by a counselor,
161 social worker, health care worker, member of the clergy, shelter worker, legal advocate, or other
162 professional who has assisted the victim of such abusive behavior in addressing the effects of
163 such abusive behavior;

164 (7) A sworn statement, signed under the penalties of perjury, from the victim of such
165 abusive behavior attesting to such abusive behavior; or

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

169 (i) An employee or prospective employee requesting an accommodation under this
170 subsection is not required to produce any documentation to, or discuss any information with, the
171 employer that would in any way compromise the safety of the victim of the abusive behavior,
172 and an employer is prohibited from requiring any such production or disclosure.

173 (j) An employer shall maintain the confidentiality of all documentation and information
174 provided by the employee or prospective employee related to the abusive behavior, including
175 that the employee, prospective employee, or employee's family member is a victim of abusive
176 behavior or that the employee or prospective employee has requested or obtained a reasonable
177 accommodation under this subsection, except under the following conditions: (i) the employee or
178 prospective employee requests or consents in writing that such documentation or information be
179 disclosed; (ii) the employer is ordered by a court of competent jurisdiction or administrative
180 agency to disclose such documentation or information; (iii) disclosure is otherwise required by
181 applicable federal or state law; (iv) disclosure is required in the course of an investigation

182 authorized by law enforcement, including, but not limited to, an investigation by the attorney
183 general; or (v) disclosure is necessary to protect the safety of the employee or others employed at
184 the workplace.

185 (k) No employer shall (i) coerce, interfere with, restrain, or deny the exercise of, or any
186 attempt to exercise, any rights provided under this subsection or (ii) make reasonable
187 accommodations requested or taken hereunder contingent upon whether or not the employee,
188 prospective employee, or victim of the abusive behavior where a family member the victim is the
189 victim, maintains contact with the alleged abuser.

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

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

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

200 “Abusive behavior,” (i) any behavior constituting domestic violence; (ii) stalking in
201 violation of section 43 of chapter 265; (iii) sexual assault, which shall include a violation of
202 sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51

203 of chapter 265 or sections 2, 3, or 35A of chapter 272; or (iv) kidnapping in violation of the third
204 paragraph of section 26 of chapter 265.

205 “Domestic violence,” abuse against a person by (i) the person’s current or former spouse;
206 (ii) someone with whom the person shares a child in common; (iii) someone with whom the
207 person is or was cohabitating; (iv) someone with whom the person is related by consanguinity,
208 adoption, or marriage; (v) someone with whom the person has or had an intimate, sexual, or
209 romantic relationship or to whom the person is or was engaged to be married; or (vi) someone
210 with whom the person is in a guardianship relationship.

211 “Employees”, individuals who perform, or who have been hired to perform, services for
212 and under the control and direction of an employer for wages or other remuneration.

213 “Family member,” (i) a spouse of the employee or prospective employee; (ii) a person
214 with whom the employee or prospective employee has a child in common;(iii) a person with
215 whom the employee or prospective employee has a substantive intimate, romantic, or sexual
216 relationship, or a dependency relationship, and with whom the employee or prospective
217 employee resides; (iv) a person to whom the employee or prospective employee is engaged to be
218 married; (v) a parent, step-parent, child, step-child, sibling, step-sibling, grandparent, step-
219 grandparent, grandchild, or step-grandchild of the employee or prospective employee; or (vi) a
220 person with whom the employee or prospective employee is in a guardianship relationship.

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

- 225 Isolating another person from friends, family, and other sources of support;
- 226 (i) Isolating another person from friends, family, and other sources of support;
- 227 (ii) Limiting another person’s access to or use of family or personal money or financial
228 resources;
- 229 (iii) Controlling, regulating, or monitoring the another person’s activities, movements,
230 communications, daily behavior, finances, economic resources, or access to services;
- 231 (iv) Belittling, degrading, or demeaning another person;
- 232 (v) Threatening to harm or kill another or another person’s family member;
- 233 (vi) Threatening to publish personal or false information about another person or to make
234 false reports to law enforcement authorities about another person;
- 235 (vii) Damaging another person’s property or household goods; or
- 236 (viii) Forcing another person to take part in criminal activity or child abuse.

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

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

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

246 (e) An employer may require an employee or prospective employee requesting leave
247 under this section to provide documentation evidencing that the employee, prospective
248 employee, or family member of the employee or prospective employee is a victim of abusive
249 behavior and that the leave taken is consistent with the conditions of clauses (i) to (iii), inclusive,
250 of subsection (b); provided, however, that an employer shall not require an employee or
251 prospective employee to show evidence of an arrest, conviction or other law enforcement
252 documentation for such abusive behavior. An employee or prospective employee shall provide
253 such documentation to the employer within a reasonable period after the employer requests
254 documentation relative to the employee's absence. An employee or prospective employee shall
255 satisfy this documentation requirement by providing any 1 of the following documents to the
256 employer, and the employer may not require the employee or prospective employee to provide a
257 specific type of documentation from among the following documents.

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

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

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

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

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

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

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

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

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

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

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

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

293 SECTION 12. Subsection (h) of Section 52E of Chapter 149 of the General Laws is
294 hereby amended by inserting, after the word “victim”, the phrase “of the abusive behavior”, and
295 after the words “this section or” by striking out the word “to”.

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