

SENATE No. 359

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 protecting elders and persons with disabilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/29/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/29/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>2/1/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/13/2019</i>

SENATE No. 359

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 359) of Patricia D. Jehlen, Danielle W. Gregoire, Jason M. Lewis, Steven Ultrino and other members of the General Court for legislation relative to protecting elders and persons with disabilities. Elder Affairs.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 350 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act protecting elders and persons with disabilities.

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 72F of chapter 111 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by inserting after the definition of “abuse” the following
3 definition:-

4 “Assisted living residence”, an entity required to be certified under chapter 19D.

5 SECTION 2. Said section 72F of said chapter 111, as so appearing, is hereby further
6 amended by inserting after the definition of “patient” the following definition:-

7 “Personal care services provider”, a person providing personal care services as defined in
8 651 CMR 12.02.

9 SECTION 3. Said section 72F of said chapter 111, as so appearing, is hereby further
10 amended by inserting after the figure “71”, in line 44, the following words:- or an assisted living
11 residence certified under chapter 19D.

12 SECTION 4. Section 72G of said chapter 111, as so appearing, is hereby amended by
13 inserting after the word “therapist”, in lines 6 and 7, the following words:- , personal care
14 services provider, nurse practitioner, registered dietician.

15 SECTION 5. Said section 72G of said chapter 111, as so appearing, is hereby further
16 amended by inserting after the word “agency”, in lines 28 and 33, in each instance, the following
17 words:- , assisted living residence.

18 SECTION 6. Said section 72G of said chapter 111, as so appearing, is hereby further
19 amended by inserting after the word “facility” , in lines 39 and 40, the following words:- or
20 assisted living residence.

21 SECTION 7. Section 72H of said chapter 111, as so appearing, is hereby amended by
22 inserting after the word “program”, in line 10, the following words:- , assisted living residence.

23 SECTION 8. Said section 72H of said chapter 111, as so appearing, is hereby further
24 amended by inserting after the word “facility”, in lines 17 and 19, in each instance, the
25 following words:- or assisted living residence.

26 SECTION 9. Section 72J of said chapter 111, as so appearing, is hereby amended by
27 striking out the second and third paragraphs and inserting in place thereof the following 4
28 paragraphs:-

29 The registry shall also contain specific documented findings by the department, made in
30 accordance with this section, of patient or resident abuse, mistreatment, neglect or
31 misappropriation of patient or resident property involving an individual listed on the registry, a
32 home health aide, a homemaker or a personal care services provider and a brief statement by the
33 individual disputing those findings. In the case of inquiries to the registry concerning a nurse
34 aide, a home health aide, a homemaker or a personal care services provider, any information
35 disclosed concerning a finding of patient or resident abuse, mistreatment, neglect or
36 misappropriation of patient or resident property shall also include a disclosure of any statement
37 in the registry relating to the finding or a clear and accurate summary of any such statement. All
38 facilities, home health agencies, assisted living residences and homemaker agencies shall contact
39 the registry prior to hiring an employee to ascertain if there is a finding of patient or resident
40 abuse, mistreatment, neglect or misappropriation of patient or resident property against a nurse
41 aide, home health aide, homemaker or personal care services provider. No facility, home health
42 agency, assisted living residence or homemaker agency shall hire an individual whose name
43 appears in the registry with an adjudicated finding of patient or resident abuse, mistreatment,
44 neglect or misappropriation of patient or resident property if that individual is under a suspension
45 imposed by the department under the terms of this section.

46 The department shall make a finding as to the accuracy of allegations of patient or
47 resident abuse, mistreatment, neglect or misappropriation of patient or resident property after
48 providing notice to the nurse aide, home health aide, homemaker or personal care services
49 provider involved in the allegation and a reasonable opportunity for a hearing for the individual
50 to rebut such allegations. If the department finds that a nurse aide, home health aide, homemaker
51 or personal care services provider abused, mistreated or neglected a patient or resident or

52 misappropriated patient or resident property, the department shall notify the nurse aide, home
53 health aide, homemaker or personal care services provider and the employer thereof and the
54 registry of that finding. The department shall not make a finding that an individual has neglected
55 a patient or resident if the individual demonstrates that such neglect was caused by factors
56 beyond the control of the individual. Upon making a finding of patient or resident abuse,
57 mistreatment, neglect or misappropriation of patient or resident property, the department may
58 suspend the right of such individual to work as a nurse aide, home health aide, homemaker or
59 personal care services provider. The department shall include the terms of any such suspension
60 in the registry and no facility, home health agency, assisted living residence or homemaker
61 agency shall hire that individual until the suspension has been served to its completion.

62 If the individual is charged with and convicted of a crime arising out of a report of abuse,
63 the department shall permanently suspend the individual's ability to work as a nurse aide, home
64 health aide, homemaker or personal care services provider; provided, however, that if an
65 individual's finding of guilt is overturned on appeal, the individual may appeal to the department
66 to overturn the suspension.

67 If a case is continued without a finding, the department may permanently suspend an
68 individual's ability to work as a nurse aide, home health aide, homemaker or personal care
69 services provider and shall make such a finding on the record to that effect after notice to that
70 individual and an opportunity to appeal; provided, however, that a case continued without a
71 finding shall appear in the registry as part of the registrant's record for not less than the length of
72 probation or sanction imposed on the individual by the court. A person who is subject to a
73 temporary or permanent suspension shall not offer services, whether publicly or privately
74 funded, as a caregiver or in another direct service capacity to persons with a physical, intellectual

75 or developmental disability, a mental illness or to children or elderly persons. An individual in
76 violation of this paragraph shall be subject to a fine of not more than \$5,000.