

HOUSE No. 1779

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

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 passage of the accompanying bill:

An Act relative to personnel records.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>

HOUSE No. 1779

By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1779) of Martha M. Walz, Denise Andrews and Carl M. Sciortino, Jr. for legislation to further regulate personnel records maintained by employers. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to personnel records.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 149 of the General Laws, as appearing in the 2010 Official Edition, is hereby
2 amended by striking out section 52C and inserting in place thereof the following section:-

3 Section 52C. As used in this section, the following words shall, unless the context clearly
4 requires otherwise, have the following meanings:--

5 "Central personnel file", a file maintained in the ordinary course of business by an
6 employer's human resources or personnel department or the employer's designee, or other
7 central repository for such files. For each employee, an employer may have a central file for
8 written documents and a separate central file for electronic records; provided, however, that for
9 purposes of this section they shall be treated as one central personnel file. A central personnel
10 file shall include a file in the possession of a person, corporation, partnership or other association
11 that has a contractual agreement with an employer to keep or supply a file as provided in this
12 section.

13 "Employee", a person currently employed or formerly employed by an employer;
14 provided, however, that for purposes of this section, a person who is employed, or was formerly
15 employed by a private institution of higher education in a position which may lead to tenure, is
16 tenured, or which involve responsibilities similar to those in tenure-track positions shall not be
17 considered an employee.

18 "Employer", an individual, corporation, partnership, labor organization, unincorporated
19 association or any other legal business, public or private, or commercial entity including agents
20 of the employer.

21 "Personnel record", a written document or electronic record kept by an employer that (i)
22 identifies an employee, (ii) is used or has been used, or may affect or be used relative to that
23 employee's qualifications for employment, promotion, transfer, additional compensation or
24 disciplinary action, and (iii) is maintained in a central personnel file. A personnel record shall not
25 include information of a personal nature about a person other than the employee if disclosure of
26 the information would constitute a clearly unwarranted invasion of such other person's privacy.
27 Without limiting the applicability or generality of the foregoing, all of the following written
28 documents or electronic records to the extent prepared by an employer of 20 or more employees
29 regarding an employee shall be included in the central personnel file for that employee: the
30 name, address, date of birth, job title and description; rate of pay and any other compensation
31 paid to the employee; starting date of employment; the job application of the employee; resumes
32 or other forms of employment inquiry submitted to the employer in response to its advertisement
33 by the employee; all employee performance evaluations, including but not limited to, employee
34 evaluation documents; written warnings of substandard performance; lists of probationary
35 periods; waivers signed by the employee; copies of dated termination notices; and any other
36 written documents or electronic records relating to disciplinary action regarding the employee.

37 An employer shall notify a current employee within 45 days of the employer placing in
38 the employee's central personnel file any written document or electronic record that has been
39 used or may be used, to negatively affect the employee's qualification for employment,
40 promotion, transfer, additional compensation or the possibility that the employee will be subject
41 to disciplinary action. An employer receiving a written request from an employee shall provide
42 the employee with an opportunity to review the employee's central personnel file within 5
43 business days of receiving the request. The review shall take place at the place of employment
44 and during normal business hours. An employee shall be given a copy of the employee's central
45 personnel file within 5 business days of submission of a written request for the copy to the
46 employer. An employer shall not be required to allow an employee to review the employee's
47 central personnel file on more than 2 separate occasions in a calendar year; provided, however,
48 that the notification and review caused by the placing of negative information in the file shall not
49 be deemed to be one of the annually permitted reviews.

50 If there is disagreement as to any information contained in a central personnel file,
51 removal or correction of the information may be mutually agreed upon by the employer and the
52 employee. If an agreement is not reached, the employee may submit a written statement
53 explaining the employee's position which shall be contained in the central personnel and shall
54 become a part of the file. The statement shall be included when the information is transmitted to
55 a third party as long as the original information is retained as part of the file. If an employer
56 places in a central personnel file any information which the employer knew or should have
57 known to be false, the employee shall have remedy through the collective bargaining agreement,
58 other personnel procedures or judicial process to have the information expunged. The provisions

59 of this section shall not prohibit the removal of information contained in a central personnel file
60 upon mutual agreement of the employer and employee for any reason.

61 An employer of 20 or more employees shall retain the complete central personnel file of
62 an employee as required to be kept under this section without deletions or expungement of
63 information from the date of employment of that employee to a date 3 years after the termination
64 of employment by the employee with the employer. In any cause of action brought by an
65 employee against an employer of 20 or more employees in any administrative or judicial
66 proceeding, including but not limited to, the Massachusetts Office of Affirmative Action, the
67 Massachusetts Commission Against Discrimination, Massachusetts Civil Service Commission,
68 Massachusetts Labor Relations Commission, attorney general, or a court of appropriate
69 jurisdiction, the employer shall retain any central personnel file required to be kept under this
70 section which is relevant to the action until the final disposition thereof.

71 If an employer of 20 or more employees elects to have a written personnel policy
72 regarding the terms and conditions of employment, the personnel policy, as it may be amended
73 from time to time, shall be continuously maintained at the office of the employer where
74 personnel matters are administered.

75 Whoever violates the provisions of this section shall be punished by a fine of not less
76 than \$500 nor more than \$2,500 dollars. This section shall be enforced by the attorney general.