

SENATE No. 1892

The Commonwealth of Massachusetts

—
In the Year Two Thousand Thirteen
—

SENATE, October 22, 2013

The committee on Ways and Means, to whom was referred the Senate Bill to establish employment leave and safety remedies to victims of domestic violence, stalking and sexual assault (Senate, No. 853),- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled, “An Act enhancing protection for victims of domestic violence”, (Senate, No. 1892).

For the committee,
Stephen M. Brewer

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An Act enhancing protection for victims of domestic violence.

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. Chapter 149 of the General Laws is hereby amended by inserting after
2 section 52D the following section:-

3 Section 52E. (a) For purposes of this section, the following words shall, unless the
4 context clearly indicates otherwise, have the following meanings:

5 "Abuse", (i) attempting to cause or causing physical harm; (ii) placing another in fear of
6 imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations
7 by force, threat or duress or engaging or threatening to engage in sexual activity with a
8 dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts
9 designed to induce terror; (v) depriving another of medical care, housing, food or other
10 necessities of life; or (vi) restraining the liberty of another.

11 "Abusive behavior", (i) any behavior constituting domestic violence, (ii) stalking in
12 violation of section 43 of chapter 265, (iii) sexual assault which shall include a violation of
13 sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51
14 of chapter 265 or sections 3 or 35A of chapter 272 and (iv) kidnapping in violation of the third
15 paragraph of section 26 of chapter 265.

16 "Domestic violence", abuse against an employee or the employee's family member by:
17 (i) a current or former spouse of the employee or the employee's family member; (ii) a person
18 with whom the employee or the employee's family member shares a child in common; (iii) a
19 person who is cohabitating with or has cohabitated with the employee or the employee's family

20 member; (iv) a person who is related by blood or marriage to the employee; or (v) a person with
21 whom the employee or employee's family member has or had a dating or engagement
22 relationship.

23 "Family member", (i) persons who are married to one another; (ii) persons in a
24 substantive dating or engagement relationship and who reside together; (iii) persons having a
25 child in common regardless of whether they have ever married or resided together; (iv) a parent,
26 step-parent, child, step-child, sibling, grandparent or grandchild; or (v) persons in a guardianship
27 relationship.

28 (b) An employer shall permit an employee to take up to 15 days of leave from work in
29 any 12 month period, with or without pay, if:

30 (i) the employee, or a family member of the employee, is a victim of abusive
31 behavior;

32 (ii) the employee is using the leave from work to: seek or obtain medical
33 attention, counseling, victim services or legal assistance; secure housing; obtain a protective
34 order from a court; appear in court or before a grand jury; meet with a district attorney or other
35 law enforcement official; or attend child custody proceedings or address other issues directly
36 related to the abusive behavior against the employee or family member of the employee; and

37 (iii) the employee is not the perpetrator of the abusive behavior against such
38 employee's family member.

39 (c) This section shall apply to employers who employ 50 or more employees. As used in
40 this subsection, "employees" shall mean individuals who perform services for and under the
41 control and direction of an employer for wages or other remuneration.

42 (d) Except in cases of imminent danger to the health or safety of an employee, an
43 employee seeking leave from work under this section shall provide appropriate advance notice of
44 the leave to the employer as required by the employer's leave policy.

45 If there is a threat of imminent danger to the health or safety of an employee or the employee's
46 family member, the employee shall not be required to provide advanced notice of leave;
47 provided, however, that the employee shall notify the employer within 5 workdays that the leave
48 was taken or is being taken under this section. Such notification may be communicated to the
49 employer by the employee, a family member of the employee or the employee's counselor,
50 social worker, health care worker, member of the clergy, shelter worker, legal advocate or other
51 professional who has assisted the employee in addressing the effects of the abusive behavior on
52 the employee or the employee's family member.

53 If an unscheduled absence occurs, an employer shall not take any negative action against the
54 employee if the employee, within 30 days from the unauthorized absence or within 30 days from

55 the last unauthorized absence in the instance of consecutive days of unauthorized absences,
56 provides any of the documentation described in paragraphs (1) to (6), inclusive, of subsection
57 (e).

58 (e) An employer may require an employee to provide documentation evidencing that the
59 employee or employee's family member has been a victim of abusive behavior and that the
60 purpose of the leave is to satisfy any 1 of the purposes enumerated in clauses (i) to (iii),
61 inclusive, of subsection (b); provided, however, that an employer shall not require an employee
62 to show evidence of an arrest, conviction or other law enforcement documentation for such
63 abusive behavior. An employee shall provide such documentation to the employer within a
64 reasonable period after the employer requests documentation relative to the employee's absence.
65 An employee shall satisfy this documentation requirement by providing any 1 of the following
66 documents to the employer.

67 (1) A protective order, order of equitable relief or other documentation issued by a
68 court of competent jurisdiction as a result of abusive behavior against the employee or
69 employee's family member.

70 (2) A police report or statement of a victim or witness, including a police incident
71 report, documenting the abusive behavior complained of by the employee or the employee's
72 family member.

73 (3) Documentation that the perpetrator of the abusive behavior against the
74 employee or family member of the employee has: admitted to sufficient facts to support a finding
75 of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile
76 delinquent by reason of, any offense constituting abusive behavior and which is related to the
77 abusive behavior that necessitated the leave under this section.

78 (4) Medical documentation of treatment as a result of the abusive behavior
79 complained of by the employee or employee's family member.

80 (5) A sworn statement, signed under the penalties of perjury, provided by a
81 counselor, social worker, health care worker, member of the clergy, shelter worker, legal
82 advocate or other professional who has assisted the employee or the employee's family member
83 in addressing the effects of the abusive behavior.

84 (6) A sworn statement, signed under the penalties of perjury, from the employee
85 attesting that the employee has been the victim of abusive behavior or is the family member of a
86 victim of abusive behavior. Any documentation provided to an employer under this section may
87 be maintained by the employer in the employee's employment record but only for as long as
88 required for the employer to make a determination as to whether the employee is eligible for
89 leave under this section.

90 (f) All information related to the employee's leave under this section shall be kept
91 confidential by the employer and shall not be disclosed, except to the extent that disclosure is:

92 (i) requested or consented to, in writing, by the employee; or

93 (ii) otherwise required by applicable federal or state law.

94 (g) An employee seeking leave under this section shall exhaust all annual or vacation
95 leave, personal leave and sick leave available to the employee, prior to requesting or taking leave
96 under this section, unless the employer waives this requirement.

97 (h) No employer shall coerce, interfere with, restrain or deny the exercise of, or any
98 attempt to exercise, any rights provided under this section or to make leave requested or taken
99 hereunder contingent upon whether or not the victim maintains contact with the alleged abuser.

100 (i) No employer shall discharge or in any other manner discriminate against an employee
101 for exercising the employee's rights under this section. The taking of leave under this section
102 shall not result in the loss of any employment benefit accrued prior to the date on which the leave
103 taken under this section commenced. Upon the employee's return from such leave, the employee
104 shall be entitled to restoration to the employee's original job or to an equivalent position.

105 (j) The attorney general shall enforce this section and may seek injunctive relief or other
106 equitable relief to enforce this section.

107 (k) Employers with 50 or more employees shall notify each employee of the rights and
108 responsibilities provided by this section including those related to notification requirements and
109 confidentiality. As used in this subsection, "employees" shall mean individuals who perform
110 services for and under the control and direction of an employer for wages or other remuneration.

111 (l) This section shall not be construed to exempt an employer from complying with
112 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights
113 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
114 or special law.

115 SECTION 2. Section 150 of said chapter 149, as appearing in the 2012 Official Edition,
116 is hereby amended by inserting after the figure "33E", in line 20, the following figure:- , 52E.

117 SECTION 3. The fifth paragraph of section 7 of chapter 209A, as so appearing, is hereby
118 amended by inserting after the first sentence the following sentence:-

119 Whoever violates such order or a protection order issued by another jurisdiction and (i)
120 has been previously convicted of violating an order issued under this chapter or a protection
121 order issued by another jurisdiction or (ii) has been previously convicted of clause (iii) of
122 subsection (b) of section 13A or subsection (b) of section 43 of chapter 265 shall be punished by

123 imprisonment in state prison for not more than 5 years or imprisonment in the house of
124 correction for not more than 2 ½ years.

125 SECTION 4. Section 13M of chapter 265 of the General Laws, as so appearing, is hereby
126 amended by adding the following paragraph:-

127 For any violation of this section, or as a condition of a continuance without a finding, the
128 court shall order the defendant to complete a certified batterer's intervention program unless,
129 upon good cause shown, the court issues specific written findings describing the reasons that
130 batterer's intervention should not be ordered or unless the batterer's intervention program
131 determines that the defendant is not suitable for intervention.

132 SECTION 5. Said chapter 265 is hereby further amended by inserting after section 15C
133 the following section:-

134 Section 15D. (a) For the purposes of this section the following words shall, unless the
135 context clearly indicates otherwise, have the following meanings:

136 "Serious bodily injury", bodily injury that results in a permanent disfigurement, loss or
137 impairment of a bodily function, limb or organ or creates a substantial risk of death.

138 "Strangulation", the intentional interference of the normal breathing or circulation of
139 blood by applying substantial pressure on the throat or neck of another.

140 "Suffocation", the intentional interference of the normal breathing or circulation of blood
141 by blocking the nose or mouth of another.

142 (b) Whoever strangles or suffocates another person shall be punished by imprisonment in
143 state prison for not more than 5 years or in the house of correction for not more than 2 ½ years,
144 or by a fine of not more than \$5,000, or by both such fine and imprisonment.

145 (c) Whoever: (i) strangles or suffocates another person and by such strangulation or
146 suffocation causes serious bodily injury; (ii) strangles or suffocates another person, who is
147 pregnant at the time of such strangulation or suffocation, knowing or having reason to know that
148 the person is pregnant; (iii) is convicted of strangling or suffocating another person after having
149 been previously convicted of the crime of strangling or suffocating another person under this
150 section, or of a like offense in another state or the United States or a military, territorial or Indian
151 tribal authority; or (iv) strangles or suffocates another person, with knowledge that the individual
152 has an outstanding temporary or permanent vacate, restraining or no contact order or judgment
153 issued under sections 18, 34B or 34C of chapter 208, section 32 of chapter 209, sections 3, 4 or 5
154 of chapter 209A or sections 15 or 20 of chapter 209C, in effect against such person at the time
155 the offense is committed, shall be punished by imprisonment in state prison for not more than 10
156 years, or in the house of correction for not more than 2½ years and by a fine of not more than
157 \$10,000.

158 SECTION 6. Section 55 of chapter 276 of the General Laws, as appearing in the 2012
159 Official Edition, is hereby amended by inserting after the word “felony”, in line 5, the following
160 words:- , or would constitute abuse as defined in section 1 of chapter 209A, or a violation of an
161 order issued under sections 3, 4 or 5 of chapter 209A or under sections 34B or 34C of chapter
162 208.