

SENATE No. 2061

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

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 promoting equality and respect in the legislature.

PETITION OF:

NAME:

Rebecca L. Rausch

DISTRICT/ADDRESS:

Norfolk, Worcester and Middlesex

SENATE No. 2061

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 2061) of Rebecca L. Rausch for legislation to promote equality and respect in the legislature. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act promoting equality and respect in the legislature.

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. The General Laws are hereby amended by inserting after chapter 23M the
2 following chapter:-

3 CHAPTER 23N. COMMISSION ON WORKPLACE HARASSMENT AND SEXUAL
4 ASSAULT IN THE LEGISLATURE.

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Claim”, a written statement submitted to the commission by a reporting individual
8 alleging workplace harassment.

9 “Commission”, the commission on workplace harassment and sexual assault in the
10 legislature.

11 “Complaint”, a written statement submitted to the commission by a complainant alleging
12 workplace harassment.

13 “Complainant”, any state house personnel who files a claim with the commission stating
14 that the person experienced, observed, or has reasonable reason to know of workplace
15 harassment by a state house personnel or another person the complainant reasonably believes
16 could affect the job security or career opportunities of the complainant.

17 “Investigative report”, a report compiled by the general counsel, duly appointed pursuant
18 to Section 4 of this chapter, at the end of an investigation.

19 “Identity-based harassment”, verbal or physical conduct designed to humiliate, threaten,
20 intimidate, coerce, demean, or disparage an individual targeted because of the individual’s race,
21 color, religion, national origin, sex, gender expression, gender identity, sexual orientation,
22 disability, age, genetic information, ancestry, or other aspect of a person’s identity, which
23 conduct negatively interferes with an individual’s work performance or creates an intimidating,
24 hostile, offensive, or otherwise untenable workplace environment.

25 “Reporting individual”, a person who has experienced or witnessed incidents of
26 workplace harassment and has reported those incidents to the commission.

27 “Respondent”, an individual accused of workplace harassment by a reporting individual
28 or complainant.

29 “Retaliatory action”, the discharge, suspension, demotion or other adverse employment
30 action taken against an individual, reporting individual, or complainant that provides information
31 to the commission.

32 "Sexual harassment", unwelcome sexual advances, requests for sexual favors, or verbal
33 or physical conduct of a sexual nature when (a) submission to or rejection of such advances,
34 requests, or conduct is made either explicitly or implicitly a term or condition of employment or
35 as a basis for an employment decision, or (b) such advances, requests, or conduct have the
36 purpose or effect of unreasonably interfering with an individual's work performance or creating
37 an intimidating, hostile, humiliating or sexually offensive work environment.

38 "Sexual assault", any nonconsensual sexual act involving physical touching.

39 "State house personnel", any person whose essential job functions are substantially
40 related to the operation of the general court. State house personnel shall include, but shall not be
41 limited to, members of the Senate and House of Representatives, employees of the legislature,
42 legislative interns, and employees of the executive branch whose principal place of business is
43 the state house.

44 "Workplace harassment", an incident involving elements of identity-based harassment,
45 sexual harassment or sexual assault as defined in this chapter.

46 Section 2. (a) There shall be within the executive office of administration and finance, but
47 not under its control, a commission on workplace harassment and sexual assault in the
48 legislature. The commission shall respond to claims and investigate and report on complaints of
49 workplace harassment as provided in this chapter. The commission shall be an independent
50 public entity not subject to the supervision and control of any other executive office, department,
51 commission, board, bureau, agency or political subdivision of the commonwealth.

52 (b) The commission shall consist of 13 members:

53 (1) 1 of whom shall be appointed by the governor, provided however that the appointee
54 shall not be a current employee of the executive branch;

55 (2) 1 of whom shall be appointed by the senate president, provided however that the
56 appointee shall not be a current member of the Senate or the House of Representatives;

57 (3) 1 of whom shall be appointed by the senate minority leader, provided however that
58 the appointee shall not be a current member of the Senate or the House of Representatives;

59 (4) 1 of whom shall be appointed by the speaker of the house of representatives, provided
60 however that the appointee shall not be a current member of the Senate or the House of
61 Representatives;

62 (5) 1 of whom shall be appointed by the house minority leader, provided however that the
63 appointee shall not be a current member of the Senate or the House of Representatives;

64 (6) 1 of whom shall be appointed by the Women’s Bar Association of Massachusetts,
65 who shall be a licensed attorney with demonstrated experience in the field of workplace
66 harassment;

67 (7) 1 of whom shall be appointed by the Massachusetts LGBTQ Bar Association, who
68 shall be a licensed attorney with demonstrated experience in the field of workplace harassment;

69 (8) 1 of whom shall be appointed by the Massachusetts Caucus of Women Legislators;

70 (9) 1 of whom shall be appointed by the Massachusetts Black and Latino Legislative
71 Caucus;

72 (10) 2 of whom shall be appointed by the attorney general, 1 of whom shall be a sexual
73 assault counsellor, as that term is defined in section 20J of chapter 233, and 1 of whom shall be a
74 licensed attorney with experience as a mediator or other presider over alternative dispute
75 resolution; and

76 (11) 2 of whom shall be appointed by the auditor, 1 of whom shall be a licensed social
77 worker with demonstrated expertise in sexual harassment outreach and 1 of whom shall be a
78 human resources professional with demonstrated expertise in the field of workplace harassment
79 training.

80 The commission shall annually elect 1 of its members to serve as chair and 1 of its
81 members to serve as vice-chair. Each member shall be appointed for a term of 3 years and shall
82 be eligible for reappointment; provided, however, that a person appointed to fill a vacancy shall
83 serve only for the unexpired term. A member shall not hold other employment in the government
84 of the commonwealth or any of its political subdivisions. Each member of the commission shall
85 be a resident of the commonwealth.

86 (c) Seven members of the commission shall constitute a quorum and the affirmative vote
87 of seven members of the commission shall be necessary and sufficient for any action taken by
88 the commission. Members shall serve without pay but shall be reimbursed for actual expenses
89 necessarily incurred in the performance of their duties. Meetings of the commission shall be
90 subject to sections 18 to 25, inclusive, of chapter 30A and records pertaining to the
91 administration of the commission shall be subject to section 42 of chapter 30 and section 10 of
92 chapter 66. All moneys of the commission shall be considered to be public funds for purposes of
93 chapter 12A.

94 The commission shall not be required to obtain the approval of any other officer or
95 employee of any executive agency in connection with the collection or analysis of any
96 information. The commission shall not be required, prior to publication, to obtain the approval of
97 any other officer or employee of any executive agency with respect to the substance of reports,
98 investigative or annual, that the general counsel has prepared under this chapter.

99 (d) The commission shall have all the powers necessary or convenient to carry out and
100 effectuate its purposes. The powers shall include, but shall not be limited to:

101 (i) developing a plan of operation for the commission that shall include, but shall not be
102 limited to, the implementation of procedures for operations of the commission and procedures
103 for communications with the general counsel;

104 (ii) making, amending and repealing rules and regulations for the management of the
105 commission's affairs;

106 (iii) making contracts and executing all instruments that are necessary or convenient for
107 the carrying on of the commission's business;

108 (iv) acquiring, owning, holding, disposing of or encumbering personal property and
109 leasing real property in the exercise of the commission's powers and the performance of the
110 commission's duties;

111 (v) seeking and receiving grant funding from the federal government, departments or
112 agencies of the commonwealth and private foundations;

113 (vi) entering into and executing instruments in connection with agreements or
114 transactions with any federal, state or municipal agency or other public institution or with any

115 private individual, partnership, firm, corporation, association or other entity that may be
116 necessary in the commission's judgment, and to fix the compensation of such an individual or
117 entity;

118 (vii) enter into interdepartmental agreements with other state agencies that the
119 commission considers necessary to implement this chapter;

120 (viii) adopt and alter an official seal;

121 (ix) sue and be sued in its own name, plead and be impleaded; and

122 (x) establish lines of credit and establish at least 1 cash and investment account to receive
123 appropriations from the commonwealth and for all other business activity granted by this
124 chapter.

125 Section 3. The commission shall: (i) ensure the objective and thorough investigation of
126 all workplace harassment complaints within its jurisdiction; (ii) ensure the transparency of
127 processes and reports related to investigations of workplace harassment within its jurisdiction;
128 (iii) monitor and record claims of workplace harassment reported to the commission by
129 frequency and claim type; (iv) provide workplace harassment resources to individuals upon
130 request; (v) establish models for workplace harassment policy guidelines and training programs
131 for the general court; and (vi) conduct an annual workplace harassment survey for general court
132 employees.

133 Section 4. (a) The commission shall appoint a general counsel by a majority vote. The
134 general counsel shall be lawfully admitted to practice as an attorney in the commonwealth and
135 shall supervise the administrative affairs and general management and operations of the

136 commission. The general counsel shall receive a salary commensurate with the duties of the
137 office. The general counsel may appoint other officers and employees of the commission
138 necessary to the functioning of the commission. Sections 9A, 45, 46, and 46C of chapter 30,
139 chapter 31 and chapter 150E shall not apply to the general counsel of the commission. Sections
140 45, 46 and 46C of chapter 30 shall not apply to any employee of the commission. The general
141 counsel may establish personnel regulations for the officers and employees of the commission.
142 The general counsel shall file an annual personnel report with the senate and house committees
143 on ways and means containing the job classifications, duties and salary of each officer and
144 employee of the commission together with personnel regulations applicable to the officers and
145 employees.

146 (b) The general counsel shall, with the approval of the commission:

147 (i) plan, direct, coordinate and execute administrative functions in conformity with the
148 policies and directives of the commission;

149 (ii) establish an intake procedure for the submission of claims by reporting individuals to
150 the commission pursuant to section 5, including any necessary forms;

151 (iii) conduct investigations authorized by this chapter, including supervising summons
152 and the collection of information relevant to authorized investigations; and

153 (iv) at the conclusion of each investigation and pursuant to the requirements of section 7,
154 submit an investigative report on the findings of the investigation to the appropriate parties.

155 Section 5. (a) The commission shall receive and review claims of workplace harassment
156 according to procedures established by the general counsel.

157 (b) A reporting individual shall submit a claim in the form of a written statement to the
158 commission including, but not limited to: (i) the name, position, and the department, if
159 applicable, of the reporting individual; (ii) the name, position and department, if applicable, of
160 the respondent; (iii) a description of the incident, including the date, location and presence of
161 witnesses; (iv) the effect of the incident on the ability of the reporting individual to perform the
162 reporting individual's job, or on other terms or conditions of the reporting individual's
163 employment; and (v) other information the reporting individual believes is relevant to the claim.
164 The general counsel or a member of the commission staff may assist the reporting individual in
165 completing the written statement. The general counsel may request additional information from
166 the reporting individual in the form of a written statement or an in-person interview.

167 (c) The commission shall notify a reporting individual orally and in writing of any
168 organization or government entity that has jurisdiction to address the specific incident of
169 workplace harassment reported by the individual including, but not limited to: (i) the attorney
170 general; (ii) a law enforcement official; (iii) the Massachusetts Commission Against
171 Discrimination; and (iv) the federal Equal Employment Opportunity Commission. A notification
172 under this subsection shall include an option for the claim to be sent to an organization or
173 government entity at the discretion and with the consent of the reporting individual. Claims
174 submitted to the commission shall be recorded and retained by the commission.

175 (d) The procedures and remedies available to a reporting individual under this chapter
176 shall not preempt or supersede any legal procedures or remedies otherwise available to an
177 individual under local, state or federal law.

178 Section 6. (a) The general counsel shall execute and supervise investigations under this
179 chapter.

180 (b) If the commission determines that a reporting individual is a complainant as defined
181 by this chapter, the general counsel shall open an investigation into the complaint reported by the
182 complainant and notify the complainant and respondent in writing that an investigation has been
183 opened.

184 (c) The commission shall issue rules and regulations to establish a process for a
185 respondent to appeal the determination that a reporting individual is a complainant under this
186 section. The process shall include notice and an opportunity for a hearing.

187 (d) The general counsel may request the production, on a voluntary basis, of testimony or
188 documents from an individual, government agency or non-governmental entity. The general
189 counsel may require by summons the production of all records, reports, audits, reviews, papers,
190 books, documents, recommendations, correspondence and any other data and material relevant to
191 a matter under investigation pursuant to this chapter. The summons shall be served in the same
192 manner as a summons for the production of documents in civil cases issued on behalf of the
193 commonwealth and the law relative to the summons shall apply to a summons issued pursuant to
194 this chapter. A justice of the superior court department of the trial court of the commonwealth
195 may, upon application by the general counsel, issue an order to compel the production of records,
196 reports, audits, reviews, papers, books, documents, recommendations, correspondence and any
197 other data and material relevant to any matter under investigation pursuant to this chapter. A
198 failure to obey such an order may be punished by the court as contempt.

199 (e) A summons issued pursuant to this section shall not be made public by the general
200 counsel or any officer or employee of the commission and any information provided pursuant to
201 this section shall not be made public until such time as it is necessary for the general counsel to
202 do so through the issuing of an investigative report. Disclosure of production, attendance or
203 testimony may be made to the members of the staff of the commission as is deemed necessary by
204 the general counsel.

205 (f) An investigation may be closed when the general counsel determines a sufficient
206 amount of information has been collected to find that it is more likely than not that workplace
207 harassment occurred or to determine that a finding could not be made. An investigation under
208 this section shall be completed in not more than 6 months; provided, however, that the
209 commission may, upon a request by the general counsel, approve an extension of not more than 6
210 months.

211 Section 7. (a) At the conclusion of an investigation, the general counsel shall compile and
212 submit a report on the findings of the investigation.

213 (b) The report shall include, but shall not be limited to: (i) the position and department, if
214 applicable, of the complainant; (ii) the name, position and department, if applicable, of the
215 respondent; (iii) the time and location of the incident being investigated; (iv) a detailed
216 description of the incident; (v) resources provided to the complainant by the commission or other
217 governmental or non-governmental entities; and (vi) a finding that it is more likely than not that
218 harassment occurred or a statement that a finding could not be made. If after an investigation a
219 majority of the commission determines that it is more likely than not that harassment occurred,
220 the commission shall include in the report a recommendation for disciplinary action, including

221 but not limited to: in the case of a legislator, reprimand, censure, temporary or permanent
222 removal from committee chairmanship or other position of authority, suspension with or without
223 pay, or expulsion; in the case of an officer or employee of the general court, reprimand,
224 suspension or removal. Said report shall not prevent the senate or house of representatives from
225 taking any other action as it shall deem advisable and appropriate.

226 (c) Prior to a report being released, the general counsel shall notify the complainant and
227 the respondent that the investigation has been closed and issue a copy of the investigative report
228 to the complainant and respondent for review. The commission shall issue rules and regulations
229 to establish a process for a complainant or respondent to appeal the release of an investigative
230 report before a report is released. The process shall include notice and an opportunity for a
231 hearing.

232 (d) The general counsel shall submit a copy of the investigative report to all interested
233 parties including, but not limited to: (i) the complainant; (ii) the respondent; (iii) each member of
234 the commission; and (iv) the respondent's employer, provided, however, that if the respondent is
235 a member of the legislature, the report will be sent to the committee on ethics in the chamber
236 where the respondent is a member. A copy of the report may be submitted to the attorney general
237 or the district attorney for the district in which the incident occurred with the complainant's
238 written consent.

239 Section 8. (a) Except as otherwise provided in this section, the proceedings and records of
240 the commission related to investigations shall be confidential and not subject to section 10 of
241 chapter 66. The commission shall establish procedures, applicable to members of the

242 commission, general counsel, and staff that ensure compliance with the confidentiality
243 requirements of this chapter.

244 (b) If the subject matter of an investigation becomes public through independent sources,
245 the general counsel may issue a statement to confirm the pendency of the investigation or to
246 clarify the procedural aspects of the investigation.

247 (c) Reports submitted to interested parties by the general counsel shall be confidential
248 and not subject to section 10 of chapter 66, including reports sent to individuals, members of the
249 commission and governmental and non-governmental entities. A party that receives a report
250 from the general counsel shall notify staff, if any, that the report is confidential and take steps to
251 ensure non-disclosure of the report.

252 (d) Nothing in this chapter shall preclude or limit the right of a complainant, respondent
253 or witness to share personal information under federal, state or local law.

254 Section 9. A person shall not discharge or cause to be discharged or otherwise discipline
255 or in any manner discriminate against or take any other retaliatory action against any employee,
256 client or other person for providing information to the commission, the general counsel or
257 commission staff, including filing a report or complaint with the commission or testifying in a
258 commission proceeding. A person who willfully violates this section shall be punished by a fine
259 of not more than \$1,000 or by imprisonment for not more than 1 year, or both. A person who
260 takes such a prohibited action against an employee, client or other person may be liable to that
261 employee, client or other person for treble damages, costs and attorney's fees.

262 Section 10. The commission shall annually conduct a workplace harassment survey of all
263 employees and interns of the general court. The survey shall be administered electronically and

264 the identity of the survey takers shall be anonymous. The survey shall include a definitions
265 section that shall include but shall not be limited to the definitions of identity-based harassment,
266 sexual harassment and sexual assault under this chapter. The survey shall include a demographic
267 section that shall include the age, sex, gender identity, race, ethnicity, sexual orientation,
268 religious affiliation, level of education and relationship status of the survey taker. The survey
269 shall include a questions section that shall include, but shall not be limited to the following
270 questions: (i) “Have you experienced or witnessed some form of workplace harassment or
271 assault-related behaviors in the past 12 months?”; (ii) “If you have experienced or witnessed
272 some form of workplace harassment or assault-related behaviors, what was the primary basis for
273 the specific behavior or set of experiences?”; (iii) “If you have experienced or witnessed some
274 form of workplace harassment or assault-related behaviors, when and where did the specific
275 behavior or set of experiences occur?”; (iv) “If you have experienced or witnessed some form of
276 workplace harassment or assault-related behaviors, how often and for how long did the specific
277 behavior or set of experiences persist?”; (v) “If you have experienced or witnessed some form of
278 workplace harassment or assault-related behaviors, who was involved in the specific behavior or
279 set of experiences?”; (vi) “If you have experienced or witnessed some form of workplace
280 harassment or assault-related behaviors, what was the job title of the person or persons involved
281 in the specific behavior or set of experiences?”; (vii) “If you have experienced or witnessed some
282 form of workplace harassment or assault-related behaviors, did your work role require you to
283 continue to interact with the person or persons involved?”; (viii) “If you have experienced or
284 witnessed some form of workplace harassment or assault-related behaviors, did you discuss the
285 specific behavior or set of experiences with anyone at work?”; (ix) “If you have experienced or
286 witnessed some form of workplace harassment or assault-related behaviors, did you make a

287 complaint or report in response to the specific behavior or set of experiences?"; (x) "If you have
288 made a complaint or report, what happened as a result of it?"; (xi) "If you have experienced or
289 witnessed some form of workplace harassment or assault-related behaviors and did not make a
290 complaint or report, what were the reasons for not doing so?"; (xii) "If you have experienced or
291 witnessed some form of workplace harassment or assault-related behaviors, what effect did the
292 specific behavior or set of experiences have on your interpersonal relationships, physical or
293 emotional well-being, job performance or willingness to remain a part of the legislature?"; (xiii)
294 "If you have experienced or witnessed some form of workplace harassment or assault-related
295 behaviors, what resources did you use to make a complaint or report or receive additional
296 information about workplace harassment, if any?"; (xiv) "If you experience or witness workplace
297 harassment or assault-related behaviors, will you make a complaint or report?"; and (xv) "If you
298 would not make a complaint or report after experiencing or witnessing workplace harassment or
299 assault behaviors, is it due to a fear of retaliatory action?".

300 Section 11. The commission shall annually compile a report that shall include, but shall
301 not be limited to: (i) the number of incidents of workplace harassment and assault reported to the
302 commission, classified and analyzed by the type of incident, the demographics of reporting
303 individuals and the percentage of reports that led to investigations; (ii) the number of
304 investigations opened by the general counsel, classified by respondent job title; (iii) the number
305 of investigative reports issued by the commission, classified by the type of incident, the
306 demographics of complainants and the demographics of respondents; (iv) the results of the
307 workplace harassment survey conducted pursuant to section 10 as raw data and synthesized to
308 identify and describe correlations and overarching trends; (vi) recommended changes to the
309 model workplace harassment policies established by the commission, if any; and (vii) any other

310 information that may assist the legislature in preventing and effectively responding to incidents
311 of workplace harassment. The commission shall file the annual report with the senate president,
312 the speaker of the house of representatives, the clerks of the senate and house of representatives
313 and the chairs of the joint committee on rules not later than September 15.

314 Section 12. The commission shall promulgate the rules and regulations and perform the
315 functions that are necessary for the administration, implementation and enforcement of this
316 chapter.

317 SECTION 2. Notwithstanding subsection (b) of section 2 of chapter 23N of the General
318 Laws, the initial appointments to the commission on workplace harassment and sexual assault in
319 the legislature made by the governor, senate president and senate minority leader shall serve for a
320 term of 3 years, the initial appointments made by the speaker of the house of representatives and
321 the house minority leader and 1 of the initial appointments made by the attorney general shall
322 serve for a term of 2 years and the initial appointments made by the auditor and 1 of the initial
323 appointments made by the attorney general shall serve for a term of 1 year.

324 SECTION 3. (a) The commission on workplace harassment and sexual assault in the
325 legislature established by chapter 23N shall, in consultation with the Massachusetts Commission
326 Against Discrimination, research and develop model workplace harassment policies for
327 consideration and use by the senate and house of representatives. In developing the model
328 policies, the commission may request and receive information and testimony from experts in
329 relevant fields including, but not limited to, workplace harassment, sexual assault, personnel
330 policies and human resources management. The model workplace harassment policies shall
331 include, at a minimum: (i) a statement of the illegality of workplace harassment; (ii) a definition

332 of identity-based harassment, sexual harassment and sexual assault; (iii) descriptions of conduct
333 constituting identity-based harassment, sexual harassment and sexual assault, including
334 examples; (iv) resources available to reporting individuals including, but not limited to, contact
335 information for the commission, the Massachusetts Commission Against Discrimination and the
336 federal Equal Employment Opportunity Commission; and (v) protection against retaliatory
337 action. The commission shall submit the model workplace harassment policies, including
338 specific policy language, to the senate president, the speaker of the house of representatives, the
339 clerks of the senate and house of representatives, and the chairs of the joint committee on rules.
340 The senate and house of representatives may adopt the model policies submitted pursuant to this
341 section in whole or in part.

342 (b) The commission shall research and develop a model workplace harassment training
343 program for consideration and use by the senate and house of representatives. In developing the
344 model training program, the commission may contract with third party vendors and request and
345 receive information and testimony from experts in relevant fields such as identity-based
346 harassment, sexual harassment, sexual assault, personnel policies and human resources
347 management. The model training program shall include, at a minimum: (i) a definition of
348 “effective interactive training”; (ii) a definition of “legislative employee”; (iii) a definition of
349 “unlawful conduct”, which shall include applicable federal and state statutory and case law
350 references and principles; (iv) minimum trainer qualifications; (v) minimum training frequency
351 and duration requirements; (vi) procedures for training completion documentation, including
352 minimum record retention requirements and procedures for individual tracking; and (vii) training
353 content requirements, including, but not limited to, types of conduct that constitute workplace
354 harassment, remedies available to reporting individuals, strategies to prevent workplace

- 355 harassment, practical examples of workplace harassment and hypothetical situations,
- 356 confidentiality of the reporting process and resources for reporting individuals.