HOUSE DOCKET, NO. 2084 FILED ON: 1/20/2011

HOUSE . . . . . No. 2309

The Commonwealth of Massachusetts

PRESENTED BY:

Frank I. Smizik

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:

An Act addressing workplace bullying, mobbing, and harassment, without regard to protected class status.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	*15th Norfolk*
Alice K. Wolf	*25th Middlesex*

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HOUSE . . . . . No. 2309

By Mr. Smizik of Brookline, a petition (accompanied by bill, House, No. 2309) of Frank I. Smizik and Alice K. Wolf for legislation to protect employees from workplace bullying, mobbing and harassment. [COMMITTEE].

The Commonwealth of Massachusetts

An Act addressing workplace bullying, mobbing, and harassment, without regard to protected class status.

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

SECTION 1. The General Laws are hereby amended by inserting after chapter 151E the following chapter:-

Chapter 151F

THE HEALTHY WORKPLACE

Section 1 -- Preamble

(a) Findings

The General Court finds that:

(1) The social and economic well-being of the Commonwealth is dependent upon healthy and productive employees;

(2) Between 37 and 59 percent of employees directly experience health-endangering workplace bullying, abuse, and harassment, and this mistreatment is approximately four times more prevalent than sexual harassment alone;

(3) Workplace bullying, mobbing, and harassment can inflict serious harm upon targeted employees, including feelings of shame and humiliation, severe anxiety, depression, suicidal tendencies, impaired immune systems, hypertension, increased risk of cardiovascular disease, and symptoms consistent with post-traumatic stress disorder;.

17 (4) Abusive work environments can have serious consequences for employers,
18 including reduced employee productivity and morale, higher turnover and absenteeism rates, and
19 increases in medical and workers' compensation claims;

20 (5) If mistreated employees who have been subjected to abusive treatment at work
21 cannot establish that the behavior was motivated by race, color, sex, sexual orientation, national
22 origin, or age, they are unlikely to be protected by the law against such mistreatment;

23 (6) Legal protection from abusive work environments should not be limited to
24 behavior grounded in protected class status as that provided for under employment
25 discrimination statutes; and,

26 (7) Existing workers' compensation plans and common-law tort actions are
27 inadequate to discourage this behavior or to provide adequate relief to employees who have been
28 harmed by abusive work environments.

29 (b) Purpose

30 It is the purpose of this Chapter:

31 (1) To provide legal relief for employees who have been harmed, psychologically,
32 physically, or economically, by being deliberately subjected to abusive work environments;

33 (2) To provide legal incentive for employers to prevent and respond to abusive
34 mistreatment of employees at work.

35 Section 2 -- Definitions

36 (a) Abusive work environment. An abusive work environment exists when the
37 defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes
38 tangible harm to the employee.

39 (1) Abusive conduct. Abusive conduct is conduct, including acts, omissions, or both,
40 that a reasonable person would find hostile, based on the severity, nature, and frequency of the
41 defendant's conduct. Abusive conduct may include, but is not limited to: repeated infliction of
42 verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal or physical
43 conduct of a threatening, intimidating, or humiliating nature; the sabotage or undermining of an
44 employee's work performance; or attempts to exploit a employee's known psychological or
45 physical vulnerability. A single act normally will not constitute abusive conduct, but an
46 especially severe and egregious act may meet this standard.

47 (2) Malice. Malice is defined as the desire to cause pain, injury, or distress to
48 another.

(b) Tangible harm. Tangible harm is defined as psychological harm or physical harm.

(1) Psychological harm. Psychological harm is the material impairment of a person's mental health, as established by competent evidence.

(2) Physical harm. Physical harm is the material impairment of a person's physical health or bodily integrity, as established by competent evidence.

(c) Adverse employment action. An adverse employment action includes, but is not limited to, a termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, or reduction in compensation.

(d) Constructive discharge. A constructive discharge shall be considered a termination, and, therefore, an adverse employment action within the meaning of this Chapter. A constructive discharge exists where: (1) the employee reasonably believed he or she was subjected to abusive conduct; (2) the employee resigned because of that abusive conduct; and, (3) prior to resigning, the employee brought to the employer's attention the existence of the abusive conduct and the employer failed to take reasonable steps to correct the situation.

Section 3 – Unlawful Employment Practices

(a) Abusive Work Environment. It shall be an unlawful employment practice under this Chapter to subject an employee to an abusive work environment as defined by this Chapter.

(b) Retaliation. It shall be an unlawful employment practice under this Chapter to retaliate in any manner against an employee who has opposed any unlawful employment practice under this Chapter, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this Chapter, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

Section 4 – Employer Liability and Defense

(a) An employer shall be vicariously liable for an unlawful employment practice, as defined by this Chapter, committed by its employee.

(b) Where the alleged unlawful employment practice does not include an adverse employment action, it shall be an affirmative defense for an employer only that:

(1) the employer exercised reasonable care to prevent and correct promptly any actionable behavior; and,

(2) the complainant employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer.

Section 5 – Employee Liability and Defense

(a) An employee may be individually liable for an unlawful employment practice as defined by this Chapter.

(b) It shall be an affirmative defense for an employee only that the employee committed an unlawful employment practice as defined in this Chapter at the direction of the employer, under threat of an adverse employment action.

Section 6 – Affirmative Defenses

It shall be an affirmative defense that:

(a) The complaint is based on an adverse employment action reasonably made for poor performance, misconduct, or economic necessity;

(b) The complaint is based on a reasonable performance evaluation; or,

(c) The complaint is based on a defendant's reasonable investigation about potentially illegal or unethical activity.

Section 7 -- Relief

(a) Relief generally. Where a defendant has been found to have committed an unlawful employment practice under this Chapter, the court may enjoin the defendant from engaging in the unlawful employment practice and may order any other relief that is deemed appropriate, including, but not limited to, reinstatement, removal of the offending party from the complainant's work environment, back pay, front pay, medical expenses, compensation for emotional distress, punitive damages, and attorney's fees.

(b) Employer liability. Where an employer has been found to have committed an unlawful employment practice under this Chapter that did not culminate in an adverse employment action, its liability for damages for emotional distress shall not exceed $25,000, and it shall not be subject to punitive damages. This provision does not apply to individually named employee defendants.

Section 8 -- Procedures

(a) Private right of action. This Chapter shall be enforced solely by a private right of action.

(b) Time limitations. An action commenced under this Chapter must be commenced no later than one year after the last act that constitutes the alleged unlawful employment practice.

Section 9 – Effect on Other Legal Relationships

112 The remedies provided for in this Chapter shall be in addition to any remedies provided
113 under any other law, and nothing in this Chapter shall relieve any person from any liability, duty,
114 penalty or punishment provided by any other law, except that if an employee receives workers'
115 compensation for medical costs for the same injury or illness pursuant to both this Chapter and
116 the workers' compensation law, or compensation under both this Chapter and that law in cash
117 payments for the same period of time not working as a result of the compensable injury or illness
118 or the unlawful employment practice, the payments of workers' compensation shall be
119 reimbursed from compensation paid under this Chapter.