

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1760

Short Title: Prevent Workplace Violence. (Public)

Sponsors: Representative Underhill.

Referred to: Rules, Calendar, and Operations of the House.

June 17, 2002

1 A BILL TO BE ENTITLED
2 AN ACT TO CONTRIBUTE TO THE PREVENTION OF WORKPLACE
3 VIOLENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 95 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 23.

8 "Workplace Violence Prevention.

9 "§ 95-260. Definitions.

10 The following definitions apply in this Article:

- 11 (1) Course of conduct. – A pattern of conduct composed of a series of acts
12 over a period of time, however short, evidencing a continuity of
13 purpose, including: following or stalking an employee to or from the
14 employee's place of work; entering the workplace of an employee;
15 following an employee during hours of employment; making
16 telephone calls to an employee; and corresponding with an employee,
17 including correspondence through the use of the public or private
18 mails, interoffice mail, facsimile, or computer e-mail.
- 19 (2) Credible threat of violence. – A knowing and willful statement or
20 course of conduct that would cause a reasonable person to believe that
21 he or she is under threat of death or serious bodily injury and that is
22 intended to, and that actually causes, a person to believe that he or she
23 is under threat of death or serious bodily injury.
- 24 (3) Employer. – Any person or entity that employs one or more employees
25 and includes the State of North Carolina and its political subdivisions.
- 26 (4) Unlawful violence. – Maliciously assaulting in a secret manner under
27 G.S. 14-31; felonious assault with a deadly weapon under G.S. 14-32;
28 assault on a handicapped person under G.S. 14-32.1; assault inflicting
29 serious bodily injury under G.S. 14-32.4; misdemeanor assaults,

1 batteries, and affrays under G.S. 14-33; habitual misdemeanor assault
2 under G.S. 14-33.2; or stalking under G.S. 14-277.3. Unlawful
3 violence does not include acts of self-defense or defense of others.

4 **"§ 95-261. Employers may seek protection of employees from workplace violence**
5 **by filing petition.**

6 (a) Any employer whose employee has suffered unlawful violence or a credible
7 threat of violence from any individual that can reasonably be construed to have been
8 carried out at the employee's workplace may seek a temporary restraining order and an
9 injunction on behalf of the employer prohibiting further unlawful violence or threats of
10 violence by that individual at the employee's workplace or while the employee is acting
11 within the course and scope of employment with the employer.

12 (b) Upon filing a petition with the court for an injunction pursuant to this section,
13 the petitioner may obtain a temporary restraining order if the petitioner also files an
14 affidavit that shows, to the satisfaction of the court, reasonable proof that an employee
15 has suffered unlawful violence or a credible threat of violence by the respondent and
16 that great or irreparable harm will result to an employee if the injunction is not granted.
17 The affidavit shall further show that the petitioner has conducted a reasonable
18 investigation into the underlying facts that are the subject of the petition. A temporary
19 restraining order granted under this section shall remain in effect, at the court's
20 discretion, for a period not to exceed 15 days, unless otherwise modified or terminated
21 by the court.

22 (c) Except for proceedings involving a nonresident respondent, the court of
23 competent jurisdiction of the county where the unlawful violence or credible threat of
24 violence occurred has jurisdiction over all proceedings under this Article. For
25 proceedings under this Article involving a nonresident respondent, the court of
26 competent jurisdiction where the petitioner's workplace is located has jurisdiction, when
27 the act involving unlawful violence or a credible threat of unlawful violence meets the
28 elements for personal jurisdiction under G.S. 1-75.4.

29 (d) Upon the filing of a petition for an injunction under the provisions of this
30 section, the respondent shall be personally served with a copy of the petition, temporary
31 restraining order, if any, and notice of hearing on the petition.

32 (e) All orders and injunctions issued under this Article have statewide validity,
33 unless specifically modified or terminated by the issuing judge, and may be enforced by
34 the issuing court for any violation anywhere in the State, and by any court of competent
35 jurisdiction within the State for violations that may occur within that court's jurisdiction.

36 **"§ 95-262. Hearing to follow filing of petition.**

37 (a) Within 10 days of filing of the petition under this Article or as soon as
38 practical thereafter, but in no case later than 30 days after the filing of the petition, a
39 hearing shall be held on the petition for an injunction. In the event a hearing cannot be
40 scheduled within the county where the case is pending within the 30-day period, it shall
41 be scheduled and heard as soon as possible. The respondent may file a response that
42 explains, excuses, justifies, or denies the alleged unlawful violence or credible threat of
43 violence or may file a counterclaim under this Article. At the hearing, the judge shall
44 receive any testimony that is relevant and may make an independent inquiry. If the

1 judge finds by clear and convincing evidence that the respondent engaged in unlawful
2 violence or made a credible threat of violence, an injunction shall be issued prohibiting
3 further unlawful violence or threat of violence at the employee's workplace or while the
4 employee is acting within the course and scope of employment with the employer.

5 (b) An injunction issued pursuant to this Article shall have a duration of not more
6 than three years. At any time within three months before the expiration of the
7 injunction, the petitioner may apply for a renewal of the injunction by filing a new
8 petition for an injunction pursuant to this Article.

9 **"§ 95-263. Temporary restraining orders; injunctions.**

10 (a) The court may include any one or more of the following orders in its
11 temporary restraining order or its injunction under this Article:

12 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
13 with the employer or the employer's operations, or the employer's
14 employee or invitee at the employer's workplace.

15 (2) Order the respondent to cease stalking the employer's employee or
16 invitee at the employer's workplace.

17 (3) Order the respondent to cease harassment of the employer or the
18 employer's employee or invitee at the employer's workplace.

19 (4) Order the respondent not to abuse or injure the employer, including the
20 employer's property, or the employer's employee or invitee at the
21 employer's workplace.

22 (5) Order the respondent not to telephone the employer or the employer's
23 employee or invitee at the employer's workplace.

24 (6) Order other relief deemed necessary and appropriate by the court.

25 (b) The court shall order the petitioner or the attorney for the petitioner to deliver
26 a copy of each temporary restraining order or injunction, or modification or termination
27 thereof, granted under this Article, by the close of the business day on which the order
28 was granted, to the law enforcement agencies within the court's discretion as are
29 requested by the petitioner. Each appropriate law enforcement agency shall make
30 available information as to the existence and current status of these orders to law
31 enforcement officers responding to the scene of reported unlawful violence or a credible
32 threat of violence. When necessary to protect the employer or the employer's employee,
33 invitee, or property, and when authorized by the court, temporary restraining orders and
34 injunctions granted under this Article may be served upon the respondent by a peace
35 officer, sheriff, constable, or policeman, or other law enforcement officer whose duty it
36 is to preserve the peace, or by any other person authorized by law to serve process, with
37 appropriate orders to the officials to enforce the court's order.

38 **"§ 95-264. Limits on liability of employers.**

39 (a) An employer and an employer's agents who act in accordance with this
40 Article shall be presumed to be acting in good faith and, unless lack of good faith is
41 shown by clear and convincing evidence, are immune from civil liability for actions
42 taken under this Article.

1 (b) Any employer, or its employee or invitee, that does not utilize the procedures
2 of this Article shall not be liable for negligence, and evidence of the failure to utilize the
3 procedures of this Article shall not be admissible as evidence of negligence.

4 **"§ 95-265. Scope of Article; other remedies available.**

5 This Article does not expand, diminish, alter, or modify the duty of any employer to
6 provide a safe workplace for employees and other persons. This Article does not limit
7 the ability of an employer or employee to pursue any other civil or criminal remedy
8 provided by law."

9 **SECTION 2.** There is appropriated from the General Fund to the Attorney
10 General's Office of the Department of Justice, the sum of one thousand five hundred
11 dollars (\$1,500) for the 2002-2003 fiscal year to be used to educate the public about
12 domestic violence.

13 **SECTION 3.** Section 1 of this act becomes effective January 1, 2003. The
14 remainder of this act becomes effective July 1, 2002.