HOUSE DOCKET, NO. FILED ON: 1/13/2009

**HOUSE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Byron Rushing, Christine E. Canavan**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*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 making discrimination on the basis of weight and height unlawful.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

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| Name: | District/Address: |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1844 OF 2007-2008.]

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

An Act making discrimination on the basis of weight and height unlawful.

 *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. Section 4 of said chapter 151B is hereby amended

by striking out subsection 1, as appearing in the 1990 Official

Edition, and inserting in place thereof the following subsection:—

1. For an employer, by himself or his agent, because of the

race, color, religious creed, national origin, sex, height, weight,

sexual orientation, which shall not include persons whose sexual

orientation involves minor children as the sex object, or ancestry

of any individual to refuse to hire or employ or to bar or to discharge

from employment such individual or to discriminate

against such individual in compensation or in terms, conditions or

privileges of employment, unless based upon a bona fide occupational

qualification.

SECTION 2. Said section 4 of said chapter 151B is hereby further

amended by striking out subsection 2, as so appearing, and

inserting in place thereof the following subsection:—

2. For a labor organization, because of the race, color, religious

creed, national origin, sex, height, weight, sexual orientation

which shall not include persons whose sexual orientation involves

minor children as the sex object, age, or ancestry of any individual,

or because of the handicap of any person alleging to be a

qualified handicapped person, to exclude from full membership

rights or to expel from its membership such individual or to discriminate

in any way against any of its members or against any

employer or any individual employed by an employer unless

based upon a bona fide occupational qualification.

SECTION 3. Said section 4 of said chapter 151B is hereby further

amended by striking out subsection 3, as so appearing, and

inserting in place thereof the following subsection:—

3. For any employer or employment agency to print or circulate

or cause to be printed or circulated any statement, advertisement

or publication, or to use any form of application for employment

or to make any inquiry or record in connection with employment,

which expresses, directly or indirectly, any limitation, specification

or discrimination as to the race, color, religious creed,

national origin, sex, height, weight, sexual orientation, which shall

not include persons whose sexual orientation involves minor children

as the sex object, age or ancestry, or the handicap of a qualified

handicapped person or any intent to make any such

limitation, specification or discrimination, or to discriminate in

any way on the ground of race, color, religious creed, national

origin, sex, sexual orientation, age, ancestry or the handicap of a

qualified handicapped person, unless based upon a bona fide

occupational qualification.

SECTION 4. Said section 4 of said chapter 151B is hereby further

amended by striking out subsection 3A, as so appearing, and

inserting in place thereof the following subsection:—

3A. For any person engaged in the insurance or bonding business,

or his agent, to make any inquiry or record of any person

seeking a bond or surety bond conditioned upon faithful performance

of his duties or to use any form of application in connection

with the furnishing of such bond, which seeks information

relative to the race, color, religious creed, national origin, sex,

height, weight, sexual orientation, which shall not include persons

whose sexual orientation involves minor children as the sex

object, or ancestry of the person to be bonded.

SECTION 5. Said section 4 of said chapter 151B is hereby further

amended by striking out subsection 6, as so appearing, and

inserting in place thereof the following subsection:—

6. For the owner, lessee, sublessee, licensed real estate broker,

assignee or managing agent of publicly assisted or multiple

dwelling or contiguously located housing accommodations or

other person having the right of ownership or possession or right

to rent or lease, or sell or negotiate for the sale of such accommodations,

or any agent or employee of such a person, or any organization

of unit owners in a condominium or housing cooperative:

(a) to refuse to rent or lease or sell or negotiate for sale or otherwise

to deny or withhold from any person or group of persons

such accommodations because of the race, religious creed, color,

national origin, sex, height, weight, sexual orientation, which shall

not include persons whose sexual orientation involves minor children

as the sex object, age, ancestry, or marital status of such

person or persons or because such person is a veteran or member

of the armed forces, or because such person is blind, or hearing

impaired; (b) to discriminate against any person because of his

race, religious creed, color, national origin, sex, height, weight,

sexual orientation, which shall not include persons whose sexual

orientation involves minor children as the sex object, age,

ancestry, or marital status or because such person is a veteran or

member of the armed forces, or because such person is blind, or

hearing impaired, in the terms, conditions or privileges of such

accommodations or the acquisitions thereof, or in the furnishings

of facilities and services in connection therewith, or because such

a person possesses a trained dog guide as a consequence of blindness,

or hearing impairment; (c) to cause to be made any written

or oral inquiry or record concerning the race, religious creed,

color, national origin, sex, height, weight, sexual orientation,

which shall not include persons whose sexual orientation involves

minor children as the sex object, age, ancestry or marital status of

the person seeking to rent or lease or buy any such accommodation,

or concerning the fact that such person is a veteran or a

member of the armed forces or because such person is blind or

hearing impaired. The word “age” as used in this subsection shall

not apply to persons who are minors nor to residency in stateaided

or federally-aided housing developments for the elderly nor

to residency in retirement communities consisting of either a

structure or structures constructed expressly for use by the elderly

on one parcel or on contiguous parcels of land, totalling at least

ten acres in size, which communities have a minimum age

requirement for residency of at least fifty-five years; provided,

however, that no more than one of the persons occupying any unit

may be under fifty-five years of age, exclusive of nurses or other

person providing health care services to the elderly occupants of

said unit.

SECTION 6. Said section 4 of said chapter 151B is hereby further

amended by striking out subsection 7, as so appearing, and

inserting in place thereof the following subsection:—

7. For the owner, lessee, sublessee, real estate broker, assignee,

or managing agent or other covered housing accommodations or

of land intended for the erection of any housing accommodation

included under subsection 10, 11, 12, or 13 of section one, or

other person having the right of ownership or possession or right

to rent or lease or sell, or negotiate for the sale or lease of such

land or accommodations, or any agent or employee of such a

person or any organization of unit owners in a condominium or

housing cooperative: (a) to refuse to rent or lease or sell or negotiate

for sale or lease or otherwise to deny or withhold from any

person or group of persons such accommodations or land because

of race, color, religious creed, national origin, sex, height, weight,

sexual orientation, which shall not include persons whose sexual

orientation involves minor children as the sex object, age,

ancestry, or marital status, veteran status or membership in the

armed forces, blindness, hearing impairment, or because such

person possesses a trained dog guide as a consequence of blindness

or hearing impairment of such person or persons; (b) to discriminate

against any person because of his race, color, religious

creed, national origin, sex, height, weight, sexual orientation,

which shall not include persons whose sexual orientation involves

minor children as the sex object, age, ancestry, or marital status,

veteran status or membership in the armed services, blindness, or

hearing impairment, or because such person possesses a trained

dog guide as a consequence of blindness or hearing impairment in

the terms, conditions or privileges of such accommodations or

land of the acquisition thereof, or in the furnishing of facilities

and services in the connection therewith, or (c) to cause to be

made any written or oral inquiry or record concerning the race,

color, religious creed, national origin, sex, height, weight, sexual

orientation, which shall not include persons whose sexual orientation

involves minor children as the sex object, age, ancestry, marital

status, veteran status or membership in the armed services,

blindness, hearing impairment or because such person possesses a

trained dog guide as a consequence of blindness or hearing

impairment, of the person seeking to rent or lease or buy any such

accommodation or land; provided, however, that this subsection

shall not apply to the leasing of a single apartment or flat in a twofamily

dwelling, the other occupancy unit of which is occupied by

the owner as his residence. The word “age” as used in this subsection

shall not apply to persons who are minors, nor to residency in

state-aided or federally-aided housing developments for the

elderly nor to residency in retirement communities consisting of

either a structure or structures constructed expressly for use by the

elderly on one parcel or on contiguous parcels of land, totalling at

least ten acres in size, which communities have a minimum age

requirement for residency of at least fifty-five years; provided,

however, that no more than one of the persons occupying any unit

may be under fifty-five years of age, exclusive of nurses or other

person providing health care services to the elderly occupants of

said unit.

SECTION 7. Said section 4 of said chapter 151B, as so

appearing, is hereby further amended by striking out subsection 8

and inserting in place thereof the following subsection:—

8. For the owner, lessee, sublessee, or managing agent of, or

other person having the right of ownership or possession of or the

right to sell, rent or lease, commercial space: (1) To refuse to sell,

rent, lease or otherwise to deny or withhold from any person or

group of persons such commercial space because of race, color,

religious creed, national origin, sex, height, weight, sexual orien-

tation, which shall not include persons whose sexual orientation

involves minor children as the sex object, age, ancestry or marital

status of such person or persons. (2) To discriminate against any

person because of his race, color, religious creed, national origin,

sex, height, weight, sexual orientation, which shall not include

persons whose sexual orientation involves minor children as the

sex object, age, ancestry or marital status in the terms, conditions

or privileges of the sale, rental or lease of any such commercial

space or in the furnishing of facilities or services in connection

therewith. (3) To cause to be made any written or oral inquiry or

record concerning the race, color, religious creed, national origin,

sex, sexual orientation, which shall not include persons whose

sexual orientation involves minor children as the sex object, age,

ancestry or marital status of a person seeking to rent or lease or

buy any such commercial space. The word “age” as used in this

subsection shall not apply to persons who are minors, nor to residency

in state-aided or federally-aided housing developments for

the elderly nor to residency in self-contained retirement communities

constructed expressly for use by the elderly and which are at

least twenty acres in size and have a minimum age requirement

for residency of at least fifty-five years.

SECTION 8. Said section 4 of said chapter 151B, as so

appearing, is hereby further amended by striking out the last paragraph

and inserting in place thereof the following paragraph:—

Nothing contained in this chapter or any rule or regulation

issued by the commission shall he interpreted as requiring any

employer, employment agency or labor organization to grant preferential

treatment to any individual or to any group because of the

race, color, religious creed, national origin, sex, height, weight,

sexual orientation, which shall not include persons whose sexual

orientation involves minor children as the sex object, age or

ancestry of such individual or group because of imbalance which

may exist between the total number or percentage of persons

employed by any employer, referred or classified for employment

by any employment agency or labor organization, admitted to

membership or classified by any labor organization or admitted to

or employed in, any apprenticeship or other training program, and

the total number or percentage of persons of such race, color, reli-

gious creed, national origin, sex, sexual orientation, which shall

not include persons whose sexual orientation involves minor children

as the sex object, age or ancestry in the commonwealth or in

any community, section or other area therein, or in the available

work force in the commonwealth or in any of its political subdivisions.

SECTION 9. Section 92A of chapter 272 of the General Laws,

as so appearing, is hereby amended by striking out the first paragraph

and inserting in place thereof the following paragraph:—

No owner, lessee, proprietor, manager, superintendent, agent or

employee of any place of public accommodation, resort or amusement

shall, directly or indirectly, by himself or another, publish,

issue, circulate, distribute or display, or cause to be published,

issued, circulated, distributed or displayed, in any way, any advertisement,

circular, folder, book, pamphlet, written or painted or

printed notice or sign, of any kind or description, intended to discriminate

against or actually discriminating against persons of any

religious sect, creed, class, race, color, denomination, sex, height,

weight, sexual orientation, which shall not include persons whose

sexual orientation involves minor children as the sex object,

nationality, or because of deafness or blindness, or any physical or

mental disability, in the full enjoyment of the accommodations,

advantages, facilities or privileges offered to the general public by

such places of public accommodation, resort or amusement.

SECTION 10. Said chapter 272 is hereby further amended by

striking out section 98, as so appearing, and inserting in place

thereof the following section:—

Section 98. Whoever makes any distinction, discrimination or

restriction on account of race, color, religious creed, national

origin, sex, height, weight, sexual orientation, which shall not

include persons whose sexual orientation involves minor children

as the sex object, deafness, blindness or any physical or mental

disability or ancestry relative to the admission of any person to, or

his treatment in any place of public accommodation, resort or

amusement, as defined in section ninety-two A, or whoever aids

or incites such distinction, discrimination or restriction, shall be

punished by a fine of not more than twenty-five hundred dollars

or by imprisonment for not more than one year, or both, and shall

be liable to any person aggrieved thereby for such damages as are

enumerated in section five of chapter one hundred and fifty-one

B; provided, however, that such civil forfeiture shall be of an

amount not less than three hundred dollars; but such person so

aggrieved shall not recover against more than one person by

reason of any one act of distinction, discrimination or restriction.

All persons shall have the right to the full and equal accommodations,

advantages, facilities and privileges of any place of public

accommodation, resort or amusement subject only to the conditions

and limitations established by law and applicable to all persons.

This right is recognized and declared to be a civil right.