

HOUSE No.

The Commonwealth of Massachusetts

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:

NAME:

DISTRICT/ADDRESS:

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

The Commonwealth of Massachusetts

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:

1 SECTION 1. Section 4 of said chapter 151B is hereby amended
2 by striking out subsection 1, as appearing in the 1990 Official
3 Edition, and inserting in place thereof the following subsection:—
4
5 1. For an employer, by himself or his agent, because of the
6 race, color, religious creed, national origin, sex, height, weight,
7 sexual orientation, which shall not include persons whose sexual
8 orientation involves minor children as the sex object, or ancestry
9 of any individual to refuse to hire or employ or to bar or to discharge
10 from employment such individual or to discriminate
11 against such individual in compensation or in terms, conditions or
12 privileges of employment, unless based upon a bona fide occupational
13 qualification.

14

15 SECTION 2. Said section 4 of said chapter 151B is hereby further
16 amended by striking out subsection 2, as so appearing, and
17 inserting in place thereof the following subsection:—

18

19 2. For a labor organization, because of the race, color, religious
20 creed, national origin, sex, height, weight, sexual orientation
21 which shall not include persons whose sexual orientation involves
22 minor children as the sex object, age, or ancestry of any individual,
23 or because of the handicap of any person alleging to be a
24 qualified handicapped person, to exclude from full membership
25 rights or to expel from its membership such individual or to discriminate
26 in any way against any of its members or against any
27 employer or any individual employed by an employer unless
28 based upon a bona fide occupational qualification.

29

30 SECTION 3. Said section 4 of said chapter 151B is hereby further
31 amended by striking out subsection 3, as so appearing, and
32 inserting in place thereof the following subsection:—

33

34 3. For any employer or employment agency to print or circulate
35 or cause to be printed or circulated any statement, advertisement
36 or publication, or to use any form of application for employment
37 or to make any inquiry or record in connection with employment,
38 which expresses, directly or indirectly, any limitation, specification
39 or discrimination as to the race, color, religious creed,

40 national origin, sex, height, weight, sexual orientation, which shall
41 not include persons whose sexual orientation involves minor children
42 as the sex object, age or ancestry, or the handicap of a qualified
43 handicapped person or any intent to make any such
44 limitation, specification or discrimination, or to discriminate in
45 any way on the ground of race, color, religious creed, national
46 origin, sex, sexual orientation, age, ancestry or the handicap of a
47 qualified handicapped person, unless based upon a bona fide
48 occupational qualification.

49

50 SECTION 4. Said section 4 of said chapter 151B is hereby further
51 amended by striking out subsection 3A, as so appearing, and
52 inserting in place thereof the following subsection:—

53

54 3A. For any person engaged in the insurance or bonding business,
55 or his agent, to make any inquiry or record of any person
56 seeking a bond or surety bond conditioned upon faithful performance
57 of his duties or to use any form of application in connection
58 with the furnishing of such bond, which seeks information
59 relative to the race, color, religious creed, national origin, sex,
60 height, weight, sexual orientation, which shall not include persons
61 whose sexual orientation involves minor children as the sex
62 object, or ancestry of the person to be bonded.

63

64 SECTION 5. Said section 4 of said chapter 151B is hereby further
65 amended by striking out subsection 6, as so appearing, and

66 inserting in place thereof the following subsection:—

67

68 6. For the owner, lessee, sublessee, licensed real estate broker,
69 assignee or managing agent of publicly assisted or multiple
70 dwelling or contiguously located housing accommodations or
71 other person having the right of ownership or possession or right
72 to rent or lease, or sell or negotiate for the sale of such accommodations,
73 or any agent or employee of such a person, or any organization
74 of unit owners in a condominium or housing cooperative:

75 (a) to refuse to rent or lease or sell or negotiate for sale or otherwise
76 to deny or withhold from any person or group of persons
77 such accommodations because of the race, religious creed, color,
78 national origin, sex, height, weight, sexual orientation, which shall
79 not include persons whose sexual orientation involves minor children
80 as the sex object, age, ancestry, or marital status of such
81 person or persons or because such person is a veteran or member
82 of the armed forces, or because such person is blind, or hearing
83 impaired; (b) to discriminate against any person because of his
84 race, religious creed, color, national origin, sex, height, weight,
85 sexual orientation, which shall not include persons whose sexual
86 orientation involves minor children as the sex object, age,
87 ancestry, or marital status or because such person is a veteran or
88 member of the armed forces, or because such person is blind, or
89 hearing impaired, in the terms, conditions or privileges of such
90 accommodations or the acquisitions thereof, or in the furnishings
91 of facilities and services in connection therewith, or because such

92 a person possesses a trained dog guide as a consequence of blindness,
93 or hearing impairment; (c) to cause to be made any written
94 or oral inquiry or record concerning the race, religious creed,
95 color, national origin, sex, height, weight, sexual orientation,
96 which shall not include persons whose sexual orientation involves
97 minor children as the sex object, age, ancestry or marital status of
98 the person seeking to rent or lease or buy any such accommodation,
99 or concerning the fact that such person is a veteran or a
100 member of the armed forces or because such person is blind or
101 hearing impaired. The word “age” as used in this subsection shall
102 not apply to persons who are minors nor to residency in stateaided
103 or federally-aided housing developments for the elderly nor
104 to residency in retirement communities consisting of either a
105 structure or structures constructed expressly for use by the elderly
106 on one parcel or on contiguous parcels of land, totalling at least
107 ten acres in size, which communities have a minimum age
108 requirement for residency of at least fifty-five years; provided,
109 however, that no more than one of the persons occupying any unit
110 may be under fifty-five years of age, exclusive of nurses or other
111 person providing health care services to the elderly occupants of
112 said unit.

113

114 SECTION 6. Said section 4 of said chapter 151B is hereby further
115 amended by striking out subsection 7, as so appearing, and
116 inserting in place thereof the following subsection:—

117

118 7. For the owner, lessee, sublessee, real estate broker, assignee,
119 or managing agent or other covered housing accommodations or
120 of land intended for the erection of any housing accommodation
121 included under subsection 10, 11, 12, or 13 of section one, or
122 other person having the right of ownership or possession or right
123 to rent or lease or sell, or negotiate for the sale or lease of such
124 land or accommodations, or any agent or employee of such a
125 person or any organization of unit owners in a condominium or
126 housing cooperative: (a) to refuse to rent or lease or sell or negotiate
127 for sale or lease or otherwise to deny or withhold from any
128 person or group of persons such accommodations or land because
129 of race, color, religious creed, national origin, sex, height, weight,
130 sexual orientation, which shall not include persons whose sexual
131 orientation involves minor children as the sex object, age,
132 ancestry, or marital status, veteran status or membership in the
133 armed forces, blindness, hearing impairment, or because such
134 person possesses a trained dog guide as a consequence of blindness
135 or hearing impairment of such person or persons; (b) to discriminate
136 against any person because of his race, color, religious
137 creed, national origin, sex, height, weight, sexual orientation,
138 which shall not include persons whose sexual orientation involves
139 minor children as the sex object, age, ancestry, or marital status,
140 veteran status or membership in the armed services, blindness, or
141 hearing impairment, or because such person possesses a trained
142 dog guide as a consequence of blindness or hearing impairment in
143 the terms, conditions or privileges of such accommodations or

144 land of the acquisition thereof, or in the furnishing of facilities
145 and services in the connection therewith, or (c) to cause to be
146 made any written or oral inquiry or record concerning the race,
147 color, religious creed, national origin, sex, height, weight, sexual
148 orientation, which shall not include persons whose sexual orientation
149 involves minor children as the sex object, age, ancestry, marital
150 status, veteran status or membership in the armed services,
151 blindness, hearing impairment or because such person possesses a
152 trained dog guide as a consequence of blindness or hearing
153 impairment, of the person seeking to rent or lease or buy any such
154 accommodation or land; provided, however, that this subsection
155 shall not apply to the leasing of a single apartment or flat in a twofamily
156 dwelling, the other occupancy unit of which is occupied by
157 the owner as his residence. The word "age" as used in this subsection
158 shall not apply to persons who are minors, nor to residency in
159 state-aided or federally-aided housing developments for the
160 elderly nor to residency in retirement communities consisting of
161 either a structure or structures constructed expressly for use by the
162 elderly on one parcel or on contiguous parcels of land, totalling at
163 least ten acres in size, which communities have a minimum age
164 requirement for residency of at least fifty-five years; provided,
165 however, that no more than one of the persons occupying any unit
166 may be under fifty-five years of age, exclusive of nurses or other
167 person providing health care services to the elderly occupants of
168 said unit.
169

170 SECTION 7. Said section 4 of said chapter 151B, as so
171 appearing, is hereby further amended by striking out subsection 8
172 and inserting in place thereof the following subsection:—
173 8. For the owner, lessee, sublessee, or managing agent of, or
174 other person having the right of ownership or possession of or the
175 right to sell, rent or lease, commercial space: (1) To refuse to sell,
176 rent, lease or otherwise to deny or withhold from any person or
177 group of persons such commercial space because of race, color,
178 religious creed, national origin, sex, height, weight, sexual orien-
179 tation, which shall not include persons whose sexual orientation
180 involves minor children as the sex object, age, ancestry or marital
181 status of such person or persons. (2) To discriminate against any
182 person because of his race, color, religious creed, national origin,
183 sex, height, weight, sexual orientation, which shall not include
184 persons whose sexual orientation involves minor children as the
185 sex object, age, ancestry or marital status in the terms, conditions
186 or privileges of the sale, rental or lease of any such commercial
187 space or in the furnishing of facilities or services in connection
188 therewith. (3) To cause to be made any written or oral inquiry or
189 record concerning the race, color, religious creed, national origin,
190 sex, sexual orientation, which shall not include persons whose
191 sexual orientation involves minor children as the sex object, age,
192 ancestry or marital status of a person seeking to rent or lease or
193 buy any such commercial space. The word “age” as used in this
194 subsection shall not apply to persons who are minors, nor to residency
195 in state-aided or federally-aided housing developments for

196 the elderly nor to residency in self-contained retirement communities
197 constructed expressly for use by the elderly and which are at
198 least twenty acres in size and have a minimum age requirement
199 for residency of at least fifty-five years.

200

201 SECTION 8. Said section 4 of said chapter 151B, as so
202 appearing, is hereby further amended by striking out the last paragraph
203 and inserting in place thereof the following paragraph:—
204 Nothing contained in this chapter or any rule or regulation
205 issued by the commission shall be interpreted as requiring any
206 employer, employment agency or labor organization to grant preferential
207 treatment to any individual or to any group because of the
208 race, color, religious creed, national origin, sex, height, weight,
209 sexual orientation, which shall not include persons whose sexual
210 orientation involves minor children as the sex object, age or
211 ancestry of such individual or group because of imbalance which
212 may exist between the total number or percentage of persons
213 employed by any employer, referred or classified for employment
214 by any employment agency or labor organization, admitted to
215 membership or classified by any labor organization or admitted to
216 or employed in, any apprenticeship or other training program, and
217 the total number or percentage of persons of such race, color, reli-
218 gious creed, national origin, sex, sexual orientation, which shall
219 not include persons whose sexual orientation involves minor children
220 as the sex object, age or ancestry in the commonwealth or in
221 any community, section or other area therein, or in the available

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

223

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

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

226 and inserting in place thereof the following paragraph:—

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

228 employee of any place of public accommodation, resort or amusement

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

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

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

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

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

234 against or actually discriminating against persons of any

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

236 weight, sexual orientation, which shall not include persons whose

237 sexual orientation involves minor children as the sex object,

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

239 mental disability, in the full enjoyment of the accommodations,

240 advantages, facilities or privileges offered to the general public by

241 such places of public accommodation, resort or amusement.

242

243 SECTION 10. Said chapter 272 is hereby further amended by

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

245 thereof the following section:—

246

247 Section 98. Whoever makes any distinction, discrimination or

248 restriction on account of race, color, religious creed, national
249 origin, sex, height, weight, sexual orientation, which shall not
250 include persons whose sexual orientation involves minor children
251 as the sex object, deafness, blindness or any physical or mental
252 disability or ancestry relative to the admission of any person to, or
253 his treatment in any place of public accommodation, resort or
254 amusement, as defined in section ninety-two A, or whoever aids
255 or incites such distinction, discrimination or restriction, shall be
256 punished by a fine of not more than twenty-five hundred dollars
257 or by imprisonment for not more than one year, or both, and shall
258 be liable to any person aggrieved thereby for such damages as are
259 enumerated in section five of chapter one hundred and fifty-one
260 B; provided, however, that such civil forfeiture shall be of an
261 amount not less than three hundred dollars; but such person so
262 aggrieved shall not recover against more than one person by
263 reason of any one act of distinction, discrimination or restriction.
264 All persons shall have the right to the full and equal accommodations,
265 advantages, facilities and privileges of any place of public
266 accommodation, resort or amusement subject only to the conditions
267 and limitations established by law and applicable to all persons.
268 This right is recognized and declared to be a civil right.
269