

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

\_\_\_\_\_  
PRESENTED BY:

**Scott P. Brown**  
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*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 relative to the Massachusetts Commission against Discrimination.

\_\_\_\_\_  
PETITION OF:

NAME:

\_\_\_\_\_  
Scott P. Brown

DISTRICT/ADDRESS:

\_\_\_\_\_  
Norfolk, Bristol and Middlesex

# The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

## AN ACT RELATIVE TO THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION.

*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 2 of Chapter 151B of the General Laws, as appearing in the 2006  
2   Official Edition, is hereby amended by adding, in line 4 , after the word “purposes” the  
3   following:-

4   “, provided that Commission policies are subjected to public review in draft form for ninety (90)  
5   days prior to final adoption”

6           SECTION 2. Section 3 of said chapter 151B of the General Laws, is hereby amended by  
7   adding, in line 14, after the word “therewith,” the following:-

8   “, provided that Commission policies and practices are subjected to public review in draft form  
9   for ninety (90) days prior to final adoption”

10          SECTION 3. Said chapter 151B of the General Laws, is further amended by adding after  
11   section 5, the following new section:-

12           Section 5A. Notwithstanding the provisions in Section 5, any person claiming to be  
13 aggrieved by an alleged unlawful practice by an employer or labor organization or employment  
14 agency because of race, color, religious creed, national origin, sex, sexual orientation, ancestry,  
15 age, or handicap to refuse to hire or employ or to bar or to discharge from employment such  
16 person or to discriminate against such person in compensation or in terms, conditions, or  
17 privileges of employment, unless based upon a bona fide occupational qualification as specified  
18 in section four 1, 1A, 1B, 2, 3, 4, 4A, 5, 9, 9A, 11A, 16, 16A may, by himself or his attorney,  
19 make, sign and file with the commission a verified complaint in writing which shall state the  
20 name and address of the person, employer, labor organization or employment agency alleged to  
21 have committed the unlawful practice complained of, the prima facie case as alleged and contain  
22 other such information as may be required by the commission, provided the complaint is  
23 accompanied by a \$250.00 filing fee, which may be waived or refunded by the commission in  
24 emergency situations or where proof of inability to pay is presented.

25           After the filing of the complaint, the commissioner shall cause to be issued and served in the  
26 name of the commission, a written notice, together with a copy of such complaint, as the same  
27 may have been amended, requiring the person, employer, labor organization, or employment  
28 agency named in such complaint, hereinafter referred to as the respondent, to answer the charges  
29 and state its position regarding such complaint in writing within 45 days of receipt of the written  
30 notice. Within five days of the commission's receipt of the respondent's position statement, the  
31 chairman of the commission shall designate an investigative officer to make a prompt  
32 investigation in connection therewith, including a scheduling of an investigative conference  
33 within 90 days from receipt of respondent's position statement and if it is not so held within 90  
34 days, or the complainant fails to attend the investigative conference, the complaint is dismissed,

35 unless good cause is shown for the absence. If an attorney represents either the complainant or  
36 the respondent, the investigative officer will also be an attorney with the commission.

37 If such investigative officer shall determine after such investigation that no probable cause exists  
38 for crediting the allegations of the complaint, or 365 days from receipt of the complaint by the  
39 commission has passed, the commission shall dismiss the complaint, and within ten days from  
40 such dismissal, cause to be issued and served upon the complainant written notice of such  
41 dismissal.

42 If the commissioner shall determine after such investigation and no more than 365 days from  
43 receipt of the complaint, that probable cause exists for crediting the allegations of any complaint,  
44 the commissioner may allow for limited discovery provided that, based on traditional rules of  
45 evidence, discovery orders be issued or denied within 30 days of request by the investigative  
46 officer and provided that the investigative officer state in writing the reasons why discovery will  
47 materially benefit resolution of the complaint, both parties will be given a 90 day discovery  
48 period. Both parties will submit a pre-determination memorandum of fact and law 30 days after  
49 close of the discovery period.

50 At the close of the discovery period, the commission must consider summary judgment motions  
51 and if accepted, the commission will dismiss the complaint and notify in writing both parties and  
52 their attorneys of their right to elect judicial determination of the complaint. The person making  
53 such an election shall give notice of such election to the commission and to all other parties and  
54 their attorneys. The commission shall establish rules of practice for removing a case to federal  
55 or state court. If a motion for summary judgment is denied, the commission will determine the

56 reasonable likelihood of success of prevailing prior to certifying the complaint for a public  
57 hearing.

58 All interested parties must attend all scheduled conferences and hearings. If a party fails to  
59 attend, except where there is a showing of good cause, that party will be defaulted. The  
60 testimony taken at hearings and conferences shall be under oath and transcribed at the request of  
61 any party.

62 If, upon all the evidence at the public hearing, the commission shall find that a respondent has  
63 engaged in any unlawful practice as defined above, the commission shall state its findings of fact  
64 and shall issue and cause to be served on such respondent an order requiring such respondent to  
65 cease and desist from such unlawful practice and will take such affirmative action including but  
66 not limited to, hiring, reinstatement, or upgrading of employees, with or without back pay, or  
67 restoration to membership in any respondent labor organization, as, in the judgment of the  
68 commission, will effectuate the purposes of this chapter. Such cease and desist orders and orders  
69 for affirmative relief may be issued to operate prospectively. In addition to any such relief, the  
70 commission shall award reasonable attorney fee and costs to any prevailing complainant.

71 If, upon all the evidence, the commission shall find that a respondent has not engaged in any such  
72 unlawful practice, the commission shall state its findings of fact and shall issue and cause to be  
73 served on the complainant an order dismissing the said complaint as to such respondent.

74 SECTION 4. Section 9 of said chapter 151B is hereby amended by adding, in line 19,  
75 after the word "commission," the following:-

76 "Or the respondent to a complaint"