

HOUSE No. 01739

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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:

Michael A. Costello

DISTRICT/ADDRESS:

1st Essex

HOUSE No. 01739

By Mr. Michael A. Costello of Newburyport, petition (accompanied by bill, House, No. 01739) of Michael A. Costello relative to the Massachusetts Commission Against Discrimination. Joint Committee on State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008 Official
2 Edition, is hereby amended by adding after the word “purposes” in line 4 the following:-

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

5 SECTION 2. Section 3 of Chapter 151B of the General Laws, as appearing in the 2008 Official
6 Edition, is hereby further amended by adding to the end of paragraph (5), prior to the period the
7 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. Section 5 of chapter 151B of the General Laws, as appearing in the 2008 Official
11 Edition, is hereby amended by adding at the end thereof the following paragraph:--

12 In the case of a public hearing in an employment discrimination matter that was held prior to
13 May 6, 2004, and where the parties to the public hearing have not yet exhausted all avenues of
14 judicial review, remand or appeal available under chapter 30A of the General Laws, or otherwise
15 entered into a binding resolution of the matter, the commissioner shall immediately serve notice
16 upon a complainant and respondent of their right to elect judicial determination of the complaint.
17 Upon notification, if a complainant or respondent wishes to elect judicial determination, they
18 shall do so in writing within 20 days of receipt of the notice. The person making the election
19 shall give notice of the election to the commission and to all other complainants and respondents
20 to whom the probable cause finding relates. The commission, upon receipt of the notice, shall
21 dismiss the complaint filed and/or vacate the finding of the commission arising out of the public
22 hearing as to all parties without prejudice and the complainant shall be barred from subsequently
23 bringing a complaint on the same matter before the commission. If any complainant or
24 respondent elects judicial determination, the commission shall authorize, and not later than 30
25 days after the election is made the complainant, through counsel, or the attorney general, in the
26 case of an unrepresented complainant, to commence and maintain, a civil action on behalf of the
27 complainant in the superior court for the county in which the unlawful practice occurred. The
28 complainant may intervene as of right in the civil action. Any party to any civil action shall be
29 entitled to a trial by jury, if so elected.

30 SECTION 4. Chapter 151B of the General Laws, as appearing, is hereby further amended by
31 adding the following new section:-

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

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

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

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

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

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

76 reasonable likelihood of success of prevailing prior to certifying the complaint for a public
77 hearing.

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

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

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

94 SECTION 5. Section 9 of Chapter 151B of the General Laws, as appearing in the 2008 Official
95 Edition, is hereby further amended by adding in line 19, following "commission," the following:
96 " or the respondent to a complaint"