

HOUSE No. 1795

The Commonwealth of Massachusetts

PRESENTED BY:

Cheryl A. Coakley-Rivera

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 further defining employment discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cheryl A. Coakley-Rivera	10th Hampden
Elizabeth A. Malia	11th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1782 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT FURTHER DEFINING EMPLOYMENT 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. The General Laws, as appearing in the 2002 Official Edition, are hereby amended by inserting after
2 Chapter 151E, the following new Chapter: -

3 CHAPTER 151F PROHIBITION OF CERTAIN DISCRIMINATION

4 Section 1. Policy. The legislature finds that the practice of unfair discrimination in employment against otherwise
5 qualified individuals by reason of arrest record or conviction record substantially and adversely affects the general
6 welfare of the state. Employers, labor organizations, employment agencies and licensing agencies that deny
7 employment opportunities and discriminate in employment against otherwise qualified individuals solely because of
8 their arrest record or conviction record deprive those individuals of the earnings that are necessary to maintain a just
9 and decent standard of living.

10 It is the intent of the legislature to protect by law the rights of all individuals to obtain gainful employment
11 and to enjoy privileges free from employment discrimination because of arrest record or conviction record, and to
12 encourage the full, nondiscriminatory utilization of the productive resources of the state to the benefit of the state,
13 the family and all the people of the state. It is the intent of the legislature to encourage employers to evaluate an
14 employee or applicant for employment based upon the employee's or applicant's individual qualifications.

15 In the interpretation and application of this Act, and otherwise, it is declared to be the public policy of the
16 state to encourage and foster to the fullest extent practicable the employment of all otherwise qualified individuals
17 regardless of arrest record or conviction record. This Act shall be liberally construed for the accomplishment of its
18 purposes.

19 Section 2. Definitions. As used in this chapter, the following words and phrases shall have the following meaning
20 unless the context clearly requires otherwise:--

21 ""Arrest record" includes, but is not limited to, information indicating that an individual has been
22 questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or
23 tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

24 ""commission", means the Massachusetts commission against discrimination, established by section fifty-
25 six of chapter six.

26 ""Conviction record" includes, but is not limited to, information indicating that an individual has been convicted of
27 any felony, misdemeanor or other offense, has been adjudicated delinquent, has been less than honorably
28 discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision or paroled pursuant
29 to any law enforcement or military authority. (add language that creates tie in to CORI statute)

30 ""employee" does not include any individual employed by his parents, spouse or child, or in the domestic
31 service of any person.

32 ""employer" shall include, but not necessarily be limited to, the commonwealth and all political subdivisions,
33 boards, departments and commissions thereof, one or more individuals, partnerships, associations, and corporations.

34 ""employment agency" includes any person undertaking to procure employees or opportunities to work.

35 ""labor organization" includes any organization which exists and is constituted for the purpose, in whole or in
36 part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of
37 employment, or of other mutual aid or protection in connection with employment.

38 ""unlawful practice" includes only those unlawful practices specified in section four.

39 Section 3. Policies; recommendations. The commission shall formulate policies to effectuate the purposes of this
40 chapter, and may make recommendations to agencies and officers of the commonwealth or its political subdivisions
41 in aid of such policies and purposes.

42 Section 4. Prohibited discrimination. Subject to sections 2 through 6, inclusive, no employer, labor organization, or
43 employment agency may engage in any act of employment discrimination as specified in section 5 against any
44 individual on the basis of arrest record or conviction record.

45 Section 5. Discriminatory actions prohibited. Subject to sections 2 through 6, inclusive, it is an act of employment
46 discrimination to do any of the following:

47 (1) To refuse to hire or employ any individual, to bar or terminate from employment or labor organization
48 membership any individual, or to discriminate against any individual in promotion, compensation or in terms,
49 conditions or privileges of employment or labor organization membership because of any basis of an arrest record or
50 conviction record as provided in section 4.

51 (2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use
52 any form of application for employment or to make any inquiry in connection with prospective employment, which
53 implies or expresses any limitation, specification or discrimination with respect to an individual or any intent to
54 make such limitation, specification or discrimination because of any basis enumerated in section 4.

55 (3) To discharge or otherwise discriminate against any individual because of any of the following:

56 (a) The individual files a complaint or attempts to enforce any right under chapter 151B, chapter 151C,
57 chapter 151D or chapter 151E.

58 (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under
59 chapter 151B, chapter 151C, chapter 151D or chapter 151E.

60 (c) The individual files a complaint or attempts to enforce a right under chapter 151B, chapter 151C, chapter
61 151D or chapter 151E..

62 (d) The individual's employer believes that the individual engaged or may engage in any activity described in
63 paragraphs (a) through (c) of this section.

64 (4) To discharge or otherwise discriminate against any individual because he or she has opposed any
65 discriminatory practice under this Act or chapter 151B, chapter 151C, chapter 151D or chapter 151E or because he
66 or she has made a complaint, testified or assisted in any proceeding under this Act or chapter 151B, chapter 151C,
67 chapter 151D or chapter 151E.

68 Section 6. Arrest or conviction record; exceptions and special cases. (1)(a) Employment discrimination because of
69 an arrest record includes, but is not limited to, requesting an applicant, employee, member, licensee or any other
70 individual, on an application form or otherwise, to supply information regarding any arrest record of the individual
71 except a record of a pending charge, except that it is not employment discrimination to request such information
72 when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent
73 bond is required by state or federal law, administrative regulation or established business practice of the employer
74 and the individual may not be bondable due to an arrest record. (may want to strike chapter 151B, section

75 (b) Notwithstanding section 5, it is not employment discrimination because of arrest record to refuse to employ
76 or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge
77 if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity.

78 (c) Notwithstanding section 5, it is not employment discrimination because of a conviction record to refuse to
79 employ or license, or to bar or terminate from employment or licensing, any individual who:

80 (1) Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially
81 relate to the circumstances of the particular job or licensed activity; or

82 (2) Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by
83 state or federal law, administrative regulation or established business practice of the employer.

84 (d) Notwithstanding the provisions of this section, it is not employment discrimination to deny employment to
85 anyone who has an arrest or conviction record and either said arrest record or conviction record is prohibitive of
86 being hired or licensed.

87 (e) Notwithstanding section 5, it is not employment discrimination because of conviction record to refuse to
88 employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.

89 Section 7. Construction and enforcement of chapter; inconsistent laws; exclusiveness of statutory procedure; civil
90 remedies; speedy trial; attorney's fees and costs; damages.

91 This chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with
92 any provision of this chapter shall not apply, but nothing contained in this chapter shall be deemed to repeal any
93 provision of any other law of this commonwealth relating to discrimination; but, as to acts declared unlawful by
94 section 4 or 5, the administrative procedure provided under section 5 of chapter 151B shall, while pending, be
95 exclusive; and the final determination on the merits shall exclude any other civil action, based on the same grievance
96 of the individual concerned.

97 Any person claiming to be aggrieved by a practice made unlawful under this chapter, may, at the expiration of
98 ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but
99 not later than three years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive
100 relief or both in the superior court for the county in which the alleged unlawful practice occurred. The petitioner
101 shall notify the commission of the filing of the action, and any complaint before the commission shall then be
102 dismissed without prejudice, and the petitioner shall be barred from subsequently bringing a complaint on the same
103 matter before the commission. An aggrieved person may also seek temporary injunctive relief in the superior court
104 within such county at any time to prevent irreparable injury during the pendency of or prior to the filing of a
105 complaint with the commission.

106 An action filed pursuant to this section shall be advanced for a speedy trial at the request of the petitioner. If the
107 court finds for the petitioner, it may award the petitioner actual and punitive damages. If the court finds for the
108 petitioner it shall, in addition to any other relief and irrespective of the amount in controversy, award the petitioner
109 reasonable attorney's fees and costs unless special circumstances would render such an award unjust. The
110 commission shall, upon the filing of any complaint with it, notify the aggrieved person of his rights under this
111 section.