

HOUSE No. 01865

The Commonwealth of Massachusetts

PRESENTED BY:

Denise Provost and

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 affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---------------------------|--------------------------------|
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> |
| <i>Carolyn C. Dykema</i> | <i>8th Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Ellen Story</i> | <i>3rd Hampshire</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |

HOUSE No. 01865

By Ms. Provost of Somerville and Senator Ms. Jehlen, a joint petition (accompanied by bill, House, No. 1865) of Story and others for the inclusion of individuals with disabilities within civil rights protections and nondiscrimination protections and for an investigation by a special commission (including members of the General Court) of the status of individuals and families with disabilities Joint Committee on Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An act affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

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 66 of chapter 3 of the General Laws, as so appearing in the Official Edition
2 of 2008, is hereby amended in line 4 by inserting after the word, “age” the following:-

3 disability,

4 And, in section 67 by inserting in line 12 after the word, “age”, the following:-

5 disability,

6 SECTION 2. Section 3 of chapter 15D of the General Laws, as so appearing in the Official
7 Edition of 2008, is hereby amended by inserting after the word, “racial”, the following:-

8 disability,

9 And, in section 5, deleting in clause (9) the words “and cultural”, and inserting in its place the
10 following:-

11 cultural and disabilities

12 SECTION 3. Section 58 of chapter 7 of the General Laws, as so appearing in the Official
13 Edition of 2008, is hereby amended in the definition of “Minority business enterprise,” by
14 inserting after the word, “racial”, the following:-

15 disability,

16 SECTION 4. Section 1E of chapter 69 of the General Laws, as so appearing in the Official
17 Edition of 2008, is hereby amended by deleting in line 1 of paragraph 2 the words “or racial” and
18 inserting in their place the following:-

19 racial, disability and age

20 And, by deleting line 2 of paragraph 2 in its entirety, and inserting in its place the following:-

21 The frameworks shall reflect sensitivity to the variety of learning styles and diverse methods of
22 learning.

23 SECTION 5. Section 5 of chapter 76 of the General Laws, as so appearing in the Official Edition
24 of 2008, is hereby amended in line 6 of clause 4(j) by inserting after the word “performance”, the
25 following:-

26 disability

27 And, in section 12B by deleting in line 6 of paragraph 4(j) the words “physical handicap” and
28 inserting in its place the following:-

29 disability

30 SECTION 6. Section 13A of chapter 90 of the General Laws, as so appearing in the Official
31 Edition of 2008, is hereby amended by deleting clause(c) and inserting in its place a new clause
32 (c) as follows:-

33 (c) any person who is physically unable to use safety belts; provided, however, that such
34 condition is duly certified by a Massachusetts registered and licensed doctor, chiropractor, or
35 nurse practitioner who shall describe why such restraint is inappropriate; and provided that no
36 such physician shall be subject to liability in any civil action for the issuance or for the failure to
37 issue such certificate; and provided further that wheelchair-using passengers shall be seated
38 forward-facing and secured with properly installed and maintained wheelchair tiedown and
39 occupant restraint system.

40 SECTION 7. Section 87AAA of chapter 112 of the General Laws, as so appearing in the Official
41 Edition of 2008, is hereby amended by inserting in line 28 of clause (k) after the word “level”,
42 the following:-

43 age, disabilities, sexual orientation, gender identity,

44 SECTION 8. Section 1 of chapter 121B, of the General Laws, as so appearing in the Official
45 Edition of 2008, is hereby amended by inserting after the sentence of the definition
46 “Handicapped persons of low income”, the following:-

47 “Handicapped persons of low income” shall have the same meaning as

48 "individuals with disabilities with low income" and "disabled persons

49 with low income”; persons whose annual net income is less than the

50 amount necessary to enable them to maintain decent, safe and sanitary

51 housing, as defined by 24CFR9.103.

52 And, section 32 of chapter 121B is amended in clause (e) of paragraph 3 by deleting the words

53 “or physical handicap”, and inserting in place thereof the following:-

54 disability, sexual orientation and gender identity

55 Additionally, section 32 of chapter 121B is amended in subclause (f) (3) of paragraph 3 by

56 inserting after the word “sanitary”, the following:-

57 and architectural access

58 SECTION 9. The title of chapter 151B of the General Laws, as appearing in the Official Edition

59 of 2008, is hereby amended by deleting the words “OR SEX” and inserting in place thereof the

60 following:-

61 , SEX OR DISABILITY

62 And, in section 1 of chapter 151B by inserting after definition 23 the following:-

63 The term "accessible dwelling unit", means an addaptable or accessible unit that is on an

64 accessible route and otherwise in compliance with the standards set forth in 521CMR.

65 And, by deleting definition 17 in section 1 of chapter 151B and inserting in its place the

66 following:-

67 The term "disability" means a physical or mental impairment that substantially limits one or
68 more major life activities without regard to the ameliorative effects of mitigating measures which
69 do not include ordinary eyeglasses or contact lenses. "Handicap" means the same as "disability."

70 And, by deleting definition 19 in section 1 of chapter 151B and inserting in its place the
71 following:-

72 The term "person with a disability" means a person who has such impairment, a record of such
73 impairment, or is regarded as having such impairment.

74 Moreover, by deleting definition 16 in section 1 of chapter 151B and inserting in its place the
75 following:-

76 The term "qualified handicapped person" means a person with a disability who is capable of
77 performing the essential functions of a particular job with or without reasonable
78 accommodations.

79 And, in subsection 6 of section 3 of chapter 151B by striking out the word "handicap" in line 21
80 and inserting in place thereof the following:-

81 disability

82 And, by deleting, in line 22 of chapter 151B, the words "handicapped person" and inserting in its
83 place the following:-

84 person with a disability

85 And, by deleting, in line 54 of chapter 151B, the words "handicapped persons" and inserting in
86 place thereof the following:-

87 individuals with disabilities

88 And, by inserting in line 63 of chapter 151B after the word “ancestry” the following:-

89 or disability.

90 And, by inserting on line 82 of chapter 151B, after the word “level” the following:-

91 or disability.

92 Moreover, in section 4 of chapter 151B by striking out on line 5 the words “or ancestry” and

93 inserting in place thereof the following:-

94 ancestry or disability

95 And, by deleting on lines 71-72 of section 4 of chapter 151B, the words starting from “or

96 ancestry of any individual” through “person” and inserting in place thereof the following:-

97 ancestry, or disability

98 And, by deleting on lines 84-85 and 88-89 in section 4 of chapter 151B, the words “the handicap

99 of a qualified person” and inserting in both places the following:-

100 disability

101 Furthermore, by deleting on line 98 in section 4 of chapter 151B, the words “or ancestry” and

102 inserting in place thereof the following:-

103 ancestry or disability

104 And, by deleting on line 139 of section 4 of chapter 151B, the word “handicap” and inserting in

105 place thereof the following:-

106 disability

107 And, on lines 165, 171 and 181 of section 4 of chapter 151B, by inserting after the word

108 “ancestry” the following:-

109 disability

110 And, by deleting in lines 166-167, 172-173, and 183-184 of section 4 of chapter 151B the words

111 “or because such person is blind, or hearing impaired or has any other handicap” and inserting in

112 their place the following:-

113 disability

114 Furthermore, by deleting in lines 229-230, 236-237, and 246 of section 4 of chapter 151B the

115 words “blindness, or hearing impairment or other handicap” and inserting in its place the

116 following:-

117 disability

118 And, by deleting in lines 230-231, 237-238, and 247-248 of section 4 chapter 151B the words

119 “possesses a trained dog guide as a consequence of blindness or hearing impairment” and

120 inserting in its place the following:-

121 utilizes a service animal as a consequence of a disability

122 And, in line 266 of subsection 7A of section 4 of chapter 151B, by deleting the word “handicap”

123 and inserting in place thereof the following:-

124 disability

125 And, in line 267-268 of subclause (1) of subsection 7A of section 4 of chapter 151B by deleting
126 the words “handicapped person” and inserting in its place the following:-

127 individual with a disability

128 And by inserting in line 270 of subsection 7A of section 4 of chapter 151B, after the word
129 “enjoyment” the following:-

130 and equal use

131 And, in line 278 of subsection 7A of section 4 of chapter 151B, by deleting the words
132 “handicapped person” and inserting in its place the following:-

133 tenant

134 And, in line 285 of clause (2) of subsection 7A of section 4 of chapter 151B, by deleting the
135 words “a handicapped person equal opportunity to use and enjoy a dwelling” and inserting in
136 place thereof the following:-

137 individual with a disability equal opportunity to use all elements including common areas of such
138 a dwelling;

139 Moreover, in line 288 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting
140 after the word “for” the following:-

141 an accessible dwelling unit, including through

142 And in line 293 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting after the
143 word “cabinet” the following:-

144 ensuring the entrance is on an accessible route

145 And in line 296 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting after the
146 word “lift” the following:-

147 , unless the request for modifications is in connection with a building which (1) has three or more
148 units and was constructed for first occupancy after March thirteenth, nineteen hundred and
149 ninety-one.

150 And, in line 316 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting after
151 the word “subsection” the following:-

152 It shall be the owner's burden to prove undue hardship. Notwithstanding any other provisions of
153 this subsection, an accommodation or modification which is paid for by the owner or other
154 person having the right of ownership is considered reasonable if it is requested by an individual
155 with a disability in order to afford such person full enjoyment of the premises; and if such
156 architectural or communications features were otherwise mandated by Federal and State
157 architectural accessibility code at the time of construction or rehabilitation.

158 And, in line 317 of clause (3) of subsection 7A of section 4 of chapter 151B, by deleting the
159 words “wheelchair accessible” and inserting in place thereof the following:-

160 an accessible dwelling unit

161 And, by deleting in line 331 of clause (3) of subsection 7A of section 4 of chapter 151B, the
162 words “handicap-accessible” and inserting in place thereof the following:-

163 accessible or adaptable.

164 Moreover, by deleting in line 342 of subsection 7B of section 4 of chapter 151B, the word
165 “handicap”, and inserting in place thereof the following:-

166 disability

167 And, in lines 351, 355, and 362 of subsection 8 of section 4 of chapter 151B, by deleting the
168 word “handicap” and inserting in place thereof the following:-

169 disability

170 And, by deleting subsection 9A of section 4 of chapter 151B in its entirety and inserting in place
171 thereof the following:-

172 9A. For an employer himself or through his agent to refuse, unless based upon a bonafide
173 occupational qualification, to hire or employ or to bar or discharge from employment any person
174 by reason of his or her failure to furnish information regarding his or her admission, on one or
175 more occasions, voluntarily or involuntarily, to any public or private facility for the care and
176 treatment of mentally ill persons, provided that such person can prove that he is mentally
177 competent to perform the job or the job for which he is applying. No application for employment
178 shall contain any questions or requests for information regarding the admission of an applicant,
179 on one or more occasions, voluntarily or involuntarily, to any public or private facility for the
180 care and treatment of mentally ill persons.

181 And, by deleting in line 475 of subsection 11 of section 4 of chapter 151B, the words “a
182 handicapped person” and inserting in place thereof the following:-

183 disability

184 And by inserting in line 484 in clause (b) of subsection 13 of section 4 of chapter 151B, after the
185 word "sex," the following:-

186 gender identity or expression,

187 And by deleting on line 485 in clause (b) of subsection 13 of section 4 of chapter 151B, the
188 words "handicapped person" and inserting in place thereof the following:-

189 disability

190 SECTION 10. Section 92A of chapter 272 of the General Laws, as so appearing in the Official
191 Edition of 2008, is hereby amended by inserting after the word "disability" on line 12 the
192 following:-

193 , age,

194 SECTION 11. Section 98 of chapter 272 of the General Laws, as so appearing in the Official
195 Edition of 2008, is hereby amended by inserting after the word "disability" on line 5 the
196 following:-

197 , age,

198 And, in the title of section 98A of chapter 272 by deleting the phrase "Physically handicapped
199 persons with dog guides" and inserting in place thereof the following:-

200 individual with disabilities accompanied by their service animal

201 And, in section 98A of chapter 272, by deleting the entire section and inserting in place thereof
202 the following:-

203 Notwithstanding any other provision of law, any individual with
204 one or more disabilities accompanied by their service animal, shall be entitled to any and all
205 accommodations, advantages, facilities and privileges of all public conveyances, public
206 amusements and places of public accommodation, within the commonwealth, to which persons
207 not accompanied by service animals are entitled, subject only to the conditions and limitations
208 applicable to all persons not accompanied by service animals, and no such individual with one or
209 more disabilities shall be required to pay any charge or fare for or on account of the
210 transportation on any public conveyance for himself or herself and their accompanying service
211 animal in addition to the charge or fare lawfully chargeable for his/her own transportation.
212 Whoever deprives any individuals with one or more disabilities of any right conferred by this
213 section shall be punished by a fine of not more than three hundred dollars and shall be liable to
214 any person aggrieved thereby for such damages as are set forth in section five of chapter one
215 hundred and fifty-one B; provided, however, that such civic forfeiture shall be of an amount not
216 less than one hundred dollars.

217 SECTION 12. Section 98B of chapter 272 of the General Laws, as so appearing in the Official
218 Edition of 2008, is hereby amended on line 3 by inserting after the word “religion” the
219 following:-

220 disability

221 SECTION 13. Chapter 3, of the General Laws, as so appearing in the Official Edition of 2008, is
222 hereby amended by adding after section 69 the following new section, section 70 as follows:-

223 Section 70. Commission on the status of individuals and families with disabilities

224 (1) There shall be established a permanent commission on the status of individuals and
225 families with disabilities comprised of 17 persons including; 1 person appointed by the president
226 of the senate; 1 person appointed by the speaker of the house of representatives; and the
227 following persons appointed by the governor: 1 person nominated by the joint committee on
228 children, families and persons with disabilities; 6 persons nominated by local and regional
229 disability rights organizations; 1 person nominated by the architectural access board; 1 person
230 nominated by the Massachusetts office on disability; and 6 persons from among the following
231 industries: communications, education, architecture, assistive technologies, arts and engineering
232 who have demonstrated competence in universal or inclusive design within their respective
233 industries.

234 (2) Members of the commission shall be drawn from diverse racial, ethnic, religious, age,
235 disability, sexual orientation, gender identity and expression, and socio-economic backgrounds
236 from throughout the commonwealth and shall have had experience working toward the
237 improvement of the status of individuals with disabilities in society. Members shall be subject to
238 the provisions of chapter 268A as they apply to special state employees.

239 The commission shall be an independent agency of the government of the
240 commonwealth and shall not be subject to the control of any other department or
241 agency.

242 (3)(a) Members shall serve terms of three years and until their successors are appointed.

243 (b) Vacancies in the membership of the commission shall be filled by the original appointing or
244 nominating authority for the balance of the unexpired term. If the position was filled by a
245 nominating body, the replacement member shall be selected from solicited nominations.

246 (c) Nominations shall be solicited between January 1 and February 15 of each year through an
247 open application process using a uniform application that is widely distributed throughout the
248 state. Appointments will be announced on April 1 of each year.

249 (d) The commission shall elect from among its members a chair, a vice-chair, a treasurer and
250 any other officers it deems necessary.

251 (e) An executive director shall be selected by the commission, and shall hire staff, subject to
252 appropriations. The executive director shall be qualified by his or her accomplishments in
253 eradicating barriers to equality for individuals and families with disabilities, in organizing
254 research and reports, and by having demonstrated leadership. The executive director shall not
255 simultaneously serve as a member of the commission on the status of individuals and families
256 with disabilities.

257 (f) The members of the commission shall receive no compensation for their services, but shall
258 be reimbursed for any usual and customary expenses incurred in the performance of their duties.

259 (3) The commission shall work to foster strategic integration of disability diversity within all
260 sectors of the Commonwealth; collect data relevant to short and long-term community support
261 and independent living service delivery programs; continuously monitor and evaluate plans,
262 programs and policies relevant to equalizing access to justice as well as assets and opportunities
263 for minorities; and provide an annual report with recommendations including, but not limited to;

264 (a) tools and guidelines; (b) specific disability benchmarking goals and objectives;(c) necessary
265 legislation, if any; and (d) mechanisms and processes.

266 (4) The commission shall: (a) study, review and report on the status of individuals with
267 disabilities in the commonwealth; (b) evaluate baseline conditions of accessibility and
268 integration throughout the Commonwealth and propose benchmarks, data collection
269 improvements and indicators to further the equal inclusion of individuals with disabilities in
270 economic, housing and environmental programs; (c) establish an informal resource group to
271 provide and support a platform of dialogue and feedback amongst program users and planners;
272 (d) inform leaders of business, education, health care, state and local governments and the
273 communications media of issues pertaining to individuals with disabilities; (e) identify and
274 recommend qualified individuals with disabilities for appointive positions at all levels of
275 government, including boards and commissions, as the commission deems necessary and
276 appropriate; (f) assess programs and practices in all state agencies as they affect individuals with
277 disabilities, as the commission deems necessary and appropriate; (g) advise executive and
278 legislative bodies regarding the impact of proposed legislation on individuals with disabilities, as
279 the commission deems necessary and appropriate; and, (h) promote and facilitate collaboration
280 among local disabilities commissions and among disability rights advocacy organizations in the
281 state, as the commission deems necessary and appropriate. The commission shall annually, on or
282 before June 2, report the results of its findings and activities of the preceding year and its
283 recommendations to the governor, the senate and house committees on ways and means, the
284 clerks of the senate and house of representatives, and the joint committee on children, families
285 and persons with disabilities.

286 (5) The powers of the commission shall include but not be limited to the following: (a) to use
287 such voluntary and uncompensated services of private individuals, agencies and organizations as
288 may from time to time be offered and needed; (b) to recommend policies and make
289 recommendations to agencies and officers of the state and local subdivisions of government to
290 effectuate the purposes of subsection (3); (c) to select an executive director and to acquire
291 adequate staff to perform its duties, subject to appropriation; (d) to establish and maintain such
292 offices as it may deem necessary, subject to appropriation; (e) to enact bylaws for its own
293 governance; (f) to appoint members to regional chapters of the commission; and (g) to hold
294 regular, public meetings and fact-finding hearings and other public forums as it may deem
295 necessary.

296 (6) The commission shall meet once a month for at least eleven months each year. The (i)
297 governor, (ii) president of the senate, (iii) speaker of the house of representatives, (iv) chairs of
298 the joint committee on children, families and persons with disabilities and (v) directors of the
299 state disability offices and commissions, or their designees, shall be invited to attend the monthly
300 meetings.

301 (7)(a) The commission may request from all state agencies such information and assistance as
302 the commission may require.

303 (b) The commission may accept and solicit funds, including any gifts, donations, grants or
304 bequests or any federal funds, for any of the purposes of this section. Such funds shall be
305 deposited in a separate account with the state treasurer, be received by said treasurer on behalf of
306 the commonwealth, and be expended by the commission in accordance with law.