

SENATE No. 986

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Barrett

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 adoption of the accompanying bill:

An Act protecting the long-term unemployed from discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/27/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2017</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/31/2017</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2017</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>2/2/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/14/2017</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/16/2017</i>

SENATE No. 986

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 986) of Michael J. Barrett, Kay Khan, James B. Eldridge, Kenneth I. Gordon and other members of the General Court for legislation to protect the long-term unemployed from discrimination. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act protecting the long-term unemployed from 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 Chapter 149 of the General Laws is hereby amended by adding the following new
2 section:-

3 Section 192. (a) As used in this section, the term:

4 “Affected individual”, means any person who was refused consideration for employment
5 or was not hired by an employer because of individual current employment status, or any person
6 who was not recruited, screened, considered or referred for employment opportunities by an
7 employment agency because of individual current employment status.

8 “Contractor”, means any person that is a party to a government contract other than the
9 government. The term contractor means the department, division, subcontractor or other unit of
10 the party responsible for the performance under the contract.

11 “Individual current employment status”, means whether an individual seeking
12 employment, at the time of consideration for such employment, has a regular or full-time job.

13 “Employer”, means any individual, person, or organization that has one or more
14 individuals performing services for it in Massachusetts for financial remuneration.

15 “Employment agency”, means any person regularly undertaking with compensation and
16 for profit, to procure employees for an employer or to procure for individuals opportunities to
17 work for an employer and includes an agent of such a person.

18 “Individual”, means any human person.

19 “Online job website”, means any Internet-based website that provides online job
20 postings.

21 “Person”, means an individual, partnership, association, corporation, business trust, legal
22 representative, or any organized group of persons.

23 (b) It shall be an unlawful practice for an employer to:

24 (1) Fail to offer employment to, or refuse to consider for employment, an individual
25 because of individual current employment status;

26 (2) Publish, in print, on the Internet or in any other medium, an advertisement or
27 announcement for any job that includes:

28 (i) Any provision stating or indicating that an individual currently having employment is
29 a requirement or qualification for a job; or

30 (ii) Any provision stating or indicating that an employer will not consider an applicant for
31 employment based on individual current employment status;

32 (3) Direct or request that an employment agency take individual current employment
33 status into account in screening or referring applicants for employment.

34 (c) It shall be an unlawful practice for an employment agency to:

35 (1) Fail or refuse to consider or refer an individual for employment based on individual
36 current employment status;

37 (2) Limit, segregate or classify individuals in any manner that may limit their access to
38 information about jobs or referral for consideration of jobs because of individual current
39 employment status;

40 (3) Publish, in print, on the Internet or in any other medium, an advertisement or
41 announcement for any job vacancy that includes:

42 (i) Any provision stating or indicating that an individual currently having employment is
43 a requirement or qualification for a job; or

44 (ii) Any provision stating or indicating that an employer will not consider individuals for
45 employment based on individual current employment status.

46 (d) It shall be an unlawful practice for an online job website to publish any advertisement
47 or announcement for any job vacancy that includes:

48 (1) Any provision stating or indicating that an individual currently having employment is
49 a requirement or qualification for a job; or

50 (2) Any provision stating or indicating that an employer will not consider individuals for
51 employment based on individual current employment status.

52 (e) It shall be unlawful for any employer or employment agency to:

53 (1) Interfere with, restrain, or deny the exercise of or the attempt to exercise, any right
54 provided under this section; or

55 (2) To refuse to hire, to discharge, or in any other manner to discriminate against any
56 individual for opposing any practice made unlawful by this section.

57 (f) It shall be unlawful for any person to discharge or in any other manner discriminate
58 against any individual because such individual:

59 (1) Has filed any charge, or has instituted or caused to be instituted any proceeding, under
60 or related to this section;

61 (2) Has given, or is about to give, any information in connection with any inquiry or
62 proceeding relating to any right provided under this section; or

63 (3) Has testified, or is about to testify, in any inquiry or proceeding relating to any right
64 provided under this section.

65 (g) Nothing in this section is intended to preclude an employer or employment agency
66 from considering an individual's employment history, or from examining the reasons underlying
67 the individual current employment status, in assessing an individual's ability to perform a job or
68 otherwise making employment decisions about that individual.

69 (h) To ensure compliance with the provisions of this title or any regulation or order
70 issued under this title, the attorney general shall have the investigative authority to enter
71 employer workplaces and examine all employer records related to allegations of violations of
72 subsections (b) through (d), inclusive. Any employer or employment agency shall make, keep,
73 and preserve records pertaining to compliance with this section.

74 (i) Any employer or employment agency that violates subsection (b) or (c) shall be liable
75 to any affected individual:

76 (1) For actual damages equal --

77 (i) The amount of

78 (A) Any wages, salary, employment benefits, or other compensation denied or lost to
79 such individual by reason of the violation; or

80 (B) In a case in which wages, salary, employment benefits, or other compensation have
81 not been denied or lost to the individual, any actual monetary losses sustained by the individual
82 as a direct result of the violation or damages in the amount of \$1000 per violation per day,
83 whichever is greater; and

84 (ii) The interest on the amount described in clause (i)(A) calculated at the prevailing rate;

85 and

86 (iii) An additional amount as liquidated damages equal to the sum of the amount of
87 compensation and interest described in subparagraphs (i) and (ii), except that if an employer or
88 employment agency that has violated subsection (b) or (c) proves to the satisfaction of the court
89 that the act or omission that violated subsection (b) or (c) was in good faith and that the employer

90 had reasonable grounds for believing that the act or omission was not a violation of subsection
91 (b) or (c), the court may, in its discretion, reduce the amount of the liability to the amount and
92 interest determined under subparagraphs (i) and (ii); and

93 (2) For such equitable relief as may be appropriate, including employment and
94 compensatory and punitive damages.

95 An action to recover the damages or equitable relief prescribed in this subsection may be
96 maintained against any employer or employment agency in any state court of competent
97 jurisdiction by any one or more persons for and in behalf of the affected individual, or the
98 affected individual and other individuals similarly situated.

99 The court in such an action shall, in addition to any judgment awarded to the plaintiff,
100 allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to
101 be paid by the defendant.

102 The right provided by this subsection to bring an action by or on behalf of any affected
103 individual shall terminate on the filing of a complaint by the attorney general in an action under
104 subsection (j).

105 (j) The attorney general shall receive, investigate, and attempt to resolve complaints of
106 violations of subsections (b) through (f), inclusive. The attorney general may bring an action in
107 any state court of competent jurisdiction:

108 (1) To enjoin violations of this title and seek other relief going forward necessary to
109 prevent future violations;

110 (2) To recover the damages described in subsection (i);

111 (3) In the case of a violation of subsections (d) through (f), inclusive, a civil penalty of
112 not less than \$250 per violation; or

113 (4) Any other equitable relief the Court deems appropriate.

114 Any sums recovered by the attorney general shall be held in a special deposit account and
115 shall be paid directly to each affected individual.

116 (k) An action under subsection (i) or (j) may be brought not later than 3 years after the
117 date of the last event constituting the alleged violation for which the action is brought, provided
118 that the limitations for filing an action shall be tolled during the period that the attorney general
119 is considering a complaint against any defendant named in a complaint filed with under
120 subsection (j).

121 (l) Payment under a contract awarded by the state, may be terminated and the contractor
122 who made the contract with the state agency may be debarred in accordance with the
123 requirements of section 29F of chapter 29, governing government contracts, if the contractor is
124 found by a court of competent jurisdiction to have engaged in the any of the prohibited acts
125 enumerated in this section.