HOUSE DOCKET, NO. 1596 FILED ON: 1/17/2013

HOUSE . . . . . No. 1745

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

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:

An Act providing fair chances for employment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Elizabeth A. Malia	*11th Suffolk*
Denise Provost	*27th Middlesex*
Denise Andrews	*2nd Franklin*
Kay Khan	*11th Middlesex*
Cory Atkins	*14th Middlesex*
David M. Rogers	*24th Middlesex*
Karen E. Spilka	*Second Middlesex and Norfolk*
John J. Mahoney	*13th Worcester*
Brian M. Ashe	*2nd Hampden*

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HOUSE . . . . . No. 1745

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1745) of Elizabeth A. Malia and others for legislation to prohibit prospective employer discrimination against persons who are or have been unemployed. Labor and Workforce Development.

The Commonwealth of Massachusetts

An Act providing fair chances for employment.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Denial of employment opportunities to individuals because they are or have been unemployed has the intent or necessary effect of burdening local economies and commerce by reducing job opportunities and diminishing earnings and incomes, thereby:

Reducing personal consumption and undermining economic stability and growth;

Squandering human capital essential to the state's economic vibrancy and growth;

Increasing demands for state and federal unemployment insurance benefits, reducing trust fund assets and leading to higher payroll taxes for employers, cuts in benefits for jobless workers, or both;

Imposing additional burdens on publicly funded health and welfare programs; and

Depressing income, property and other tax revenues that states and localities rely on to support operations and institutions essential to building and maintaining and robust economy.

The purpose of this legislation is to eliminate the burdens imposed on the state's economy and on families and workers in the state when individuals are excluded from job opportunities because of their current unemployment status, and to prohibit consideration of current employment status in screening for or filling positions.

SECTION 2. Chapter 149 of the General Laws is hereby amended by inserting at the end thereof the following new section:--

Section 189. (a) As used in this section, the term

19 “Affected individual,” means any person who was refused consideration for employment
20 or was not hired by an employer because of the person’s current employment status, or any
21 person who was not recruited, screened, considered or referred for employment opportunities by
22 an employment agency because of the person’s current employment status.

23

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

27 “Contracting officer,” means an individual who, by appointment in accordance with
28 applicable regulations, has the authority to make and administer contracts and to make
29 determinations and findings with respect to contracts, or the authorized representative of the
30 contracting officer acting within the limits of the representative’s authority.

31 “Current employment status,” means that an individual is currently employed.

32 “Current unemployment status,” means that an individual is currently unemployed.

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

36 “Online job website,” means any Internet-based website that provides online job
37 postings, regardless of how they are acquired.

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

40

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

42 (1) Fail to offer employment to, or refuse to consider for employment, an individual
43 because of the individual’s current unemployment status;

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

46 (i) Any provision stating or indicating that current employment status is a
47 requirement or qualification for a job; or

48

(ii) Any provision stating or indicating that an employer will not consider an applicant for employment based on the person's current unemployment status;

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

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

(1) Fail or refuse to consider or refer an individual for employment based on the individual's current unemployment status;

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

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

(i) Any provision stating or indicating that current employment status is a requirement or qualification for a job; or

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

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

(1) Any provision stating or indicating that current employment status is a requirement or qualification for a job; or

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

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

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

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

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

83

84 (1) has filed any charge, or has instituted or caused to be instituted any proceeding, under
85 or related to this section;

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

88 (3) has testified, or is about to testify, in any inquiry or proceeding relating to any right
89 provided under this section.

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

94 (h) To ensure compliance with the provisions of this title or any regulation or order
95 issued under this title, the Attorney General shall have the investigative authority to enter
96 employer workplaces and examine all employer records related to allegations of violations of
97 subsections (b) through (d), inclusive. Any employer or employment agency shall make, keep,
98 and preserve records pertaining to compliance with this section.

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

101

102 (1) for actual damages equal --

103 (i) the amount of

104 (A) any wages, salary, employment benefits, or other compensation denied
105 or lost to such individual by reason of the violation; or

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

110

111 (ii) the interest on the amount described in clause (i)(A) calculated at the
112 prevailing rate; and

113 (iii) an additional amount as liquidated damages equal to the sum of the amount of
114 compensation and interest described in subparagraphs (i) and (ii), except that if an employer or
115 employment agency that has violated subsection (b) or (c) proves to the satisfaction of the court
116 that the act or omission that violated subsection (b) or (c) was in good faith and that the
117 employer had reasonable grounds for believing that the act or omission was not a violation of
118 subsection (b) or (c), the court may, in its discretion, reduce the amount of the liability to the
119 amount and interest determined under subparagraphs (i) and (ii); and

120

121 (2) for such equitable relief as may be appropriate, including employment and
122 compensatory and punitive damages.

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

127

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

131

132 The right provided by this subsection to bring an action by or on behalf of any affected
133 individual shall terminate on the filing of a complaint by the Attorney General in an action under
134 subsection (j).

135 (j) The Attorney General shall receive, investigate, and attempt to resolve complaints of
136 violations of subsections (b) through (f), inclusive. The Attorney General may bring an action in
137 any state court of competent jurisdiction:

138

139 (1) to enjoin violations of this title and seek other relief going forward necessary to
140 prevent future violations;

141 (2) to recover the damages described in subsection (i);

142

143 (3) in the case of a violation of subsections (d) through (f), inclusive, a civil penalty of
144 not less than $250 per violation; or

145 (4) any other equitable relief the Court deems appropriate.

146

147 Any sums recovered by the Attorney General shall be held in a special deposit account
148 and shall be paid directly to each affected individual.

149

150 (k) An action under subsection (i) or (j) may be brought not later than 3 years after the
151 date of the last event constituting the alleged violation for which the action is brought, provided
152 that the limitations for filing an action shall be tolled during the period that the Attorney General
153 is considering a complaint against any defendant named in a complaint filed with under
154 subsection (j).

155

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