

HOUSE No. 1733

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone and Ellen Story

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 to establish pay equity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Thomas J. Calter</i>	<i>12th Plymouth</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>

<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Edward F. Coppinger</i>	<i>10th Suffolk</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>

<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>
<i>Brian R. Mannal</i>	<i>2nd Barnstable</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>
<i>Paul McMurtry</i>	<i>11th Norfolk</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Rady Mom</i>	<i>18th Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Walter F. Timilty</i>	<i>7th Norfolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>

<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>John C. Velis</i>	<i>4th Hampden</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>

HOUSE No. 1733

By Representatives Livingstone of Boston and Story of Amherst, a petition (accompanied by bill, House, No. 1733) of Jay D. Livingstone and others relative to pay equity. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act to establish pay equity.

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: Chapter 149 of the General Laws is hereby amended by striking out section
2 105A and inserting in place thereof the following section:-

3 “Section 105A:

4 (a)No employer shall discriminate on the basis of gender in any way in the payment of
5 wages, benefits or other compensation, or pay any person in its employ wages, benefits or other
6 compensation less than it pays to employees of the opposite gender for work of like or
7 comparable character or work on like or comparable operations; provided, however, that
8 variations in wages, benefits or other compensation shall not be prohibited when based upon a
9 difference in seniority. In any action brought under this section, the comparability of two
10 positions shall be solely based on whether the two positions entail comparable skill, effort,
11 responsibility and working conditions between employees of the opposite gender. An employer
12 who is paying a wage differential in violation of Section 105A shall not, in order to comply with

13 the provisions of Section 105A, reduce the pay of any employee. Nothing in this section shall be
14 construed to affect any bargaining agreement or company policy which provides for greater or
15 additional wages, benefits or other compensation than those required under this section.

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

17 (1) Require, as a condition of employment, that an employee refrain from disclosing,
18 discussing, or sharing information about the amount of his or her wages, benefits or other
19 compensation, or from inquiring, discussing or sharing information about any other employee's
20 wages, benefits or other compensation.

21 (2) Require an employee to sign a waiver or other document that denies the employee the
22 right to disclose the amount of his or her wages, benefits or other compensation or to inquire
23 about, discuss or share information about any other employee's wages, benefits or other
24 compensation.

25 (3) Discharge, formally discipline, or otherwise discriminate against an employee
26 because the employee:

27 (i) has opposed any act or practice that is prohibited under this chapter or asserted a right
28 that is protected under this chapter;

29 (ii) has lodged a complaint or has testified, assisted, or participated in any manner in an
30 informal or formal investigation of prohibited acts or practices;

31 (iii) is known by the employer to be about to lodge a complaint, testify, assist, or
32 participate in any manner in an informal or formal investigation of prohibited acts or practices;

33 (iv) has disclosed his or her wages, benefits or other compensation or has inquired about
34 or discussed the wages, benefits or other compensation of any other employee; or

35 (v) is believed by the employer to have acted as described in subdivisions (i) through (iv)
36 of this subparagraph.

37 Unless otherwise required by law, an employer may prohibit a human resources
38 employee from disclosing the wages of any employee to another employee. Employers may not
39 disclose the salary of any individual employee unless required by law or with the written
40 permission of the employee whose salary is to be disclosed.

41 (c) Employers must post a notice in their workplace in a space where employees
42 congregate and can clearly see it, in a font of no less than 24. Such a notice will state:

43 In Massachusetts, it shall be an unlawful practice for an employer to:

44 (1) Require, as a condition of employment, that an employee refrain from disclosing,
45 discussing, or sharing information about the amount of his or her wages, benefits or other
46 compensation, or from inquiring, discussing or sharing information about any other employee's
47 wages, benefits or other compensation.

48 (2) Require an employee to sign a waiver or other document that denies the employee the
49 right to disclose the amount of his or her wages, benefits or other compensation or to inquire
50 about, discuss or share information about any other employee's wages, benefits or other
51 compensation.

52 (3) Discharge, formally discipline, or otherwise discriminate against an employee
53 because the employee:

54 (i) has opposed any act or practice that is prohibited under this chapter or asserted a right
55 that is protected under this chapter;

56 (ii) has lodged a complaint or has testified, assisted, or participated in any manner in an
57 informal or formal investigation of prohibited acts or practices;

58 (iii) is known by the employer to be about to lodge a complaint, testify, assist, or
59 participate in any manner in an informal or formal investigation of prohibited acts or practices;

60 (iv) has disclosed his or her wages, benefits or other compensation or has inquired about
61 or discussed the wages, benefits or other compensation of any other employee; or

62 (v) is believed by the employer to have acted as described in subdivisions (i) through (iv)
63 of this subparagraph.

64 (d) Any employer who violates any provision of this section shall be liable to the
65 employee or employees affected in the amount of their unpaid wages, benefits or other
66 compensation, and in an additional equal amount of liquidated damages. An action to recover
67 such liability may be maintained in any court of competent jurisdiction by any one or more
68 employees for and on behalf of such employee or employees and other employees similarly
69 situated. Any agreement between the employer and any such employee to work for less than the
70 wages, benefits or other compensation to which such employee is entitled under this section shall
71 be no defense to such action. The court in such action shall, in addition to any judgment awarded
72 to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and the
73 costs of the action. Attorneys' fees can be awarded under this subparagraph in the absence of
74 compensatory damages. At the request of any employee paid less than the wages, benefits or
75 other compensation to which the employee is entitled under this section, the attorney general

76 may take an assignment of such wage claim in trust for the assigning employee and may bring
77 legal action necessary to collect such claim, and the employer shall be required to pay an
78 additional equal amount of liquidated damages, together with the costs of the action and such
79 reasonable attorney's fee as may be allowed by the court. The attorney general shall not be
80 required to pay any filing fee, or other costs, in connection with such action. The attorney
81 general may join various claimants against the employer in one cause of action. Any action
82 based upon or arising under sections 105A to 105C, inclusive, shall be instituted within 3 years
83 after the date of the alleged violation.

84 (e) (1) An employer, charged under this section with unlawful discrimination by an
85 employee who holds a job predominantly occupied by members of one gender (as defined
86 below), who has completed a self-evaluation that meets the standards set forth in subsection (5),
87 and who can also make an affirmative showing that progress has been made towards removing or
88 preventing wage differentials based on gender, in accordance with that evaluation, including
89 implementing any required remediation plan, shall be entitled to a rebuttable presumption that
90 the employer has not engaged in gender discrimination in violation of this section.

91 (2) In such cases, the court must give the aggrieved party an opportunity to rebut this
92 presumption through evidence that reasonably demonstrates that, notwithstanding the employer's
93 self-evaluation, the employer has violated this Section. In meeting the burden of overcoming
94 this presumption the aggrieved party may provide all relevant information including, but not
95 limited to, evidence that:

96 (i) the employer's job analysis devalues attributes associated with jobs occupied
97 predominantly by members of one gender and/or over values attributes associated with jobs
98 occupied predominantly by members of the other gender;

99 (ii) notwithstanding non-discriminatory basic pay rates, periodic raises, bonuses,
100 incentive payments, or other forms of remuneration differ between jobs occupied predominantly
101 by members of one gender;

102 (iii) the job the aggrieved party occupies was not adequately evaluated; or

103 (iv) a job evaluation process has been completed and, if necessary, a remediation process
104 is in progress or has been completed, but the self-evaluation has not been reviewed and updated
105 at reasonable intervals to adjust for changes in the work environment over time.

106 (3) An employer wishing to avail itself of this presumption must produce documentation
107 describing the self-evaluation process in the detail necessary to show that it has met the standards
108 under subsection (5).

109

110 (4) A job occupied predominantly by members of one gender means that at least 75
111 percent of the occupants of the job are of the same gender.

112 (5) In order to be eligible for the presumption of compliance, the self-evaluation must:

113 (i) clearly define the employer's establishment (meaning industrial or commercial facility
114 or place of business);

115 (ii) analyze the employee population to identify possible areas of pay discrimination;

116 (iii) establish a job evaluation plan as a means of determining the value of jobs within the
117 establishment. The plan must:

118 a. be free of any gender bias;

119 b. allow for the comparison of all jobs; and

120 c. fully and accurately measure the skill, effort, responsibility, and working conditions of
121 each job based on the actual work performance requirements of the jobs evaluated;

122 (iv) apply the job evaluation plan to all or a significant sample of jobs, focusing on those
123 that are predominantly occupied by one gender;

124 (v) create a salary structure or have an identifying salary group system where jobs of
125 equal value are placed in the same level or grouping;

126 (vi) determine for each salary grouping or for each total job evaluation score the base pay
127 differential between jobs that are predominantly occupied by one gender to other jobs, including
128 those predominantly occupied by the other gender, in order to identify any wage rate
129 discrimination; and

130 (vii) remedy any base pay differential identified in subsection (vi). In order to meet this
131 standard, such remediation may not reduce the pay of any employee or class of employees.

132 The presumption of compliance may be strengthened where, throughout the self-
133 evaluation, including any needed remediation, the employer maintains communication with and
134 keeps employees apprised of the process. The method and procedure for that communication
135 may vary according to the size and organizational structure of the establishment. However, any
136 method or procedure chosen should be adequate to reach all employees at the establishment.

137 (f)The Attorney General may issue regulations to interpret and apply the provisions of
138 section 105A.”

139 SECTION 2: Section 4 of Chapter 151B of the General Laws is hereby amended by
140 inserting after subsection 19, the following subsections:

141 “(20) For an employer, personally or through an agent, to publish, list, or post, publicly or
142 within the organization; or publish, list, or post with any employment agency, job-listing service,
143 or website an advertisement to recruit candidates for hire or independent contractors to fill a
144 position within the organization without including the minimum rate of pay whether paid by the
145 hour, shift, day, week, salary, piece, commission, or other; including overtime; with allowances,
146 if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances. In
147 addition, no employer shall pay wages for the position less than what were advertised.

148 (21) For an employer to refuse to comply with the provisions of section 105A(b) of
149 chapter 149. A violation of section 105A(b) of chapter 149 is a violation of this section.

150 (22) (a) For a current or prospective employer, personally or through an agent, to seek
151 salary history information, including but not limited to compensation and benefits, from the
152 potential employee for an interview or as a condition of employment; or (b) for an employer to
153 release the salary history of any current or former employee to any prospective employer in
154 response to a request as part of an interview or hiring process without written authorization from
155 such current or former employee.”

156 SECTION 3: Section 5 of Chapter 151B of the General Laws is hereby amended by
157 inserting at the end thereof the following sentence:-

158 “Attorneys’ fees can be awarded under this section in the absence of compensatory
159 damages.”

160 SECTION 4: Section 9 of Chapter 151B of the General Laws is hereby amended by
161 inserting after the word “damages”, in line 37, the following sentence:-

162 “Attorneys’ fees can be awarded under this section in the absence of compensatory
163 damages.”