

HOUSE No. 1795

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 amended by inserting after 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
5 employment against otherwise qualified individuals by reason of arrest record or conviction
6 record substantially and adversely affects the general welfare of the state. Employers, labor
7 organizations, employment agencies and licensing agencies that deny employment opportunities
8 and discriminate in employment against otherwise qualified individuals solely because of their
9 arrest record or conviction record deprive those individuals of the earnings that are necessary to
10 maintain a just and decent standard of living.

11 It is the intent of the legislature to protect by law the rights of all individuals to
12 obtain gainful employment and to enjoy privileges free from employment discrimination because
13 of arrest record or conviction record, and to encourage the full, nondiscriminatory utilization of

14 the productive resources of the state to the benefit of the state, the family and all the people of
15 the state. It is the intent of the legislature to encourage employers to evaluate an employee or
16 applicant for employment based upon the employee's or applicant's individual qualifications.

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

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

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

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

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

34 “employee” does not include any individual employed by his parents, spouse
35 or child, or in the domestic service of any person.

36 “employer” shall include, but not necessarily be limited to. the commonwealth and all
37 political subdivisions, boards, departments and commissions thereof, one or more individuals,
38 partnerships, associations, and corporations.

39 “employment agency” includes any person undertaking to procure employees or
40 opportunities to work.

41 “labor organization” includes any organization which exists and is constituted for
42 the purpose, in whole or in part, of collective bargaining or of dealing with employers
43 concerning grievances, terms or conditions of employment, or of other mutual aid or protection
44 in connection with employment.

45 “unlawful practice” includes only those unlawful practices specified in section
46 four.

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

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

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

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

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

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

68 (a) The individual files a complaint or attempts to enforce any right under chapter
69 151B, chapter 151C, chapter 151D or chapter 151E.

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

72 (c) The individual files a complaint or attempts to enforce a right under chapter
73 151B, chapter 151C, chapter 151D or chapter 151E..

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

76 (4) To discharge or otherwise discriminate against any individual because he or she
77 has opposed any discriminatory practice under this Act or chapter 151B, chapter 151C, chapter
78 151D or chapter 151E or because he or she has made a complaint, testified or assisted in any
79 proceeding under this Act or chapter 151B, chapter 151C, chapter 151D or chapter 151E.

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

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

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

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

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

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

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

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

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

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

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