

# HOUSE . . . . . No. 3464

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to labor and industries..

*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 5 of Chapter 151B of the General Laws, as appearing in the 2004  
2   Official Edition, is hereby amended by: (1) reformatting the second full paragraph by adding to  
3   the beginning of the first line of the second paragraph before the word “After” the following  
4   subsection indicator: “(a)”; (2) reformatting the second full paragraph by adding to the  
5   beginning of the tenth line of the second paragraph before the clause “If such commissioner” the  
6   following indented subparagraph number: “(1)”; (3) reformatting the second full paragraph by  
7   adding to the twenty eighth line of the second paragraph before the clause “If such  
8   commissioner” the following indented subparagraph number: “(2)”; (4) inserting the words “in a  
9   complaint relative to a housing practice” after the clause “of the matter” in the thirtieth line of  
10   the second full paragraph; (5) striking the word “he” in the thirtieth line of the second full  
11   paragraph and replacing it with the words “the commissioner”; (6) reformatting the second full  
12   paragraph by adding to the sentence in the thirty fifth line beginning with the words “In case of”  
13   the following indented subparagraph number: “(3)”; (7) striking the words “or in advance thereof

14 if in his judgment circumstances so warrant, he” in the thirty sixth line and replacing them with  
15 the following:

16 and if the matter involves a complaint relative to an employment practice the  
17 commissioner shall immediately serve notice upon the complainant and respondent of their right  
18 to elect judicial determination of the complaint as an alternative to determination in a hearing  
19 before the commission. If a complainant or respondent so notified wishes to elect such judicial  
20 determination, he shall do so in writing within twenty days of receipt of the said notice. The  
21 person making such election shall give notice of such election to the commission and to all other  
22 complainants and respondents to whom the probable cause finding relates. The commission,  
23 upon receipt of such notice, shall dismiss the complaint pending before it as to all parties without  
24 prejudice and the complainant shall be barred from subsequently bringing a complaint on the  
25 same matter before the commission. If any complainant or respondent elects judicial  
26 determination as aforesaid, the commission shall authorize, and not later than thirty days after the  
27 election is made the complainant, through counsel, or the attorney general, in the case of an  
28 unrepresented complainant, shall commence and maintain, a civil action on behalf of the  
29 complainant in the superior court for the county in which the unlawful practice occurred. Any  
30 complainant may intervene as of right in said civil action. If conciliation efforts have failed with  
31 regard to an employment or housing complaint, and no complainant or respondent has elected  
32 judicial determination in accordance with the procedures outlined above, the commissioner.;

33 (8) reformatting the third full paragraph by adding to the beginning of the first sentence  
34 of the third full paragraph the following subparagraph number: “(c)”; (9) reformatting the fourth  
35 full paragraph by adding to the beginning of the first sentence of the fourth full paragraph the  
36 following subparagraph number: “(d)”; (10) changing the subparagraph indicator in the fourth

line of the fourth full paragraph from “(a)” to “(1)”; (11) changing the subparagraph indicator in the sixth line of the fourth full paragraph from “(b)” to “(2)”; (12) changing the subparagraph indicator in the ninth line of the fourth full paragraph from “(c)” to “(3)”; (13) adding the following new subparagraph at the end of Section 5 :

(e) As of the effective date of this Section, where a public hearing in an employment discrimination matter was held prior to May 6, 2004 and where the parties to such public hearing have not yet exhausted all avenues of judicial review, remand or appeal available under G.L. chapter 30A or otherwise entered into a binding resolution of the matter, the commissioner shall immediately serve notice upon the complainant and respondent of their right to elect judicial determination of the complaint. If a complainant or respondent so notified wishes to elect such judicial determination, he shall do so in writing within twenty days of receipt of the said notice. The person making such election shall give notice of such election to the commission and to all other complainants and respondents to whom the probable cause finding relates. The commission, upon receipt of such notice, shall dismiss the complaint filed and/or vacate the finding of the commission arising out of the public hearing as to all parties without prejudice and the complainant shall be barred from subsequently bringing a complaint on the same matter before the commission. If any complainant or respondent elects judicial determination as aforesaid, the commission shall authorize, and not later than thirty days after the election is made the complainant, through counsel, or the attorney general, in the case of an unrepresented complainant, to commence and maintain, a civil action on behalf of the complainant in the superior court for the county in which the unlawful practice occurred. Any complainant may intervene as of right in said civil action. Any party to any such civil action shall be entitled to a trial by jury, if so elected.;

and (14) adding the following new subparagraph at the end of Section 5 section (e):

(f) The provisions of this Section, as amended, shall take immediate affect and shall be immediately applicable to: (1) all matters currently pending before the Commission; and (2) all employment discrimination matters where a public hearing was held prior to May 6, 2004 and where the parties to such public hearing have not yet exhausted all avenues of judicial review, remand or appeal available under G.L. chapter 30A or otherwise entered into a binding resolution of the matter.”