

HOUSE No. 4622

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

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 2008 Official Edition, are hereby
2 amended by inserting after chapter 151F, the following chapter: -

3 CHAPTER 151G

4 Section 1. As used in this chapter, the following words and phrases shall have the
5 following meaning unless the context clearly requires otherwise:

6 “Arrest record”, includes, but is not limited to, information indicating that an individual
7 has been

8 questioned, apprehended, taken into custody or detention, held for investigation, arrested,
9 or charged with any offense pursuant to any law enforcement or military authority.

10 “Commission”, means the Massachusetts commission against discrimination, as set forth
11 in section 2 of chapter 151B.

“Criminal record”, includes, but is not limited to, records and data in any communicable form compiled by a criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pre-trial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Criminal record shall not include evaluative information, statistical and analytical reports and files in which individuals are not directly or indirectly identifiable, or intelligence information. Criminal record shall be limited to information concerning persons who have attained the age of 17 and shall not include any information concerning criminal offenses or acts of delinquency committed by any person before he attained the age of 17; provided, however, that if a person under the age of 17 is adjudicated as an adult, information relating to such criminal offense shall be criminal record.

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

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

“Employment agency”, includes any person undertaking to procure employees or opportunities to work.

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

“Unlawful practice”, includes only those unlawful practices specified in sections 3 and 4 of this chapter.

Section 2. The commission shall formulate policies to effectuate the purposes of this chapter, and may make recommendations to agencies and officers of the commonwealth or its political subdivisions in aid of such policies and purposes.

Section 3. Subject to sections 1 through 5, inclusive, of this chapter, no employer, labor organization, job training program, licensing agency or employment agency, by himself or itself or through an agent, in connection with an application for employment, job training, or licensing, or in connection with the terms, conditions, or privileges of employment, job training, or licensing, or the transfer, bonding, promotion, demotion, or discharge of any person, or in any other matter relating to the employment or job training of any person may engage in any act of employment discrimination as specified in section 5 of this chapter against any individual on the basis of arrest record or criminal record, unless state or federal law so requires.

Section 4. It is an act of employment discrimination to do any of the following:

(a) To use an application form or application blank which makes an inquiry about an individual’s arrest or criminal record, or seek, orally or in writing, information relating to a felony or misdemeanor conviction regardless of the length of time passed since the conviction, or inquire about or request an individual’s criminal record before he or she has been determined to be a qualified applicant for a position and has been made a conditional offer of employment, provided that no covered entity shall request or obtain criminal record information from any source prior to said determination.

(b) To exclude, limit or otherwise discriminate against any person on account of his failure to furnish such information.

(c) To rely on an inaccurate or improperly obtained or issued criminal record to deny employment.

(d) To exclude, limit or otherwise discriminate against any person because his criminal record consists of:

(1) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or

(2) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or

(3) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the employer's request for such criminal record; or

(4) any conviction of a felony where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 7 or more years prior to the employer's request for such criminal record.

(e) To exclude, limit or otherwise discriminate against any person on account of the person's having a criminal record, provided however, that it shall not be a violation of this subsection if the person has a criminal record containing 1 or more convictions which substantially relate to the circumstances of a particular employment or licensed activity, and the decision against the person was not unreasonable based on the totality of the circumstances.

(f) To fail to provide a rejected applicant with a copy of the criminal record upon which an adverse decision was made, notify the applicant of the part or parts which render him or her ineligible, and offer an opportunity to contest the relevance and accuracy of the record. In determining the relevance of a record to a position sought, a consideration of these factors is required:

(1) Nature, seriousness and circumstance of any past criminal conviction or pending charge;

(2) Age of the candidate at the time of the offense;

(3) Date of the offense, excluding any felony conviction that is 7 or more years old and any misdemeanor that is 3 or more years old at the time of the review;

(4) Relevance of the offense to the duties and qualifications of the position in question;

(5) Sentence imposed and length of any period of incarceration;

(6) Any reasonable available information concerning compliance with conditions of parole or probation, including orders of no contact with victim and witnesses;

(7) The individual's conduct and experience in the time since the offense, including, but not limited to, education or professional certification obtained since the time of the offense;

(8) Any other evidence of rehabilitation.

(g) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, which implies or expresses any limitation, specification or discrimination on account of an arrest record or criminal record.

(h) To discharge or otherwise discriminate against any individual because of any of the following:

(1) The individual files a complaint or attempts to enforce any right under this chapter.

(2) The individual testifies or assists in any action or proceeding held under or to enforce any right under this chapter.

(3) The individual's employer believes that the individual engaged or may engage in any activity described in paragraphs (1) or (2) of this subsection.

(4) The individual has opposed any discriminatory practice under this act or any similar anti-discrimination law.

Section 5. Notwithstanding section 4 of this chapter, it shall not be employment discrimination to rely on criminal record information when employment depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by state or federal law, or administrative regulation and the individual may not be bondable due to a serious criminal record.

Section 6. This chapter shall be construed liberally for the accomplishment of its purposes, and any law inconsistent with any provision of this chapter shall not apply, but nothing contained in this chapter shall be deemed to repeal any provision of any other law of this

commonwealth relating to discrimination; but, as to acts declared unlawful by section 3 or 4, the administrative procedure provided under section 5 of chapter 151B shall, while pending, be exclusive; and the final determination on the merits shall exclude any other civil action, based on the same grievance of the individual concerned.

Any person claiming to be aggrieved by a practice made unlawful under this chapter, may, at the expiration of 90 days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than 3 years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive relief or both in the superior court for the county in which the alleged unlawful practice occurred. The petitioner shall notify the commission of the filing of the action, and any complaint before the commission shall then be dismissed without prejudice, and the petitioner shall be barred from subsequently bringing a complaint on the same matter before the commission. An aggrieved person may also seek temporary injunctive relief in the superior court within such county at any time to prevent irreparable injury during the pendency of or prior to the filing of a complaint with the commission.

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