

SENATE No. 1404

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the Massachusetts Commission against 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. Section 2 of Chapter 151B of the General Laws, as appearing in the 2006
2 Official Edition, is hereby amended by adding, in line 4 , after the word “purposes” the
3 following:- “, provided that Commission policies are subjected to public review in draft form for
4 ninety (90) days prior to final adoption”

5 SECTION 2. Section 3 of said chapter 151B of the General Laws, is hereby amended by
6 adding, in line 14, after the word “therewith,” the following:- “, provided that Commission
7 policies and practices are subjected to public review in draft form for ninety (90) days prior to
8 final adoption”

9 SECTION 3. Said chapter 151B of the General Laws, is further amended by adding after
10 section 5, the following new section:- Section 5A. Notwithstanding the provisions in Section 5,
11 any person claiming to be aggrieved by an alleged unlawful practice by an employer or labor
12 organization or employment agency because of race, color, religious creed, national origin, sex,
13 sexual orientation, ancestry, age, or handicap to refuse to hire or employ or to bar or to discharge
14 from employment such person or to discriminate against such person in compensation or in

15 terms, conditions, or privileges of employment, unless based upon a bona fide occupational
16 qualification as specified in section four 1, 1A, 1B, 2, 3, 4, 4A, 5, 9, 9A, 11A, 16, 16A may, by
17 himself or his attorney, make, sign and file with the commission a verified complaint in writing
18 which shall state the name and address of the person, employer, labor organization or
19 employment agency alleged to have committed the unlawful practice complained of, the prima
20 facie case as alleged and contain other such information as may be required by the commission,
21 provided the complaint is accompanied by a \$250.00 filing fee, which may be waived or
22 refunded by the commission in emergency situations or where proof of inability to pay is
23 presented.

24 After the filing of the complaint, the commissioner shall cause to be issued and served in
25 the name of the commission, a written notice, together with a copy of such complaint, as the
26 same may have been amended, requiring the person, employer, labor organization, or
27 employment agency named in such complaint, hereinafter referred to as the respondent, to
28 answer the charges and state its position regarding such complaint in writing within 45 days of
29 receipt of the written notice. Within five days of the commission's receipt of the respondent's
30 position statement, the chairman of the commission shall designate an investigative officer to
31 make a prompt investigation in connection therewith, including a scheduling of an investigative
32 conference within 90 days from receipt of respondent's position statement and if it is not so held
33 within 90 days, or the complainant fails to attend the investigative conference, the complaint is
34 dismissed, unless good cause is shown for the absence. If an attorney represents either the
35 complainant or the respondent, the investigative officer will also be an attorney with the
36 commission.

37 If such investigative officer shall determine after such investigation that no probable
38 cause exists for crediting the allegations of the complaint, or 365 days from receipt of the
39 complaint by the commission has passed, the commission shall dismiss the complaint, and within
40 ten days from such dismissal, cause to be issued and served upon the complainant written notice
41 of such dismissal.

42 If the commissioner shall determine after such investigation and no more than 365 days
43 from receipt of the complaint, that probable cause exists for crediting the allegations of any
44 complaint, the commissioner may allow for limited discovery provided that, based on traditional
45 rules of evidence, discovery orders be issued or denied within 30 days of request by the
46 investigative officer and provided that the investigative officer state in writing the reasons why
47 discovery will materially benefit resolution of the complaint, both parties will be given a 90 day
48 discovery period. Both parties will submit a pre-determination memorandum of fact and law 30
49 days after close of the discovery period.

50 At the close of the discovery period, the commission must consider summary judgment
51 motions and if accepted, the commission will dismiss the complaint and notify in writing both
52 parties and their attorneys of their right to elect judicial determination of the complaint. The
53 person making such an election shall give notice of such election to the commission and to all
54 other parties and their attorneys. The commission shall establish rules of practice for removing a
55 case to federal or state court. If a motion for summary judgment is denied, the commission will
56 determine the reasonable likelihood of success of prevailing prior to certifying the complaint for
57 a public hearing.

58 All interested parties must attend all scheduled conferences and hearings. If a party fails
59 to attend, except where there is a showing of good cause, that party will be defaulted. The
60 testimony taken at hearings and conferences shall be under oath and transcribed at the request of
61 any party.

62 If, upon all the evidence at the public hearing, the commission shall find that a
63 respondent has engaged in any unlawful practice as defined above, the commission shall state its
64 findings of fact and shall issue and cause to be served on such respondent an order requiring such
65 respondent to cease and desist from such unlawful practice and will take such affirmative action
66 including but not limited to, hiring, reinstatement, or upgrading of employees, with or without
67 back pay, or restoration to membership in any respondent labor organization, as, in the judgment
68 of the commission, will effectuate the purposes of this chapter. Such cease and desist orders and
69 orders for affirmative relief may be issued to operate prospectively. In addition to any such
70 relief, the commission shall award reasonable attorney fee and costs to any prevailing
71 complainant.

72 If, upon all the evidence, the commission shall find that a respondent has not engaged in
73 any such unlawful practice, the commission shall state its findings of fact and shall issue and
74 cause to be served on the complainant an order dismissing the said complaint as to such
75 respondent.

76 SECTION 4. Section 9 of said chapter 151B is hereby amended by adding, in line 19,
77 after the word "commission," the following:- "Or the respondent to a complaint"