

SENATE No. 1688

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to restore enforcement of civil rights..

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 11 of Chapter 12 of the General Laws, as appearing in the
2 2002 Official Edition, is hereby amended by inserting a new section
3 11M as follows:—

4 (a) No unit of State, county, or local government shall:—

5 (1) exclude a person from participation in, deny a person the benefits
6 of, or otherwise subject a person to discrimination in any program or
7 activity on the grounds of that person’s race, color, national origin, or sex; or

8 (2) utilize criteria or methods of administration that have the effect of excluding persons
9 from participation in, denying persons the benefits of, or otherwise subjecting persons to
10 discrimination in any program or activity because of their race, color, national origin, or sex.

11 (b) Any person aggrieved by conduct that violates subsection (a)

12 may bring a civil lawsuit, in a State court, against the offending unit
13 of government. This lawsuit must be brought not later than 3 years
14 after the violation of subsection (a). A violation of this section is
15 established if, based on the totality of the circumstances, it is shown
16 that any individual has been denied any of the rights protected by
17 subsection (a). If the court finds that a violation of paragraph (1) of
18 subsection (a) has occurred, the court may award to the plaintiff
19 actual and punitive damages and if the court finds that a violation of
20 paragraph (2) of subsection (a) has occurred, the court may award to
21 the plaintiff actual damages. The court, as it deems appropriate, may
22 grant as relief any permanent or preliminary injunction, temporary
23 restraining order, or other order.

24 (c) Upon motion, a court shall award reasonable attorneys' fees
25 and costs, including expert witness fees and other litigation
26 expenses, to a plaintiff who is a prevailing party in any action
27 brought:—

28 (1) pursuant to subsection (b); or

29 (2) to enforce a right arising under the Massachusetts Constitution.

30 In awarding reasonable attorneys' fees, the court shall consider

31 the degree to which the relief obtained relates to the relief sought.

32 (d) For the purpose of this Act, the term "prevailing party"

33 includes any party:—

34 (1) who obtains some of his or her requested relief through a judicial

35 judgment in his or her favor;

36 (2) who obtains some of his or her requested relief through any

37 settlement agreement approved by the court; or

38 (3) whose pursuit of a non-frivolous claim was a catalyst for a

39 unilateral change in position by the unit of State, county, or local government relative to

40 the relief sought.

41 (e) Nothing in this section shall be intended to require a plaintiff

42 seeking to enforce the protection afforded herein to exhaust any

43 administrative remedies applicable to discrimination actions under

44 other laws.