HOUSE DOCKET, NO. 1962 FILED ON: 1/20/2011

HOUSE . . . . . No. 1739

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Massachusetts Commission Against Discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	*1st Essex*

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HOUSE . . . . . No. 1739

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 1739) of Michael A. Costello relative to the Massachusetts Commission Against Discrimination. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Section 2 of Chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding after the word "purposes" in line 4 the following:-

", provided that Commission policies are subjected to public review in draft form for ninety (90) days prior to final adoption"

SECTION 2. Section 3 of Chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby further amended by adding to the end of paragraph (5), prior to the period the following:-

" , provided that Commission policies and practices are subjected to public review in draft form for ninety (90) days prior to final adoption"

SECTION 3. Section 5 of chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof the following paragraph:--

12 In the case of a public hearing in an employment discrimination matter that was held
13 prior to May 6, 2004, and where the parties to the public hearing have not yet exhausted all
14 avenues of judicial review, remand or appeal available under chapter 30A of the General Laws,
15 or otherwise entered into a binding resolution of the matter, the commissioner shall immediately
16 serve notice upon a complainant and respondent of their right to elect judicial determination of
17 the complaint. Upon notification, if a complainant or respondent wishes to elect judicial
18 determination, they shall do so in writing within 20 days of receipt of the notice. The person
19 making the election shall give notice of the election to the commission and to all other
20 complainants and respondents to whom the probable cause finding relates. The commission,
21 upon receipt of the notice, shall dismiss the complaint filed and/or vacate the finding of the
22 commission arising out of the public hearing as to all parties without prejudice and the
23 complainant shall be barred from subsequently bringing a complaint on the same matter before
24 the commission. If any complainant or respondent elects judicial determination, the commission
25 shall authorize, and not later than 30 days after the election is made the complainant, through
26 counsel, or the attorney general, in the case of an unrepresented complainant, to commence and
27 maintain, a civil action on behalf of the complainant in the superior court for the county in which
28 the unlawful practice occurred. The complainant may intervene as of right in the civil action.
29 Any party to any civil action shall be entitled to a trial by jury, if so elected.

30 SECTION 4. Chapter 151B of the General Laws, as appearing, is hereby further
31 amended by adding the following new section:-

32 Section 5A. Notwithstanding the provisions in Section 5, any person claiming to be
33 aggrieved by an alleged unlawful practice by an employer or labor organization or employment
34 agency because of race, color, religious creed, national origin, sex, sexual orientation, ancestry,

35 age, or handicap to refuse to hire or employ or to bar or to discharge from employment such
36 person or to discriminate against such person in compensation or in terms, conditions, or
37 privileges of employment, unless based upon a bona fide occupational qualification as specified
38 in section four 1, 1A, 1B, 2, 3, 4, 4A, 5, 9, 9A, 11A, 16, 16A may, by himself or his attorney,
39 make, sign and file with the commission a verified complaint in writing which shall state the
40 name and address of the person, employer, labor organization or employment agency alleged to
41 have committed the unlawful practice complained of, the prima facie case as alleged and contain
42 other such information as may be required by the commission, provided the complaint is
43 accompanied by a $250.00 filing fee, which may be waived or refunded by the commission in
44 emergency situations or where proof of inability to pay is presented.

45 After the filing of the complaint, the commissioner shall cause to be issued and served in
46 the name of the commission, a written notice, together with a copy of such complaint, as the
47 same may have been amended, requiring the person, employer, labor organization, or
48 employment agency named in such complaint, hereinafter referred to as the respondent, to
49 answer the charges and state its position regarding such complaint in writing within 45 days of
50 receipt of the written notice. Within five days of the commission's receipt of the respondent's
51 position statement, the chairman of the commission shall designate an investigative officer to
52 make a prompt investigation in connection therewith, including a scheduling of an investigative
53 conference within 90 days from receipt of respondent's position statement and if it is not so held
54 within 90 days, or the complainant fails to attend the investigative conference, the complaint is
55 dismissed, unless good cause is shown for the absence. If an attorney represents either the
56 complainant or the respondent, the investigative officer will also be an attorney with the
57 commission.

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

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

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

79 All interested partied must attend all scheduled conferences and hearings. If a party fails
80 to attend, except where there is a showing of good cause, that party will be defaulted. The
81 testimony taken at hearings and conferences shall be under oath and transcribed at the request of
82 any party.

83 If, upon all the evidence at the public hearing, the commission shall find that a
84 respondent has engaged in any unlawful practice as defined above, the commission shall state its
85 findings of fact and shall issue and cause to be served on such respondent an order requiring such
86 respondent to cease and desist form such unlawful practice and will take such affirmative action
87 including but not limited to, hiring, reinstatement, or upgrading of employees, with or without
88 back pay, or restoration to membership in any respondent labor organization, as, in the judgment
89 of the commission, will effectuate the purposes of his chapter. Such cease and desist orders and
90 orders for affirmative relief may be issued to operate prospectively. In addition to any such
91 relief, the commission shall award reasonable attorney fee and costs to any prevailing
92 complainant.

93 If, upon all the evidence, the commission shall find that a respondent has not engage in
94 any such unlawful practice, the commission shall state its findings of fact and shall issue and
95 cause to be served on the complainant an order dismissing the said complaint as to such
96 respondent.

97 SECTION 5. Section 9 of Chapter 151B of the General Laws, as appearing in the 2008
98 Official Edition, is hereby further amended by adding in line 19, following "commission," the
99 following:

100 " or the respondent to a complaint"