

# HOUSE . . . . . No. 1865

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Denise Provost and Patricia D. Jehlen***

*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 affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/21/2011</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/1/2011</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>2/1/2011</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/3/2011</i>
<i>James B. Eldridge</i>		<i>2/4/2011</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>2/4/2011</i>
<i>Patricia D. Jehlen</i>		<i>2/3/2011</i>

# HOUSE . . . . . No. 1865

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By Representative Provost of Somerville and Senator Jehlen, a joint petition (accompanied by bill, House, No. 1865) of Denise Provost, Patricia D. Jehlen and others for the inclusion of individuals with disabilities within civil rights protections and nondiscrimination protections and for an investigation by a special commission (including members of the General Court) of the status of individuals and families with disabilities. Children, Families and Persons with Disabilities.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

*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 66 of chapter 3 of the General Laws, as so appearing in the Official  
2 Edition of 2008, is hereby amended in line 4 by inserting after the word, “age” the following:-

3                   disability,

4           And, in section 67 by inserting in line 12 after the word, “age”, the following:-

5                   disability,

6           SECTION 2. Section 3 of chapter 15D of the General Laws, as so appearing in the  
7 Official Edition of 2008, is hereby amended by inserting after the word, “racial”, the following:-

8                   disability,

9 And, in section 5, deleting in clause (9) the words “and cultural”, and inserting it its place  
10 the following:-

11 cultural and disabilities

12 SECTION 3. Section 58 of chapter 7 of the General Laws, as so appearing in the Official  
13 Edition of 2008, is hereby amended in the definition of “Minority business enterprise,” by  
14 inserting after the word, “racial”, the following:-

15 disability,

16 SECTION 4. Section 1E of chapter 69 of the General Laws, as so appearing in the  
17 Official Edition of 2008, is hereby amended by deleting in line 1 of paragraph 2 the words “or  
18 racial” and inserting in their place the following:-

19 racial, disability and age

20 And, by deleting line 2 of paragraph 2 in its entirety, and inserting it is place the  
21 following:-

22 The frameworks shall reflect sensitivity to the variety of learning styles and diverse  
23 methods of learning.

24 SECTION 5. Section 5 of chapter 76 of the General Laws, as so appearing in the Official  
25 Edition of 2008, is hereby amended in line 6 of clause 4(j) by inserting after the word  
26 “performance”, the following:-

27 disability

And, in section 12B by deleting in line 6 of paragraph 4(j) the words “physical handicap” and inserting in its place thereof the following:-

disability

SECTION 6. Section 13A of chapter 90 of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended by deleting clause(c) and inserting in its place a new clause (c) as follows:-

(c) any person who is physically unable to use safety belts; provided, however, that such condition is duly certified by a Massachusetts registered and licensed doctor, chiropractor, or nurse practitioner who shall describe why such restraint is inappropriate; and provided that no such physician shall be subject to liability in any civil action for the issuance or for the failure to issue such certificate; and provided further that wheelchair-using passengers shall be seated forward-facing and secured with properly installed and maintained wheelchair tiedown and occupant restraint system.

SECTION 7. Section 87AAA of chapter 112 of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended by inserting in line 28 of clause (k) after the word “level”, the following:-

age, disabilities, sexual orientation, gender identity,

SECTION 8. Section 1 of chapter 121B, of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended by inserting after the sentence of the definition “Handicapped persons of low income”, the following:-

“Handicapped persons of low income” shall have the same meaning as

"individuals with disabilities with low income" and "disabled persons with low income"; persons whose annual net income is less than the amount necessary to enable them to maintain decent, safe and sanitary housing, as defined by 24CFR9.103.

And, section 32 of chapter 121B is amended in clause (e) of paragraph 3 by deleting the words "or physical handicap", and inserting in place thereof the following:-

disability, sexual orientation and gender identity

Additionally, section 32 of chapter 121B is amended in subclause (f) (3) of paragraph 3 by inserting after the word "sanitary", the following:-

and architectural access

SECTION 9. The title of chapter 151B of the General Laws, as appearing in the Official Edition of 2008, is hereby amended by deleting the words "OR SEX" and inserting in place thereof the following:-

, SEX OR DISABILITY

And, in section 1 of chapter 151B by inserting after definition 23 the following:-

The term "accessible dwelling unit", means an addaptable or accessible unit that is on an accessible route and otherwise in compliance with the standards set forth in 521CMR.

And, by deleting definition 17 in section 1 of chapter 151B and inserting in its place the following:-

68           The term "disability" means a physical or mental impairment that substantially limits one  
69   or more major life activities without regard to the ameliorative effects of mitigating measures  
70   which do not include ordinary eyeglasses or contact lenses. "Handicap" means the same as  
71   "disability."

72           And, by deleting definition 19 in section 1 of chapter 151B and inserting in its place the  
73   following:-

74           The term "person with a disability" means a person who has such impairment, a record of  
75   such impairment, or is regarded as having such impairment.

76           Moreover, by deleting definition 16 in section 1 of chapter 151B and inserting in its place  
77   the following:-

78           The term "qualified handicapped person" means a person with a disability who is capable  
79   of performing the essential functions of a particular job with or without reasonable  
80   accommodations.

81           And, in subsection 6 of section 3 of chapter 151B by striking out the word "handicap" in  
82   line 21 and inserting in place thereof the following:-

83           disability

84           And, by deleting, in line 22 of chapter 151B, the words "handicapped person" and  
85   inserting in its place the following:-

86           person with a disability

87 And, by deleting, in line 54 of chapter 151B, the words “handicapped persons” and  
88 inserting in place thereof the following:-

89 individuals with disabilities

90 And, by inserting in line 63 of chapter 151B after the word “ancestry” the following:-  
91 or disability.

92 And, by inserting on line 82 of chapter 151B, after the word “level” the following:-  
93 or disability.

94 Moreover, in section 4 of chapter 151B by striking out on line 5 the words “or ancestry”  
95 and inserting in place thereof the following:-

96 ancestry or disability

97 And, by deleting on lines 71-72 of section 4 of chapter 151B, the words starting from “or  
98 ancestry of any individual” through “person” and inserting in place thereof the following:-

99 ancestry, or disability

100 And, by deleting on lines 84-85 and 88-89 in section 4 of chapter 151B, the words “the  
101 handicap of a qualified person” and inserting in both places the following:-

102 disability

103 Furthermore, by deleting on line 98 in section 4 of chapter 151B, the words or ancestry”  
104 and inserting in place thereof the following:-

105 ancestry or disability

106 And, by deleting on line 139 of section 4 of chapter 151B, the word “handicap” and  
107 inserting in place thereof the following:-

108 disability

109 And, on lines 165, 171 and 181 of section 4 of chapter 151B, by inserting after the word  
110 “ancestry” the following:-

111 disability

112 And, by deleting in lines 166-167, 172-173, and 183-184 of section 4 of chapter 151B the  
113 words “or because such person is blind, or hearing impaired or has any other handicap” and  
114 inserting in their place the following:-

115 disability

116 Furthermore, by deleting in lines 229-230, 236-237, and 246 of section 4 of chapter 151B  
117 the words “blindness, or hearing impairment or other handicap” and inserting in its place the  
118 following:-

119 disability

120 And, by deleting in lines 230-231, 237-238, and 247-248 of section 4 chapter 151B the  
121 words “possesses a trained dog guide as a consequence of blindness or hearing impairment” and  
122 inserting in its place the following:-

123 utilizes a service animal as a consequence of a disability

124 And, in line 266 of subsection 7A of section 4 of chapter 151B, by deleting the word  
125 “handicap” and inserting in place thereof the following:-



126                   disability

127           And, in line 267-268 of subclause (1) of subsection 7A of section 4 of chapter 151B by  
128 deleting the words “handicapped person” and inserting in its place the following:-

129           individual with a disability

130           And by inserting in line 270 of subsection 7A of section 4 of chapter 151B, after the word  
131 “enjoyment” the following:-

132           and equal use

133           And, in line 278 of subsection 7A of section 4 of chapter 151B, by deleting the words  
134 “handicapped person” and inserting in its place the following:-

135           tenant

136           And, in line 285 of clause (2) of subsection 7A of section 4 of chapter 151B, by deleting  
137 the words “a handicapped person equal opportunity to use and enjoy a dwelling” and inserting in  
138 place thereof the following:-

139           individual with a disability equal opportunity to use all elements including common areas  
140 of such a dwelling;

141           Moreover, in line 288 of clause (3) of subsection 7A of section 4 of chapter 151B, by  
142 inserting after the word “for” the following:-

143           an accessible dwelling unit, including through

144           And in line 293 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting  
145 after the word “cabinet” the following:-

146           ensuring the entrance is on an accessible route

147           And in line 296 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting  
148 after the word “lift” the following:-

149           , unless the request for modifications is in connection with a building which (1) has three  
150 or more units and was constructed for first occupancy after March thirteenth, nineteen hundred  
151 and ninety-one.

152           And, in line 316 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting  
153 after the word “subsection” the following:-

154           It shall be the owner's burden to prove undue hardship. Notwithstanding any other  
155 provisions of this subsection, an accommodation or modification which is paid for by the owner  
156 or other person having the right of ownership is considered reasonable if it is requested by an  
157 individual with a disability in order to afford such person full enjoyment of the premises; and if  
158 such architectural or communications features were otherwise mandated by Federal and State  
159 architectural accessibility code at the time of construction or rehabilitation.

160           And, in line 317 of clause (3) of subsection 7A of section 4 of chapter 151B, by deleting  
161 the words “wheelchair accessible” and inserting in place thereof the following:-

162           an accessible dwelling unit

163           And, by deleting in line 331 of clause (3) of subsection 7A of section 4 of chapter 151B,  
164 the words “handicap-accessible” and inserting in place thereof the following:-

165 accessible or adaptable.

166 Moreover, by deleting in line 342 of subsection 7B of section 4 of chapter 151B, the  
167 word “handicap”, and inserting in place thereof the following:-

168 disability

169 And, in lines 351, 355, and 362 of subsection 8 of section 4 of chapter 151B, by deleting  
170 the word “handicap” and inserting in place thereof the following:-

171 disability

172 And, by deleting subsection 9A of section 4 of chapter 151B in its entirety and inserting  
173 in place thereof the following:-

174 9A. For an employer himself or through his agent to refuse, unless based upon a bonafide  
175 occupational qualification, to hire or employ or to bar or discharge from employment any person  
176 by reason of his or her failure to furnish information regarding his or her admission, on one or  
177 more occasions, voluntarily or involuntarily, to any public or private facility for the care and  
178 treatment of mentally ill persons, provided that such person can prove that he is mentally  
179 competent to perform the job or the job for which he is applying. No application for employment  
180 shall contain any questions or requests for information regarding the admission of an applicant,  
181 on one or more occasions, voluntarily or involuntarily, to any public or private facility for the  
182 care and treatment of mentally ill persons.

183 And, by deleting in line 475 of subsection 11 of section 4 of chapter 151B, the words “a  
184 handicapped person” and inserting in place thereof the following:-

185 disability

186 And by inserting in line 484 in clause (b) of subsection 13 of section 4 of chapter 151B,  
187 after the word "sex," the following:-

188 gender identity or expression,

189 And by deleting on line 485 in clause (b) of subsection 13 of section 4 of chapter 151B,  
190 the words "handicapped person" and inserting in place thereof the following:-

191 disability

192 SECTION 10. Section 92A of chapter 272 of the General Laws, as so appearing in the  
193 Official Edition of 2008, is hereby amended by inserting after the word "disability" on line 12  
194 the following:-

195 , age,

196 SECTION 11. Section 98 of chapter 272 of the General Laws, as so appearing in the  
197 Official Edition of 2008, is hereby amended by inserting after the word "disability" on line 5 the  
198 following:-

199 , age,

200 And, in the title of section 98A of chapter 272 by deleting the phrase "Physically  
201 handicapped persons with dog guides" and inserting in place thereof the following:-

202 individual with disabilities accompanied by their service animal

203 And, in section 98A of chapter 272, by deleting the entire section and inserting in place  
204 thereof the following:-

Notwithstanding any other provision of law, any individual with one or more disabilities accompanied by their service animal, shall be entitled to any and all accommodations, advantages, facilities and privileges of all public conveyances, public amusements and places of public accommodation, within the commonwealth, to which persons not accompanied by service animals are entitled, subject only to the conditions and limitations applicable to all persons not accompanied by service animals, and no such individual with one or more disabilities shall be required to pay any charge or fare for or on account of the transportation on any public conveyance for himself or herself and their accompanying service animal in addition to the charge or fare lawfully chargeable for his/her own transportation. Whoever deprives any individuals with one or more disabilities of any right conferred by this section shall be punished by a fine of not more than three hundred dollars and shall be liable to any person aggrieved thereby for such damages as are set forth in section five of chapter one hundred and fifty-one B; provided, however, that such civic forfeiture shall be of an amount not less than one hundred dollars.

SECTION 12. Section 98B of chapter 272 of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended on line 3 by inserting after the word "religion" the following:-

disability

SECTION 13. Chapter 3, of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended by adding after section 69 the following new section, section 70 as follows:-

Section 70. Commission on the status of individuals and families with disabilities

227           (1)     There shall be established a permanent commission on the status of individuals  
228     and families with disabilities comprised of 17 persons including; 1 person appointed by the  
229     president of the senate; 1 person appointed by the speaker of the house of representatives; and  
230     the following persons appointed by the governor: 1 person nominated by the joint committee on  
231     children, families and persons with disabilities; 6 persons nominated by local and regional  
232     disability rights organizations; 1 person nominated by the architectural access board; 1 person  
233     nominated by the Massachusetts office on disability; and 6 persons from among the following  
234     industries: communications, education, architecture, assistive technologies, arts and engineering  
235     who have demonstrated competence in universal or inclusive design within their respective  
236     industries.

237           (2)     Members of the commission shall be drawn from diverse racial, ethnic, religious,  
238     age, disability, sexual orientation, gender identity and expression, and socio-economic  
239     backgrounds from throughout the commonwealth and shall have had experience working toward  
240     the improvement of the status of individuals with disabilities in society. Members shall be  
241     subject to the provisions of chapter 268A as they apply to special state employees.

242           The commission shall be an independent agency of the government of the  
243           commonwealth and shall not be subject to the control of any other department or  
244           agency.

245           (3)(a) Members shall serve terms of three years and until their successors are appointed.

246           (b) Vacancies in the membership of the commission shall be filled by the original  
247     appointing or nominating authority for the balance of the unexpired term. If the position was

248 filled by a nominating body, the replacement member shall be selected from solicited  
249 nominations.

250 (c) Nominations shall be solicited between January 1 and February 15 of each year  
251 through an open application process using a uniform application that is widely distributed  
252 throughout the state. Appointments will be announced on April 1 of each year.

253 (d) The commission shall elect from among its members a chair, a vice-chair, a treasurer  
254 and any other officers it deems necessary.

255 (e) An executive director shall be selected by the commission, and shall hire staff,  
256 subject to appropriations. The executive director shall be qualified by his or her  
257 accomplishments in eradicating barriers to equality for individuals and families with disabilities,  
258 in organizing research and reports, and by having demonstrated leadership. The executive  
259 director shall not simultaneously serve as a member of the commission on the status of  
260 individuals and families with disabilities.

261 (f) The members of the commission shall receive no compensation for their services, but  
262 shall be reimbursed for any usual and customary expenses incurred in the performance of their  
263 duties.

264 (3) The commission shall work to foster strategic integration of disability diversity within  
265 all sectors of the Commonwealth; collect data relevant to short and long-term community  
266 support and independent living service delivery programs; continuously monitor and evaluate  
267 plans, programs and policies relevant to equalizing access to justice as well as assets and  
268 opportunities for minorities; and provide an annual report with recommendations including, but

not limited to; (a) tools and guidelines; (b) specific disability benchmarking goals and objectives;(c) necessary legislation, if any; and (d) mechanisms and processes.

(4) The commission shall: (a) study, review and report on the status of individuals with disabilities in the commonwealth; (b) evaluate baseline conditions of accessibility and integration throughout the Commonwealth and propose benchmarks, data collection improvements and indicators to further the equal inclusion of individuals with disabilities in economic, housing and environmental programs; (c) establish an informal resource group to provide and support a platform of dialogue and feedback amongst program users and planners; (d) inform leaders of business, education, health care, state and local governments and the communications media of issues pertaining to individuals with disabilities; (e) identify and recommend qualified individuals with disabilities for appointive positions at all levels of government, including boards and commissions, as the commission deems necessary and appropriate; (f) assess programs and practices in all state agencies as they affect individuals with disabilities, as the commission deems necessary and appropriate; (g) advise executive and legislative bodies regarding the impact of proposed legislation on individuals with disabilities, as the commission deems necessary and appropriate; and, (h) promote and facilitate collaboration among local disabilities commissions and among disability rights advocacy organizations in the state, as the commission deems necessary and appropriate. The commission shall annually, on or before June 2, report the results of its findings and activities of the preceding year and its recommendations to the governor, the senate and house committees on ways and means, the clerks of the senate and house of representatives, and the joint committee on children, families and persons with disabilities.



(5) The powers of the commission shall include but not be limited to the following: (a) to use such voluntary and uncompensated services of private individuals, agencies and organizations as may from time to time be offered and needed; (b) to recommend policies and make recommendations to agencies and officers of the state and local subdivisions of government to effectuate the purposes of subsection (3); (c) to select an executive director and to acquire adequate staff to perform its duties, subject to appropriation; (d) to establish and maintain such offices as it may deem necessary, subject to appropriation; (e) to enact bylaws for its own governance; (f) to appoint members to regional chapters of the commission; and (g) to hold regular, public meetings and fact-finding hearings and other public forums as it may deem necessary.

(6) The commission shall meet once a month for at least eleven months each year. The (i) governor, (ii) president of the senate, (iii) speaker of the house of representatives, (iv) chairs of the joint committee on children, families and persons with disabilities and (v) directors of the state disability offices and commissions, or their designees, shall be invited to attend the monthly meetings.

(7)(a) The commission may request from all state agencies such information and assistance as the commission may require.

(b) The commission may accept and solicit funds, including any gifts, donations, grants or bequests or any federal funds, for any of the purposes of this section. Such funds shall be deposited in a separate account with the state treasurer, be received by said treasurer on behalf of the commonwealth, and be expended by the commission in accordance with law.