

SENATE No. 983

The Commonwealth of Massachusetts

PRESENTED BY:

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 to establish pay equity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Patricia D. Jehlen	Second Middlesex
Karen E. Spilka	Second Middlesex and Norfolk
Harriette L. Chandler	First Worcester
Jay D. Livingstone	8th Suffolk
Anne M. Gobi	Worcester, Hampden, Hampshire and Middlesex
Michael J. Barrett	Third Middlesex
Cory Atkins	14th Middlesex
Ruth B. Balsler	12th Middlesex
Benjamin Swan	11th Hampden
Thomas M. McGee	Third Essex
Jason M. Lewis	Fifth Middlesex
Tricia Farley-Bouvier	3rd Berkshire
Lori A. Ehrlich	8th Essex
Mary S. Keefe	15th Worcester
Daniel A. Wolf	Cape and Islands
Danielle W. Gregoire	4th Middlesex
Eileen M. Donoghue	First Middlesex

<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>	
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	
<i>James J. O'Day</i>	<i>14th Worcester</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>	
<i>Diana DiZoglio</i>	<i>14th Essex</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	
<i>Thomas P. Kennedy</i>	<i>Second Plymouth and Bristol</i>	<i>3/4/2015</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>	<i>4/2/2015</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>4/14/2015</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>	<i>4/21/2015</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>4/23/2015</i>
<i>Eric P. Lesser</i>	<i>First Hampden and Hampshire</i>	<i>4/23/2015</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	<i>4/27/2015</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>7/15/2015</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>7/15/2015</i>

SENATE No. 983

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 983) of Patricia D. Jehlen, Karen E. Spilka, Harriette L. Chandler, Jay D. Livingstone and other members of the General Court for legislation to establish pay equity. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to establish pay equity.

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: Chapter 149 of the General Laws is hereby amended by striking out section
2 105A and inserting in place thereof the following section:-

3 “Section 105A: (a) No employer shall discriminate on the basis of gender in any way
4 in the payment of wages, benefits or other compensation, or pay any person in its employ wages,
5 benefits or other compensation less than it pays to employees of the opposite gender for work of
6 like or comparable character or work on like or comparable operations; provided, however, that
7 variations in wages, benefits or other compensation shall not be prohibited when based upon a
8 difference in seniority. In any action brought under this section, the comparability of two
9 positions shall be solely based on whether the two positions entail comparable skill, effort,
10 responsibility and working conditions between employees of the opposite gender. An employer
11 who is paying a wage differential in violation of Section 105A shall not, in order to comply with
12 the provisions of Section 105A, reduce the pay of any employee. Nothing in this section shall be

13 construed to affect any bargaining agreement or company policy which provides for greater or
14 additional wages, benefits or other compensation than those required under this section.

15 (b) It shall be an unlawful practice for an employer to:

16 (1) Require, as a condition of employment, that an employee refrain from disclosing,
17 discussing, or sharing information about the amount of his or her wages, benefits or other
18 compensation, or from inquiring, discussing or sharing information about any other employee's
19 wages, benefits or other compensation.

20 (2) Require an employee to sign a waiver or other document that denies the employee the
21 right to disclose the amount of his or her wages, benefits or other compensation or to inquire
22 about, discuss or share information about any other employee's wages, benefits or other
23 compensation.

24 (3) Discharge, formally discipline, or otherwise discriminate against an employee
25 because the employee:

26 (i) has opposed any act or practice that is prohibited under this chapter or asserted a right
27 that is protected under this chapter;

28 (ii) has lodged a complaint or has testified, assisted, or participated in any manner in an
29 informal or formal investigation of prohibited acts or practices;

30 (iii) is known by the employer to be about to lodge a complaint, testify, assist, or
31 participate in any manner in an informal or formal investigation of prohibited acts or practices;

32 (iv) has disclosed his or her wages, benefits or other compensation or has inquired about
33 or discussed the wages, benefits or other compensation of any other employee; or

34 (v) is believed by the employer to have acted as described in subdivisions (i) through (iv)
35 of this subparagraph.

36 Unless otherwise required by law, an employer may prohibit a human resources
37 employee from disclosing the wages of any employee to another employee. Employers may not
38 disclose the salary of any individual employee unless required by law or with the written
39 permission of the employee whose salary is to be disclosed.

40 (c) Employers must post a notice in their workplace in a space where employees
41 congregate and can clearly see it, in a font of no less than 24. Such a notice will state:

42 In Massachusetts, it shall be an unlawful practice for an employer to:

43 (1) Require, as a condition of employment, that an employee refrain from disclosing,
44 discussing, or sharing information about the amount of his or her wages, benefits or other
45 compensation, or from inquiring, discussing or sharing information about any other employee's
46 wages, benefits or other compensation.

47 (2) Require an employee to sign a waiver or other document that denies the employee the
48 right to disclose the amount of his or her wages, benefits or other compensation or to inquire
49 about, discuss or share information about any other employee's wages, benefits or other
50 compensation.

51 (3) Discharge, formally discipline, or otherwise discriminate against an employee
52 because the employee:

53 (i) has opposed any act or practice that is prohibited under this chapter or asserted a right
54 that is protected under this chapter;

55 (ii) has lodged a complaint or has testified, assisted, or participated in any manner in an
56 informal or formal investigation of prohibited acts or practices;

57 (iii) is known by the employer to be about to lodge a complaint, testify, assist, or
58 participate in any manner in an informal or formal investigation of prohibited acts or practices;

59 (iv) has disclosed his or her wages, benefits or other compensation or has inquired about
60 or discussed the wages, benefits or other compensation of any other employee; or

61 (v) is believed by the employer to have acted as described in subdivisions (i) through (iv)
62 of this subparagraph.

63 (d) Any employer who violates any provision of this section shall be liable to the
64 employee or employees affected in the amount of their unpaid wages, benefits or other
65 compensation, and in an additional equal amount of liquidated damages. An action to recover
66 such liability may be maintained in any court of competent jurisdiction by any one or more
67 employees for and on behalf of such employee or employees and other employees similarly
68 situated. Any agreement between the employer and any such employee to work for less than the
69 wages, benefits or other compensation to which such employee is entitled under this section shall
70 be no defense to such action. The court in such action shall, in addition to any judgment awarded
71 to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and the
72 costs of the action. Attorneys' fees can be awarded under this subparagraph in the absence of
73 compensatory damages. At the request of any employee paid less than the wages, benefits or
74 other compensation to which the employee is entitled under this section, the attorney general
75 may take an assignment of such wage claim in trust for the assigning employee and may bring
76 legal action necessary to collect such claim, and the employer shall be required to pay an

77 additional equal amount of liquidated damages, together with the costs of the action and such
78 reasonable attorney's fee as may be allowed by the court. The attorney general shall not be
79 required to pay any filing fee, or other costs, in connection with such action. The attorney
80 general may join various claimants against the employer in one cause of action. Any action
81 based upon or arising under sections 105A to 105C, inclusive, shall be instituted within 3 years
82 after the date of the alleged violation.

83 (e) (1) An employer, charged under this section with unlawful discrimination by an
84 employee who holds a job predominantly occupied by members of one gender (as defined
85 below), who has completed a self-evaluation that meets the standards set forth in subsection (5),
86 and who can also make an affirmative showing that progress has been made towards removing or
87 preventing wage differentials based on gender, in accordance with that evaluation, including
88 implementing any required remediation plan, shall be entitled to a rebuttable presumption that
89 the employer has not engaged in gender discrimination in violation of this section.

90 (2) In such cases, the court must give the aggrieved party an opportunity to rebut this
91 presumption through evidence that reasonably demonstrates that, notwithstanding the employer's
92 self-evaluation, the employer has violated this Section. In meeting the burden of overcoming
93 this presumption the aggrieved party may provide all relevant information including, but not
94 limited to, evidence that:

95 (i) the employer's job analysis devalues attributes associated with jobs occupied
96 predominantly by members of one gender and/or over values attributes associated with jobs
97 occupied predominantly by members of the other gender;

98 (ii) notwithstanding non-discriminatory basic pay rates, periodic raises, bonuses,
99 incentive payments, or other forms of remuneration differ between jobs occupied predominantly
100 by members of one gender;

101 (iii) the job the aggrieved party occupies was not adequately evaluated; or

102 (iv) a job evaluation process has been completed and, if necessary, a remediation process
103 is in progress or has been completed, but the self-evaluation has not been reviewed and updated
104 at reasonable intervals to adjust for changes in the work environment over time.

105 (3) An employer wishing to avail itself of this presumption must produce documentation
106 describing the self-evaluation process in the detail necessary to show that it has met the standards
107 under subsection (5).

108 (4) A job occupied predominantly by members of one gender means that at least 75
109 percent of the occupants of the job are of the same gender.

110 (5) In order to be eligible for the presumption of compliance, the self-evaluation must:

111 (i) clearly define the employer's establishment (meaning industrial or commercial facility
112 or place of business);

113 (ii) analyze the employee population to identify possible areas of pay discrimination;

114 (iii) establish a job evaluation plan as a means of determining the value of jobs within the
115 establishment. The plan must:

116 a. be free of any gender bias;

117 b. allow for the comparison of all jobs; and

118 c. fully and accurately measure the skill, effort, responsibility, and working conditions of
119 each job based on the actual work performance requirements of the jobs evaluated;

120 (iv) apply the job evaluation plan to all or a significant sample of jobs, focusing on those
121 that are predominantly occupied by one gender;

122 (v) create a salary structure or have an identifying salary group system where jobs of
123 equal value are placed in the same level or grouping;

124 (vi) determine for each salary grouping or for each total job evaluation score the base pay
125 differential between jobs that are predominantly occupied by one gender to other jobs, including
126 those predominantly occupied by the other gender, in order to identify any wage rate
127 discrimination; and

128 (vii) remedy any base pay differential identified in subsection (vi). In order to meet this
129 standard, such remediation may not reduce the pay of any employee or class of employees.

130 The presumption of compliance may be strengthened where, throughout the self-
131 evaluation, including any needed remediation, the employer maintains communication with and
132 keeps employees apprised of the process. The method and procedure for that communication
133 may vary according to the size and organizational structure of the establishment. However, any
134 method or procedure chosen should be adequate to reach all employees at the establishment.

135 (f) The Attorney General may issue regulations to interpret and apply the provisions of
136 section 105A.”

137 SECTION 2: Section 4 of Chapter 151B of the General Laws is hereby amended by
138 inserting after subsection 19, the following subsections:-

139 “(20) For an employer, personally or through an agent, to publish, list, or post, publicly or
140 within the organization; or publish, list, or post with any employment agency, job-listing service,
141 or website an advertisement to recruit candidates for hire or independent contractors to fill a
142 position within the organization without including the minimum rate of pay whether paid by the
143 hour, shift, day, week, salary, piece, commission, or other; including overtime; with allowances,
144 if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances. In
145 addition, no employer shall pay wages for the position less than what were advertised.

146 (21) For an employer to refuse to comply with the provisions of section 105A(b) of
147 chapter 149. A violation of section 105A(b) of chapter 149 is a violation of this section.

148 (22) (a) For a current or prospective employer, personally or through an agent, to seek
149 salary history information, including but not limited to compensation and benefits, from the
150 potential employee for an interview or as a condition of employment; or (b) for an employer to
151 release the salary history of any current or former employee to any prospective employer in
152 response to a request as part of an interview or hiring process without written authorization from
153 such current or former employee.”

154 SECTION 3: Section 5 of Chapter 151B of the General Laws is hereby amended by
155 inserting at the end thereof the following sentence:-

156 “Attorneys’ fees can be awarded under this section in the absence of compensatory
157 damages.”

158 SECTION 4: Section 9 of Chapter 151B of the General Laws is hereby amended by
159 inserting after the word “damages”, in line 37, the following sentence:-

160 “Attorneys’ fees can be awarded under this section in the absence of compensatory
161 damages.”