

SENATE No. 991

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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 fair hiring practices.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---------------------------|------------------------------------|
| <i>Mark C. Montigny</i> | <i>Second Bristol and Plymouth</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |

SENATE No. 991

By Mr. Montigny, a petition (accompanied by bill, Senate, No. 991) of Mark C. Montigny, James B. Eldridge and Marjorie C. Decker for legislation relative to fair hiring practices. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 872 OF 2013-2014.]

The Commonwealth of Massachusetts

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

An Act relative to fair hiring practices.

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 4 of Chapter 151B of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by adding the following subsection after subsection 9A:

3 9B. For an employer or employment agency, itself or through its agent, to:

4 (1) refuse to hire, employ, or consider a person for employment based on a person's status
5 as unemployed;

6 (2) limit, segregate or classify a person in any manner that would limit or tends to limit
7 his access to information about jobs, or consideration, screening or referral for consideration of
8 jobs because of his status as unemployed; or

9 (3) publish, print or circulate or cause to be published, printed or circulated in print, on
10 the internet, or in any other medium, any advertisement, announcement, or posting for any job
11 that includes:

12 (a) any provision stating or indicating that a person's status as unemployed disqualifies
13 him from a job or referral for a job;

14 (b) any provision stating or indicating that an employer will not consider a person for
15 employment based on that person's status as unemployed; or

16 (c) any provision stating or indicating that a person's current employment is a
17 requirement for a job;

18 (4) use any form of application for employment or to make any inquiry in connection
19 with prospective employment, which expresses, directly or indirectly, any limitation,
20 specification or discrimination based on a person's status as unemployed; or

21 (5) fail or refuse to screen, consider, or refer a person for employment because of his
22 status as unemployed;

23 For purposes of this subsection, the term "status as unemployed" shall mean a person's
24 present or past unemployment, regardless of the length of time that the person has been
25 unemployed.

26 Notwithstanding the provisions of this subsection, it shall not be an unlawful employment
27 practice for an employer or employment agency to:

28 (1) circulate an announcement for a job vacancy that limits hiring to the employer's
29 existing work force;

30 (2) consider a person's employment history or factual and objective reasons underlying a
31 person's status as unemployed in assessing a person's ability to perform the job; or

32 (3) assess whether a person's employment in a similar or related job for a period of time
33 reasonably proximate to the time of consideration of the person for new employment is a bona
34 fide occupational qualification reasonably necessary for the successful performance of the job
35 being filled.

36 (4) circulate an announcement for a job vacancy that contains provisions setting forth any
37 qualifications for a job as permitted by law including the holding of a current or valid
38 professional or occupational license, certificate, registration, permit, or other credential or a
39 minimum level of education, training, or professional, occupational, or field experience.

40 SECTION 2: Section 4 of Chapter 151B of the General Laws, as appearing in the 2010
41 Official Edition, is hereby amended by adding the following subsection after subsection 19:

42 20. It shall be unlawful employment practice for an employer or employment agency,
43 itself or through its agent, in connection with an application for employment, or the terms,
44 conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any
45 person, or in any other matter relating to the employment of any person, to request or require that
46 an employee or applicant disclose any user name, password, or other means for viewing or
47 accessing the information contained on a employee's or applicant's personal account or service
48 through any device that uses electronic signals to create, transmit, and receive information.

49 For purposes of this subsection, the term "personal account or service" shall mean any
50 personal web site, internet web site, social networking account, email account, web-based
51 account, or similar account but does not include any non-personal account or service created by

52 the employer or employment agency that provides access to the employer's or employment
53 agency's computer network, information systems, or email system.

54 Notwithstanding the provisions of this subsection, it shall not be an unlawful employment
55 practice for an employer or employment agency to:

56 (1) investigate an employee's actions for the purpose of ensuring compliance with
57 applicable federal and state securities or financial law, statutes, and regulatory requirements
58 based on the receipt of information about the use of a personal account or service by an
59 employee for business purposes;

60 (2) investigate an employee's actions based on the receipt of information about
61 unauthorized downloading or transferring of the employer's proprietary, confidential, or
62 financial information to a personal account or service, or disclosure of the same on a personal
63 account or service, by an employee; or

64 (3) monitor the usage and any information transmitted through the employer's or
65 employment agency's electronic equipment without requesting or requiring that any employee or
66 applicant disclose any user name, password, or other means for viewing or accessing the
67 information contained on a personal account or service.