SENATE DOCKET, NO. 991 FILED ON: 1/19/2017

SENATE . . . . . No. 986

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Barrett

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 protecting the long-term unemployed from discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Michael J. Barrett	*Third Middlesex*	
Kay Khan	*11th Middlesex*	*1/27/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/30/2017*
Kenneth I. Gordon	*21st Middlesex*	*1/31/2017*
Mary S. Keefe	*15th Worcester*	*1/31/2017*
Barbara A. L'Italien	*Second Essex and Middlesex*	*2/2/2017*
Elizabeth A. Malia	*11th Suffolk*	*2/3/2017*
Bruce E. Tarr	*First Essex and Middlesex*	*2/14/2017*
Paul R. Heroux	*2nd Bristol*	*2/16/2017*
William N. Brownsberger	*Second Suffolk and Middlesex*	*2/23/2017*

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SENATE . . . . . No. 986

By Mr. Barrett, a petition (accompanied by bill, Senate, No. 986) of Michael J. Barrett, Kay Khan, James B. Eldridge, Kenneth I. Gordon and other members of the General Court for legislation to protect the long-term unemployed from discrimination. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act protecting the long-term unemployed from discrimination.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 149 of the General Laws is hereby amended by adding the following new section:-

Section 192. (a) As used in this section, the term:

"Affected individual", means any person who was refused consideration for employment or was not hired by an employer because of individual current employment status, or any person who was not recruited, screened, considered or referred for employment opportunities by an employment agency because of individual current employment status.

"Contractor", means any person that is a party to a government contract other than the government. The term contractor means the department, division, subcontractor or other unit of the party responsible for the performance under the contract.

"Individual current employment status", means whether an individual seeking employment, at the time of consideration for such employment, has a regular or full-time job.

"Employer", means any individual, person, or organization that has one or more individuals performing services for it in Massachusetts for financial remuneration.

"Employment agency", means any person regularly undertaking with compensation and for profit, to procure employees for an employer or to procure for individuals opportunities to work for an employer and includes an agent of such a person.

"Individual", means any human person.

"Online job website", means any Internet-based website that provides online job postings.

"Person", means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

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

(1) Fail to offer employment to, or refuse to consider for employment, an individual because of individual current employment status;

(2) Publish, in print, on the Internet or in any other medium, an advertisement or announcement for any job that includes:

(i) Any provision stating or indicating that an individual currently having employment is a requirement or qualification for a job; or

(ii) Any provision stating or indicating that an employer will not consider an applicant for employment based on individual current employment status;

(3) Direct or request that an employment agency take individual current employment status into account in screening or referring applicants for employment.

(c) It shall be an unlawful practice for an employment agency to:

(1) Fail or refuse to consider or refer an individual for employment based on individual current employment status;

(2) Limit, segregate or classify individuals in any manner that may limit their access to information about jobs or referral for consideration of jobs because of individual current employment status;

(3) Publish, in print, on the Internet or in any other medium, an advertisement or announcement for any job vacancy that includes:

(i) Any provision stating or indicating that an individual currently having employment is a requirement or qualification for a job; or

(ii) Any provision stating or indicating that an employer will not consider individuals for employment based on individual current employment status.

(d) It shall be an unlawful practice for an online job website to publish any advertisement or announcement for any job vacancy that includes:

(1) Any provision stating or indicating that an individual currently having employment is a requirement or qualification for a job; or

(2) Any provision stating or indicating that an employer will not consider individuals for employment based on individual current employment status.

(e) It shall be unlawful for any employer or employment agency to:

(1) Interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this section; or

(2) To refuse to hire, to discharge, or in any other manner to discriminate against any individual for opposing any practice made unlawful by this section.

(f) It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual:

(1) Has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this section;

(2) Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this section; or

(3) Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this section.

(g) Nothing in this section is intended to preclude an employer or employment agency from considering an individual's employment history, or from examining the reasons underlying the individual current employment status, in assessing an individual's ability to perform a job or otherwise making employment decisions about that individual.

(h) To ensure compliance with the provisions of this title or any regulation or order issued under this title, the attorney general shall have the investigative authority to enter employer workplaces and examine all employer records related to allegations of violations of subsections (b) through (d), inclusive. Any employer or employment agency shall make, keep, and preserve records pertaining to compliance with this section.

(i) Any employer or employment agency that violates subsection (b) or (c) shall be liable to any affected individual:

(1) For actual damages equal --

(i) The amount of

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such individual by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the individual, any actual monetary losses sustained by the individual as a direct result of the violation or damages in the amount of $1000 per violation per day, whichever is greater; and

(ii) The interest on the amount described in clause (i)(A) calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount of compensation and interest described in subparagraphs (i) and (ii), except that if an employer or employment agency that has violated subsection (b) or (c) proves to the satisfaction of the court that the act or omission that violated subsection (b) or (c) was in good faith and that the employer

had reasonable grounds for believing that the act or omission was not a violation of subsection (b) or (c), the court may, in its discretion, reduce the amount of the liability to the amount and interest determined under subparagraphs (i) and (ii); and

(2) For such equitable relief as may be appropriate, including employment and compensatory and punitive damages.

An action to recover the damages or equitable relief prescribed in this subsection may be maintained against any employer or employment agency in any state court of competent jurisdiction by any one or more persons for and in behalf of the affected individual, or the affected individual and other individuals similarly situated.

The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

The right provided by this subsection to bring an action by or on behalf of any affected individual shall terminate on the filing of a complaint by the attorney general in an action under subsection (j).

(j) The attorney general shall receive, investigate, and attempt to resolve complaints of violations of subsections (b) through (f), inclusive. The attorney general may bring an action in any state court of competent jurisdiction:

(1) To enjoin violations of this title and seek other relief going forward necessary to prevent future violations;

(2) To recover the damages described in subsection (i);

(3) In the case of a violation of subsections (d) through (f), inclusive, a civil penalty of not less than $250 per violation; or

(4) Any other equitable relief the Court deems appropriate.

Any sums recovered by the attorney general shall be held in a special deposit account and shall be paid directly to each affected individual.

(k) An action under subsection (i) or (j) may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought, provided that the limitations for filing an action shall be tolled during the period that the attorney general is considering a complaint against any defendant named in a complaint filed with under subsection (j).

(l) Payment under a contract awarded by the state, may be terminated and the contractor who made the contract with the state agency may be debarred in accordance with the requirements of section 29F of chapter 29, governing government contracts, if the contractor is found by a court of competent jurisdiction to have engaged in the any of the prohibited acts enumerated in this section.