HOUSE DOCKET, NO. 3669 FILED ON: 2/19/2021

HOUSE . . . . . No. 1854

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

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 establishing a fair housing disparate impact standard.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
David M. Rogers	*24th Middlesex*	*2/19/2021*
Lindsay N. Sabadosa	*1st Hampshire*	*2/25/2021*
Peter Capano	*11th Essex*	*2/25/2021*
Jack Patrick Lewis	*7th Middlesex*	*2/26/2021*
Nika C. Elugardo	*15th Suffolk*	*2/26/2021*
Christine P. Barber	*34th Middlesex*	*3/16/2021*
James B. Eldridge	*Middlesex and Worcester*	*3/26/2021*
Natalie M. Higgins	*4th Worcester*	*9/3/2021*

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HOUSE . . . . . No. 1854

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1854) of David M. Rogers and others relative to discrimination against members of protected groups that creates, increases, reinforces or perpetuates segregated housing patterns. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act establishing a fair housing disparate impact standard.

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 1 of chapter 151B of the General Laws, as so appearing, is hereby amended by adding the following:-

24. The term "discriminatory effect" means a decision, program, policy or practice that actually or predictably results in a disparate impact on a group of persons because of their membership in a protected class or a decision, program, policy or practice that creates, increases, reinforces, or perpetuates segregated housing patterns.

25. The term "disparate impact" means when a decision, program, policy or practice disproportionately disadvantages members of a protected class, without regard for the intention behind or purpose of the decision, program, policy or practice.

26. The term "legally sufficient justification" means that a justification for a challenged decision, program, policy or practice: (a) is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant; (b) effectively carries out

the identified interest, (c) is sufficiently compelling to override the discriminatory effect; (d) there is no feasible alternative policy or practice that would equally or better accomplish the identified interest with a less discriminatory effect; and (e) is supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the elements of a legally sufficient justification are set forth Section 4 of this chapter.

SECTION 2. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by adding the following:-

20. For any person to adopt any housing, community development, lending or insurance decision, program, policy or practice that has a discriminatory effect on members of protected groups or that creates, increases, reinforces, or perpetuates segregated housing patterns independently of the extent to which it produces a disparate impact on protected groups.

In discriminatory effects cases the complainant has the burden of proving by a preponderance of evidence that a challenged housing, community development, lending or insurance decision, program, policy or practice caused or predictably will cause a disparate impact. The complainant need not prove that the challenged decision, program, policy or practice is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a practical business, profit, policy consideration, or requirement of law or third party.

Once the complainant satisfies the burden of proof, the respondent has the burden of proving that the challenged decision, program, policy or practice meets all of the elements of a legally sufficient justification as defined in Section 1 and that no other policy or practice that has a less discriminatory effect could serve the substantial, legitimate, nondiscriminatory interest identified. A demonstration by the respondent that a practice was reasonably necessary to

comply with a third party's requirement of law, or to support an interest in business or profit may not be used as a justification or defense against a claim of discrimination.

A challenged decision, program, policy or practice must be a contributing cause of the disparate impact complained of but not necessarily the direct, proximate or robust cause. A challenged policy or practice may have a discriminatory effect even if there are intervening causes that contribute to the result.

A single person may pursue a claim based on a decision, program, policy or practice that has a disparate impact on a group of individuals if that person has or predictably will be injured by the decision, program, policy or practice.

Nothing in this subsection is intended to require a person seeking to enforce the protections afforded herein to exhaust any administrative remedies applicable to discrimination claims under this Section or other laws, or to prevent or limit a person from filing a complaint at the Massachusetts Commission Against Discrimination.