

# SENATE . . . . . No. 860

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Joseph A. Boncore***

*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 prohibiting discriminatory effects in housing and community development.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/25/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/1/2021</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/7/2021</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>4/29/2021</i>

# SENATE . . . . . No. 860

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By Mr. Boncore, a petition (accompanied by bill, Senate, No. 860) of Joseph A. Boncore, Jack Patrick Lewis, James B. Eldridge and Sal N. DiDomenico for legislation to prohibit discriminatory effects in housing and community development. Housing.

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## The Commonwealth of Massachusetts

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

An Act prohibiting discriminatory effects in housing and community development.

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

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

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

10          26. The term “legally sufficient justification” means that a justification for a challenged  
11   decision, program, policy or practice: (a) is necessary to achieve one or more substantial,  
12   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

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

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

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

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