

SENATE No. 996

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 create access to justice.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/25/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>3/2/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/4/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/8/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>3/8/2021</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>3/9/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/15/2021</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>3/15/2021</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/18/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>3/19/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/31/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>5/7/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>5/17/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>6/23/2021</i>

SENATE No. 996

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 996) of Sal N. DiDomenico, Joanne M. Comerford, Jason M. Lewis, Carmine Lawrence Gentile and other members of the General Court for legislation to restore enforcement of civil rights. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 915 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act to create access to justice.

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 12 of the General Laws, as appearing in the 2018 Official Edition,
2 is hereby amended by inserting after section 11N the following section:-

3 Section 11O.

4 (a) Definitions. For the purposes of this Section the following terms shall have the
5 following meanings:

6 “Age” means forty years of age or older unless a different meaning clearly appears from
7 the context.

8 “Disability” means (a) a physical or mental impairment, including, but not limited to an
9 intellectual, developmental, psychiatric, sensory or learning impairment, which substantially

10 limits one or more major life activities of a person; (b) a record of having such impairment; or (c)
11 being regarded as having such impairment, but such term shall not include current, illegal use of
12 a controlled substance as defined in section one of chapter ninety-four C.

13 “Major life activities” means functions, including, but not limited to, caring for one’s
14 self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and
15 working.

16 “Familial status” means one or more individuals (a) being or seeking to become pregnant;
17 (b) being in the process of securing legal custody of a person who has not attained the age of 18
18 years; (c) being the parent or another person with legal custody of an individual who has not
19 attained the age of 18 years and is domiciled with said parent or legal custodian; or (d) being a
20 person with whom an individual who has not attained the age of 18 is domiciled with the written
21 permission of such parent or legal custodian.

22 “Discriminatory effect” means the following: a program, policy or practice has a
23 discriminatory effect if it has or predictably will have the effect of excluding or partially
24 excluding from participation, disadvantaging, harming, denying one or more benefits to, causing
25 a disparate impact upon, or otherwise discriminating against a person based on or because of one
26 or more of the person’s protected characteristics, even if not motivated by a discriminatory
27 intent. A disparate impact occurs when a program, policy or practice disproportionately
28 disadvantages persons based on or because of protected characteristics or perpetuates or will tend
29 to perpetuate segregation, even if not motivated by discriminatory intent. A person claiming to
30 be aggrieved by a Unit of Government’s program, policy or practice that has a discriminatory

31 effect may pursue a claim pursuant to subsection (c) of this Section if that person has or
32 predictably will be injured by the program, policy or practice.

33 “Legally sufficient justification” means the program, policy or practice:

34 (1) is necessary to achieve one or more identified compelling interests of the Unit of
35 Government and effectively carries out the identified interests;

36 (2) is narrowly tailored to serve the identified interests;

37 (3) the identified interests could not be served by a less discriminatory alternative; and,

38 (4) the justification is supported by evidence that is not hypothetical or speculative.

39 Demonstrating that the program, policy or practice is supported by a legally sufficient
40 justification as defined in this Section is not a defense to a claim of intentional discrimination.

41 “Person” means one or more individuals, unincorporated or incorporated organizations,
42 partnerships, associations, legal representatives, trustees, tribal governments, or receivers,
43 including individuals or organizations engaged in civil rights testing.

44 “Prevailing party” means a party who obtains some requested relief through a judicial
45 judgment or court-approved settlement agreement in that party’s favor, or whose pursuit of a
46 claim was a catalyst for a unilateral change in position by the Unit of Government relative to the
47 relief sought.

48 “Program, policy or practice” means, without limitation, one or more actions, operations,
49 decisions, policies, practices, programs, criteria and methods of administration of a Unit of
50 Government.

51 “Protected characteristic” means race, color, religion, national origin, ethnicity, ancestry,
52 citizenship or immigration status, limited English proficiency, genetic information, sex, gender
53 identity or gender expression, sexual orientation, age, disability, medical condition, familial
54 status, pregnancy, status as a veteran or member of the armed forces, or recipient of public
55 assistance, rental assistance or housing subsidy, or any characteristic protected by the
56 Commonwealth.

57 “Unit of Government” means any executive office, department, agency or subdivision of
58 the Commonwealth including, without limitation, counties, cities, towns, offices, boards,
59 commissions, and authorities; any persons employed by or contracting with a unit of
60 government, and any programs or activities conducted, operated or administered by, or funded
61 directly or otherwise receiving financial or in-kind assistance from, a unit of government.

62 (b) No Unit of Government shall directly or indirectly:

63 (1) exclude or partially exclude from participation, disadvantage, harm, deny one or more
64 benefits to, or otherwise subject a person to discrimination based on or because of one or more of
65 the person’s protected characteristics; or

66 (2) adopt, implement or without limitation otherwise approve or utilize any program,
67 policy or practice that has a discriminatory effect.

68 (c) Any person or class of persons claiming to be aggrieved by a violation of subsection
69 (b) may institute and prosecute a civil action in the District, Superior, Housing, Probate or Land
70 Court Department or other venue of competent jurisdiction for injunctive and other appropriate
71 equitable relief including an award of actual damages, and for violations of intentional
72 discrimination, an award of punitive damages. This civil action must be filed not later than three

73 years after a violation of subsection (b). Any aggrieved person who prevails in an action
74 authorized by this Section shall be entitled to an award of the costs of the litigation including
75 expert witness fees, reasonable attorneys' fees in an amount to be fixed by the court, and
76 prejudgment and post-judgment interest. The attorney general may, in like manner, also
77 commence a civil action to seek relief for a violation of subsection (b).

78 (d) Burdens of proof in actions for discriminatory effect brought pursuant to this Section.

79 (1) The plaintiff has the burden of proving that a challenged program, policy or practice
80 caused or predictably will cause a discriminatory effect. The plaintiff need not prove that the
81 challenged program, policy or practice is artificial, arbitrary, or unnecessary.

82 (2) Once the plaintiff satisfies the burden of proof set forth in subsection (d)(1) of this
83 Section, the defendant has the burden of proving that the challenged program, policy or practice
84 meets all of the elements of a legally sufficient justification as defined in subsection (a) of this
85 Section.

86 (3) If the defendant satisfies the burden of proof set forth in subsection (d)(2), the
87 defendant must also prove that there is no other program, policy or practice that has a less
88 discriminatory effect which could serve the identified compelling interest or interests.

89 (e) A challenged program, policy or practice must be a contributing cause of the
90 discriminatory effect complained of but not necessarily the direct or proximate cause.

91 (f) Nothing in this Section is intended to require a person seeking to enforce the
92 protections afforded herein to exhaust any administrative remedies applicable to discrimination
93 claims under this Section or other laws, or to prevent or limit a person from filing a complaint at

94 the Massachusetts Commission Against Discrimination under the procedures set out in Chapter
95 151B of the General Law or any other anti-discrimination law of the Commonwealth and
96 implementing regulations.

97 (g) This Act is intended to be liberally construed to effectuate the broad, remedial goal of
98 eradicating discrimination by Units of Government, whether intentionally or through an
99 unjustified discriminatory effect, and securing access to the judicial process for aggrieved parties
100 to enforce their rights. Any state or federal statute, regulation, or judicial decision construing
101 such statute or regulation, which is inconsistent with this goal or any provision of this Section, or
102 which imposes additional obstacles or restrictions on aggrieved parties, shall not apply. No
103 subsequent statute shall be held to supersede or modify the provisions of this Section except to
104 the extent that such statute shall do so expressly.