HOUSE DOCKET, NO. 3194 FILED ON: 1/16/2025

HOUSE . . . . . No. 1889

The Commonwealth of Massachusetts

PRESENTED BY:

Joan Meschino

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 eliminate disparate impact.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Joan Meschino	*3rd Plymouth*	*1/16/2025*
Christine P. Barber	*34th Middlesex*	*3/4/2025*
Sal N. DiDomenico	*Middlesex and Suffolk*	*1/29/2025*
James B. Eldridge	*Middlesex and Worcester*	*3/19/2025*
Carmine Lawrence Gentile	*13th Middlesex*	*2/17/2025*
Natalie M. Higgins	*4th Worcester*	*4/12/2025*
Adrian C. Madaro	*1st Suffolk*	*3/11/2025*
Samantha Montaño	*15th Suffolk*	*2/20/2025*
Lindsay N. Sabadosa	*1st Hampshire*	*2/18/2025*
Danillo A. Sena	*37th Middlesex*	*4/9/2025*
Erika Uyterhoeven	*27th Middlesex*	*2/19/2025*

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HOUSE . . . . . No. 1889

By Representative Meschino of Hull, a petition (accompanied by bill, House, No. 1889) of Joan Meschino and others relative to disparate impact. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

An Act to eliminate disparate impact.

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. Chapter 12 of the General Laws, is hereby amended by inserting after Section 11N the following section:-

Section 11O.

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

"Program, policy or practice", means, without limitation, one or more actions, activities, operations, decisions, initiatives, mandates, criteria or methods of administration of a unit of government.

"Protected characteristic", a characteristic protected from discrimination under Commonwealth law as defined in statute, case law, administrative regulation, and other legal precedent.

"Unit of government", (1) any executive office, department, agency or subdivision of the Commonwealth including, without limitation: counties, cities, towns, offices, boards, commissions and authorities; (2) any persons employed by or contracted by a unit of government or (3) any programs or activities conducted, operated or administered or funded through direct or in-kind assistance, by a unit of government.

(b) No unit of government shall directly or indirectly adopt, implement, approve or utilize, without limitation, any program, policy or practice that has a disparate impact.

(c) Any person or class of persons claiming to be aggrieved by a violation of subsection (b) may institute and prosecute a civil action in a state court for injunctive, declaratory and other appropriate forms of relief including an award of actual damages. Any person or class of persons claiming to be aggrieved by violations of intentional discrimination may seek an award of punitive damages. This civil action must be filed not later than three years after a violation of subsection (b).

Any aggrieved person or persons who prevails in an action authorized by this Section shall be entitled to an award of the costs of the litigation including expert witness fees, reasonable attorneys' fees in an amount to be fixed by the court and prejudgment and post-judgment interest.

(d) Burdens of proof in actions for disparate impact.

(1) The plaintiff has the burden of proving that a challenged program, policy or practice caused a disparate impact. The plaintiff does not have to prove that the challenged program, policy or practice intended to discriminate.

(2) Once the plaintiff satisfies the burden of proof set forth in subsection (d)(1) of this Section, the defendant has the burden of proving that the challenged program, policy or practice meets all of the elements of a substantial legitimate justification.

(3) Demonstrating that the program, policy or practice is supported by a substantial legitimate justification is not a defense against a claim of intentional discrimination.

(e) A challenged program, policy or practice may be a contributing cause of the disparate impact, but does not need to be the sole or predominant cause.

(f) Nothing in this section shall be intended to require a plaintiff seeking to enforce the protection afforded herein to exhaust any administrative remedies applicable to discrimination actions under other laws.

(g) This Act is intended to be liberally construed to effectuate the broad, remedial goal of eradicating discrimination by units of government, whether intentionally or due to disparate impact, and to secure access to the judicial process for an aggrieved person or persons.

SECTION 2: This Act shall take effect upon its passage.