HOUSE DOCKET, NO. 565 FILED ON: 1/18/2011

HOUSE . . . . . No. 539

The Commonwealth of Massachusetts

PRESENTED BY:

Byron Rushing

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 passage of the accompanying:

An Act making discrimination on the basis of height and weight unlawful.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Byron Rushing	*9th Suffolk*
Christine E. Canavan	*10th Plymouth*
Carl M. Sciortino, Jr.	*34th Middlesex*
Martha M. Walz	*8th Suffolk*
Gloria L. Fox	*7th Suffolk*
Benjamin Swan	*11th Hampden*
Ellen Story	*3rd Hampshire*
Kay Khan	*11th Middlesex*

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HOUSE . . . . . No. 539

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 539) of Byron Rushing and others for legislation to make it unlawful to discriminate on the basis of height and weight in compensation or in terms, conditions or privileges of employment. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1850* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act making discrimination on the basis of height and weight unlawful.

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 4 of said chapter 151B is hereby amended by striking out subsection 1, as appearing in the 1990 Official Edition, and inserting in place thereof the following subsection:—

1. For an employer, by himself or his agent, because of the race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, or ancestry of any individual to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification.

SECTION 2. Said section 4 of said chapter 151B is hereby further amended by striking out subsection 2, as so appearing, and inserting in place thereof the following subsection:—

2. For a labor organization, because of the race, color, religious creed, national origin, sex, height, weight, sexual orientation which shall not include persons whose sexual orientation involves minor children as the sex object, age, or ancestry of any individual, or because of the handicap of any person alleging to be a qualified handicapped person, to exclude from full

16 membership rights or to expel from its membership such individual or to discriminate in any way
17 against any of its members or against any employer or any individual employed by an employer
18 unless based upon a bona fide occupational qualification.

19 SECTION 3. Said section 4 of said chapter 151B is hereby further amended by striking
20 out subsection 3, as so appearing, and inserting in place thereof the following subsection:—

21 3. For any employer or employment agency to print or circulate or cause to be printed or
22 circulated any statement, advertisement or publication, or to use any form of application for
23 employment or to make any inquiry or record in connection with employment, which expresses,
24 directly or indirectly, any limitation, specification or discrimination as to the race, color,
25 religious creed, national origin, sex, height, weight, sexual orientation, which shall not include
26 persons whose sexual orientation involves minor children as the sex object, age or ancestry, or
27 the handicap of a qualified handicapped person or any intent to make any such limitation,
28 specification or discrimination, or to discriminate in any way on the ground of race, color,
29 religious creed, national origin, sex, sexual orientation, age, ancestry or the handicap of a
30 qualified handicapped person, unless based upon a bona fide occupational qualification.

31 SECTION 4. Said section 4 of said chapter 151B is hereby further amended by striking
32 out subsection 3A, as so appearing, and inserting in place thereof the following subsection:—

33 3A. For any person engaged in the insurance or bonding business, or his agent, to make
34 any inquiry or record of any person seeking a bond or surety bond conditioned upon faithful
35 performance of his duties or to use any form of application in connection with the furnishing of
36 such bond, which seeks information relative to the race, color, religious creed, national origin,
37 sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation
38 involves minor children as the sex object, or ancestry of the person to be bonded.

39 SECTION 5. Said section 4 of said chapter 151B is hereby further amended by striking
40 out subsection 6, as so appearing, and inserting in place thereof the following subsection:—

41 6. For the owner, lessee, sub lessee, licensed real estate broker, assignee or managing
42 agent of publicly assisted or multiple dwelling or contiguously located housing accommodations
43 or other person having the right of ownership or possession or right to rent or lease, or sell or
44 negotiate for the sale of such accommodations, or any agent or employee of such a person, or
45 any organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or
46 lease or sell or negotiate for sale or otherwise to deny or withhold from any person or group of
47 persons such accommodations because of the race, religious creed, color, national origin, sex,
48 height, weight, sexual orientation, which shall not include persons whose sexual orientation
49 involves minor children as the sex object, age, ancestry, or marital status of such person or
50 persons or because such person is a veteran or member of the armed forces, or because such
51 person is blind, or hearing impaired; (b) to discriminate against any person because of his race,
52 religious creed, color, national origin, sex, height, weight, sexual orientation, which shall not

53 include persons whose sexual orientation involves minor children as the sex object, age,
54 ancestry, or marital status or because such person is a veteran or member of the armed forces, or
55 because such person is blind, or hearing impaired, in the terms, conditions or privileges of such
56 accommodations or the acquisitions thereof, or in the furnishings of facilities and services in
57 connection therewith, or because such a person possesses a trained dog guide as a consequence
58 of blindness, or hearing impairment; (c) to cause to be made any written or oral inquiry or record
59 concerning the race, religious creed, color, national origin, sex, height, weight, sexual
60 orientation, which shall not include persons whose sexual orientation involves minor children as
61 the sex object, age, ancestry or marital status of the person seeking to rent or lease or buy any
62 such accommodation, or concerning the fact that such person is a veteran or a member of the
63 armed forces or because such person is blind or hearing impaired. The word "age" as used in this
64 subsection shall not apply to persons who are minors nor to residency in state aided or federally
65 aided housing developments for the elderly nor to residency in retirement communities
66 consisting of either a structure or structures constructed expressly for use by the elderly on one
67 parcel or on contiguous parcels of land, totaling at least ten acres in size, which communities
68 have a minimum age requirement for residency of at least fifty-five years; provided, however,
69 that no more than one of the persons occupying any unit may be under fifty five years of age,
70 exclusive of nurses or other person providing health care services to the elderly occupants of said
71 unit.

72 SECTION 6. Said section 4 of said chapter 151B is hereby further amended by striking
73 out subsection 7, as so appearing, and inserting in place thereof the following subsection:—

74 7. For the owner, lessee, sub lessee, real estate broker, assignee, or managing agent or
75 other covered housing accommodations or of land intended for the erection of any housing
76 accommodation included under subsection 10, 11, 12, or 13 of section one, or other person
77 having the right of ownership or possession or right to rent or lease or sell, or negotiate for the
78 sale or lease of such land or accommodations, or any agent or employee of such a person or any
79 organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or
80 lease or sell or negotiate for sale or lease or otherwise to deny or withhold from any person or
81 group of persons such accommodations or land because of race, color, religious creed, national
82 origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual
83 orientation involves minor children as the sex object, age, ancestry, or marital status, veteran
84 status or membership in the armed forces, blindness, hearing impairment, or because such person
85 possesses a trained dog guide as a consequence of blindness or hearing impairment of such
86 person or persons; (b) to discriminate against any person because of his race, color, religious
87 creed, national origin, sex, height, weight, sexual orientation, which shall not include persons
88 whose sexual orientation involves minor children as the sex object, age, ancestry, or marital
89 status, veteran status or membership in the armed services, blindness, or hearing impairment, or
90 because such person possesses a trained dog guide as a consequence of blindness or hearing
91 impairment in the terms, conditions or privileges of such accommodations or land of the

92 acquisition thereof, or in the furnishing of facilities and services in the connection therewith, or
93 (c) to cause to be made any written or oral inquiry or record concerning the race, color, religious
94 creed, national origin, sex, height, weight, sexual orientation, which shall not include persons
95 whose sexual orientation involves minor children as the sex object, age, ancestry, marital status,
96 veteran status or membership in the armed services, blindness, hearing impairment or because
97 such person possesses a trained dog guide as a consequence of blindness or hearing impairment,
98 of the person seeking to rent or lease or buy any such accommodation or land; provided,
99 however, that this subsection shall not apply to the leasing of a single apartment or flat in a two-
100 family dwelling, the other occupancy unit of which is occupied by the owner as his residence.
101 The word "age" as used in this subsection shall not apply to persons who are minors, nor to
102 residency in state-aided or federally-aided housing developments for the elderly nor to residency
103 in retirement communities consisting of either a structure or structures constructed expressly for
104 use by the elderly on one parcel or on contiguous parcels of land, totaling at least ten acres in
105 size, which communities have a minimum age requirement for residency of at least fifty-five
106 years; provided, however, that no more than one of the persons occupying any unit may be under
107 fifty-five years of age, exclusive of nurses or other person providing health care services to the
108 elderly occupants of said unit.

109 SECTION 7. Said section 4 of said chapter 151B, as so appearing, is hereby further
110 amended by striking out subsection 8 and inserting in place thereof the following subsection:—
111 8. For the owner, lessee, sub lessee, or managing agent of, or other person having the right of
112 ownership or possession of or the right to sell, rent or lease, commercial space: (1) To refuse to
113 sell, rent, lease or otherwise to deny or withhold from any person or group of persons such
114 commercial space because of race, color, religious creed, national origin, sex, height, weight,
115 sexual orientation, which shall not include persons whose sexual orientation involves minor
116 children as the sex object, age, ancestry or marital status of such person or persons. (2) To
117 discriminate against any person because of his race, color, religious creed, national origin, sex,
118 height, weight, sexual orientation, which shall not include persons whose sexual orientation
119 involves minor children as the sex object, age, ancestry or marital status in the terms, conditions
120 or privileges of the sale, rental or lease of any such commercial space or in the furnishing of
121 facilities or services in connection therewith. (3) To cause to be made any written or oral inquiry
122 or record concerning the race, color, religious creed, national origin, sex, sexual orientation,
123 which shall not include persons whose sexual orientation involves minor children as the sex
124 object, age, ancestry or marital status of a person seeking to rent or lease or buy any such
125 commercial space. The word "age" as used in this subsection shall not apply to persons who are
126 minors, nor to residency in state-aided or federally-aided housing developments for the elderly
127 nor to residency in self-contained retirement communities constructed expressly for use by the
128 elderly and which are at least twenty acres in size and have a minimum age requirement for
129 residency of at least fifty-five years.

130 SECTION 8. Said section 4 of said chapter 151B, as so appearing, is hereby further
131 amended by striking out the last paragraph and inserting in place thereof the following
132 paragraph:—

133 Nothing contained in this chapter or any rule or regulation issued by the commission shall
134 he interpreted as requiring any employer, employment agency or labor organization to grant
135 preferential treatment to any individual or to any group because of the race, color, religious
136 creed, national origin, sex, height, weight, sexual orientation, which shall not include persons
137 whose sexual orientation involves minor children as the sex object, age or ancestry of such
138 individual or group because of imbalance which may exist between the total number or
139 percentage of persons employed by any employer, referred or classified for employment by any
140 employment agency or labor organization, admitted to membership or classified by any labor
141 organization or admitted to or employed in, any apprenticeship or other training program, and the
142 total number or percentage of persons of such race, color, religious creed, national origin, sex,
143 sexual orientation, which shall not include persons whose sexual orientation involves minor
144 children as the sex object, age or ancestry in the commonwealth or in any community, section or
145 other area therein, or in the available work force in the commonwealth or in any of its political
146 subdivisions.

147 SECTION 9. Section 92A of chapter 272 of the General Laws, as so appearing, is hereby
148 amended by striking out the first paragraph and inserting in place thereof the following
149 paragraph:—

150 No owner, lessee, proprietor, manager, superintendent, agent or employee of any place of
151 public accommodation, resort or amusement shall, directly or indirectly, by himself or another,
152 publish, issue, circulate, distribute or display, or cause to be published, issued, circulated,
153 distributed or displayed, in any way, any advertisement, circular, folder, book, pamphlet, written
154 or painted or printed notice or sign, of any kind or description, intended to discriminate against
155 or actually discriminating against persons of any religious sect, creed, class, race, color,
156 denomination, sex, height, weight, sexual orientation, which shall not include persons whose
157 sexual orientation involves minor children as the sex object, nationality, or because of deafness
158 or blindness, or any physical or mental disability, in the full enjoyment of the accommodations,
159 advantages, facilities or privileges offered to the general public by such places of public
160 accommodation, resort or amusement.

161 SECTION 10. Said chapter 272 is hereby further amended by striking out section 98, as
162 so appearing, and inserting in place thereof the following section:—

163 Section 98. Whoever makes any distinction, discrimination or restriction on account of
164 race, color, religious creed, national origin, sex, height, weight, sexual orientation, which shall
165 not include persons whose sexual orientation involves minor children as the sex object, deafness,
166 blindness or any physical or mental disability or ancestry relative to the admission of any person

167 to, or his treatment in any place of public accommodation, resort or amusement, as defined in
168 section ninety-two A, or whoever aids or incites such distinction, discrimination or restriction,
169 shall be punished by a fine of not more than twenty-five hundred dollars or by imprisonment for
170 not more than one year, or both, and shall be liable to any person aggrieved thereby for such
171 damages as are enumerated in section five of chapter one hundred and fifty-one B; provided,
172 however, that such civil forfeiture shall be of an amount not less than three hundred dollars; but
173 such person so aggrieved shall not recover against more than one person by reason of any one act
174 of distinction, discrimination or restriction. All persons shall have the right to the full and equal
175 accommodations, advantages, facilities and privileges of any place of public accommodation,
176 resort or amusement subject only to the conditions and limitations established by law and
177 applicable to all persons. This right is recognized and declared to be a civil right.