

HOUSE No. 00539

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 bill:

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

PETITION OF:

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

HOUSE No. 00539

By Mr. Byron Rushing of Boston, petition (accompanied by bill, House, No. 00539) of Christine E. Canavan 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. Joint Committee on 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:

- 1 SECTION 1. Section 4 of said chapter 151B is hereby amended by striking out subsection 1, as
2 appearing in the 1990 Official Edition, and inserting in place thereof the following subsection:—
- 3 1. For an employer, by himself or his agent, because of the race, color, religious creed, national
4 origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual
5 orientation involves minor children as the sex object, or ancestry of any individual to refuse to
6 hire or employ or to bar or to discharge from employment such individual or to discriminate
7 against such individual in compensation or in terms, conditions or privileges of employment,
8 unless based upon a bona fide occupational qualification.

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

11 2. For a labor organization, because of the race, color, religious creed, national origin, sex,
12 height, weight, sexual orientation which shall not include persons whose sexual orientation
13 involves minor children as the sex object, age, or ancestry of any individual, or because of the
14 handicap of any person alleging to be a qualified handicapped person, to exclude from full
15 membership rights or to expel from its membership such individual or to discriminate in any way
16 against any of its members or against any employer or any individual employed by an employer
17 unless based upon a bona fide occupational qualification.

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

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

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

32 3A. For any person engaged in the insurance or bonding business, or his agent, to make any
33 inquiry or record of any person seeking a bond or surety bond conditioned upon faithful
34 performance of his duties or to use any form of application in connection with the furnishing of
35 such bond, which seeks information relative to the race, color, religious creed, national origin,
36 sex, height, weight, sexual orientation, which shall not include persons whose sexual orientation
37 involves minor children as the sex object, or ancestry of the person to be bonded.

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

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

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

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

73 7. For the owner, lessee, sub lessee, real estate broker, assignee, or managing agent or other
74 covered housing accommodations or of land intended for the erection of any housing

75 accommodation included under subsection 10, 11, 12, or 13 of section one, or other person
76 having the right of ownership or possession or right to rent or lease or sell, or negotiate for the
77 sale or lease of such land or accommodations, or any agent or employee of such a person or any
78 organization of unit owners in a condominium or housing cooperative: (a) to refuse to rent or
79 lease or sell or negotiate for sale or lease or otherwise to deny or withhold from any person or
80 group of persons such accommodations or land because of race, color, religious creed, national
81 origin, sex, height, weight, sexual orientation, which shall not include persons whose sexual
82 orientation involves minor children as the sex object, age, ancestry, or marital status, veteran
83 status or membership in the armed forces, blindness, hearing impairment, or because such person
84 possesses a trained dog guide as a consequence of blindness or hearing impairment of such
85 person or persons; (b) to discriminate against any person because of his race, color, religious
86 creed, national origin, sex, height, weight, sexual orientation, which shall not include persons
87 whose sexual orientation involves minor children as the sex object, age, ancestry, or marital
88 status, veteran status or membership in the armed services, blindness, or hearing impairment, or
89 because such person possesses a trained dog guide as a consequence of blindness or hearing
90 impairment in the terms, conditions or privileges of such accommodations or land of the
91 acquisition thereof, or in the furnishing of facilities and services in the connection therewith, or
92 (c) to cause to be made any written or oral inquiry or record concerning the race, color, religious
93 creed, national origin, sex, height, weight, sexual orientation, which shall not include persons
94 whose sexual orientation involves minor children as the sex object, age, ancestry, marital status,
95 veteran status or membership in the armed services, blindness, hearing impairment or because
96 such person possesses a trained dog guide as a consequence of blindness or hearing impairment,
97 of the person seeking to rent or lease or buy any such accommodation or land; provided,

98 however, that this subsection shall not apply to the leasing of a single apartment or flat in a two-
99 family dwelling, the other occupancy unit of which is occupied by the owner as his residence.
100 The word “age” as used in this subsection shall not apply to persons who are minors, nor to
101 residency in state-aided or federally-aided housing developments for the elderly nor to residency
102 in retirement communities consisting of either a structure or structures constructed expressly for
103 use by the elderly on one parcel or on contiguous parcels of land, totaling at least ten acres in
104 size, which communities have a minimum age requirement for residency of at least fifty-five
105 years; provided, however, that no more than one of the persons occupying any unit may be under
106 fifty-five years of age, exclusive of nurses or other person providing health care services to the
107 elderly occupants of said unit.

108 SECTION 7. Said section 4 of said chapter 151B, as so appearing, is hereby further amended by
109 striking out subsection 8 and inserting in place thereof the following subsection:— 8. For the
110 owner, lessee, sub lessee, or managing agent of, or other person having the right of ownership or
111 possession of or the right to sell, rent or lease, commercial space: (1) To refuse to sell, rent, lease
112 or otherwise to deny or withhold from any person or group of persons such commercial space
113 because of race, color, religious creed, national origin, sex, height, weight, sexual orientation,
114 which shall not include persons whose sexual orientation involves minor children as the sex
115 object, age, ancestry or marital status of such person or persons. (2) To discriminate against any
116 person because of his race, color, religious creed, national origin, sex, height, weight, sexual
117 orientation, which shall not include persons whose sexual orientation involves minor children as
118 the sex object, age, ancestry or marital status in the terms, conditions or privileges of the sale,
119 rental or lease of any such commercial space or in the furnishing of facilities or services in
120 connection therewith. (3) To cause to be made any written or oral inquiry or record concerning

121 the race, color, religious creed, national origin, sex, sexual orientation, which shall not include
122 persons whose sexual orientation involves minor children as the sex object, age, ancestry or
123 marital status of a person seeking to rent or lease or buy any such commercial space. The word
124 “age” as used in this subsection shall not apply to persons who are minors, nor to residency in
125 state-aided or federally-aided housing developments for the elderly nor to residency in self-
126 contained retirement communities constructed expressly for use by the elderly and which are at
127 least twenty acres in size and have a minimum age requirement for residency of at least fifty-five
128 years.

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

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

143 other area therein, or in the available work force in the commonwealth or in any of its political
144 subdivisions.

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

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

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

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

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