

HOUSE No. 2235

By Mr. Rushing of Boston, petition of Byron Rushing and others that public offices be prohibited from denying benefits on the grounds of race, color or national origin. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Byron Rushing Marie P. St. Fleur
William Lantigua Benjamin Swan
Anne M. Gobi Gloria L. Fox

In the Year Two Thousand and Seven.

AN ACT FURTHER PROTECTING CIVIL RIGHTS.

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 11 of Chapter 12 of the General Laws, as appearing in the
2 2002 Official Edition, is hereby amended by inserting a new section
3 11M as follows:—
4 (a) No unit of State, county, or local government shall:—
5 (1) exclude a person from participation in, deny a person the ben-
6 efits of, or subject a person to discrimination under any program or
7 activity on the grounds of that person’s race, color, or national
8 origin; or
9 (2) utilize criteria or methods of administration that have the
10 effect of subjecting individuals to discrimination because of their
11 race, color, or national origin.
12 (b) Any party aggrieved by conduct that violates subsection (a)
13 may bring a civil lawsuit, in a State court, against the offending unit
14 of government. This lawsuit must be brought not later than 4 years
15 after the violation of subsection (a). A violation of this section is
16 established if, based on the totality of the circumstances, it is shown
17 that any individual has been denied any of the rights protected by
18 subsection (a). If the court finds that a violation of paragraph (1) of
19 subsection (a) has occurred, the court may award to the plaintiff

20 actual and punitive damages and if the court finds that a violation of
21 paragraph (2) of subsection (a) has occurred, the court may award to
22 the plaintiff actual damages. The court, as it deems appropriate, may
23 grant as relief any permanent or preliminary injunction, temporary
24 restraining order, or other order, including an order enjoining the
25 defendant from engaging in the violation of subsection (a) or man-
26 dating affirmative action.

27 (c) Upon motion, a court shall award reasonable attorneys' fees
28 and costs, including expert witness fees and other litigation
29 expenses, to a plaintiff who is a prevailing party in any action
30 brought:—

31 (1) pursuant to subsection (b); or (2) to enforce a right arising
32 under the Massachusetts' Constitution.

33 In awarding reasonable attorneys' fees, the court shall consider
34 the degree to which the relief obtained relates to the relief sought.

35 (d) For the purpose of this Act, the term "prevailing party"
36 includes any party:—

37 (1) who obtains some of his or her requested relief through a judi-
38 cial judgment in his or her favor;

39 (2) who obtains some of his or her requested relief through any
40 settlement agreement approved by the court; or

41 (3) whose pursuit of a non-frivolous claim was a catalyst for a
42 unilateral change in position by the opposing party relative to the
43 relief sought.

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