

SENATE NO. 1898

AN ACT RELATIVE TO THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

*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 2 of Chapter 151B of the General Laws, as appearing in the 2002 Official
2 Edition, is hereby amended by adding after the word “purposes” in line 4 the following:-

3 , provided that Commission policies are subjected to public review in draft form for ninety (90)
4 days prior to final adoption

5 SECTION 2. Section 3 of Chapter 151B of the General Laws, as appearing in the 2002
6 Official Edition, is hereby further amended by adding to the end of paragraph (5), prior to the period
7 the following:-

8 , provided that Commission policies and practices are subjected to public review in draft form
9 for ninety (90) days prior to final adoption

10 SECTION 3. Chapter 151B of the General Laws, as appearing in the 2002 Official Edition, is
11 hereby further amended by adding the following new section:-

12 Section 5A. Notwithstanding the provisions in Section 5, any person claiming to be aggrieved
13 by an alleged unlawful practice by an employer or labor organization or employment agency because
14 of race, color, religious creed, national origin, sex, sexual orientation, ancestry, age, or handicap to
15 refuse to hire or employ or to bar or to discharge from employment such person or to discriminate
16 against such person in compensation or in terms, conditions, or privileges of employment, unless
17 based upon a bona fide occupational qualification as specified in section four 1, 1A, 1B, 2, 3, 4, 4A, 5,
18 9, 9A, 11A, 16, 16A may, by himself or his attorney, make, sign and file with the commission a
19 verified complaint in writing which shall state the name and address of the person, employer, labor
20 organization or employment agency alleged to have committed the unlawful practice complained of,
21 the prima facie case as alleged and contain other such information as may be required by the
22 commission, provided the complaint is accompanied by a \$250.00 filing fee, which may be waived or
23 refunded by the commission in emergency situations or where proof of inability to pay is presented.

24 After the filing of the complaint, the commissioner shall cause to be issued and served in the
25 name of the commission, a written notice, together with a copy of such complaint, as the same may
26 have been amended, requiring the person, employer, labor organization, or employment agency named
27 in such complaint, hereinafter referred to as the respondent, to answer the charges and state its position
28 regarding such complaint in writing within 45 days of receipt of the written notice. Within five days
29 of the commission's receipt of the respondent's position statement, the chairman of the commission
30 shall designate an investigative officer to make a prompt investigation in connection therewith,
31 including a scheduling of an investigative conference within 90 days from receipt of respondent's
32 position statement and if it is not so held within 90 days, or the complainant fails to attend the
33 investigative conference, the complaint is dismissed, unless good cause is shown for the absence. If an

34 attorney represents either the complainant or the respondent, the investigative officer will also be an
35 attorney with the commission.

36 If such investigative officer shall determine after such investigation that no probable cause
37 exists for crediting the allegations of the complaint, or 365 days from receipt of the complaint by the
38 commission has passed, the commission shall dismiss the complaint, and within ten days from such
39 dismissal, cause to be issued and served upon the complainant written notice of such dismissal.

40 If the commissioner shall determine after such investigation and no more than 365 days from
41 receipt of the complaint, that probable cause exists for crediting the allegations of any complaint, the
42 commissioner may allow for limited discovery provided that, based on traditional rules of evidence,
43 discovery orders be issued or denied within 30 days of request by the investigative officer and
44 provided that the investigative officer state in writing the reasons why discovery will materially benefit
45 resolution of the complaint, both parties will be given a 90 day discovery period. Both parties will
46 submit a pre-determination memorandum of fact and law 30 days after close of the discovery period.

47 At the close of the discovery period, the commission must consider summary judgment
48 motions and if accepted, the commission will dismiss the complaint and notify in writing both parties
49 and their attorneys of their right to elect judicial determination of the complaint. The person making
50 such an election shall give notice of such election to the commission and to all other parties and their
51 attorneys. The commission shall establish rules of practice for removing a case to federal or state
52 court. If a motion for summary judgment is denied, the commission will determine the reasonable
53 likelihood of success of prevailing prior to certifying the complaint for a public hearing.

54 All interested parties must attend all scheduled conferences and hearings. If a party fails to
55 attend, except where there is a showing of good cause, that party will be defaulted. The testimony
56 taken at hearings and conferences shall be under oath and transcribed at the request of any party.

57 If, upon all the evidence at the public hearing, the commission shall find that a respondent has
58 engaged in any unlawful practice as defined above, the commission shall state its findings of fact and
59 shall issue and cause to be served on such respondent an order requiring such respondent to cease and
60 desist from such unlawful practice and will take such affirmative action including but not limited to,
61 hiring, reinstatement, or upgrading of employees, with or without back pay, or restoration to
62 membership in any respondent labor organization, as, in the judgment of the commission, will
63 effectuate the purposes of this chapter. Such cease and desist orders and orders for affirmative relief
64 may be issued to operate prospectively. In addition to any such relief, the commission shall award
65 reasonable attorney fee and costs to any prevailing complainant.

66 If, upon all the evidence, the commission shall find that a respondent has not engaged in any
67 such unlawful practice, the commission shall state its findings of fact and shall issue and cause to be
68 served on the complainant an order dismissing the said complaint as to such respondent.

69 SECTION 4. Section 9 of Chapter 151B of the General Laws, as appearing in the 2002
70 Official Edition, is hereby further amended by adding in line 19, following "commission," the
71 following: -

72 or the respondent to a complaint.