HOUSE DOCKET, NO. 2990 FILED ON: 1/21/2011

HOUSE . . . . . No. 1865

The Commonwealth of Massachusetts

PRESENTED BY:

Denise Provost and Patricia D. Jehlen

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 affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Denise Provost	*27th Middlesex*
Kay Khan	*11th Middlesex*
Ruth B. Balser	*12th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
James B. Eldridge	☐ *[District]* ☐
Ellen Story	*3rd Hampshire*
Patricia D. Jehlen	☐ *[District]* ☐

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HOUSE . . . . . No. 1865

By Representative Provost of Somerville and Senator Jehlen, a joint petition (accompanied by bill, House, No. 1865) of Denise Provost, Patricia D. Jehlen and others for the inclusion of individuals with disabilities within civil rights protections and nondiscrimination protections and for an investigation by a special commission (including members of the General Court) of the status of individuals and families with disabilities. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

An Act affirming inclusion of individuals with disabilities within civil rights protections and nondiscrimination provisions in the Commonwealth of Massachusetts.

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 66 of chapter 3 of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended in line 4 by inserting after the word, age" the following:-

disability,

And, in section 67 by inserting in line 12 after the word, "age", the following:-

disability,

SECTION 2. Section 3 of chapter 15D of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended by inserting after the word, "racial", the following:-

disability,

And, in section 5, deleting in clause (9) the words "and cultural", and inserting it its place the following:-

cultural and disabilities

SECTION 3. Section 58 of chapter 7 of the General Laws, as so appearing in the Official Edition of 2008, is hereby amended in the definition of "Minority business enterprise," by inserting after the word, "racial", the following:-

disability,

16 SECTION 4. Section 1E of chapter 69 of the General Laws, as so appearing in the
17 Official Edition of 2008, is hereby amended by deleting in line 1 of paragraph 2 the words "or
18 racial" and inserting in their place the following:-

19 racial, disability and age

20 And, by deleting line 2 of paragraph 2 in its entirety, and inserting it is place the
21 following:-

22 The frameworks shall reflect sensitivity to the variety of learning styles and diverse
23 methods of learning.

24 SECTION 5. Section 5 of chapter 76 of the General Laws, as so appearing in the Official
25 Edition of 2008, is hereby amended in line 6 of clause 4(j) by inserting after the word
26 "performance", the following:-

27 disability

28 And, in section 12B by deleting in line 6 of paragraph 4(j) the words "physical handicap"
29 and inserting it place thereof the following:-

30 disability

31 SECTION 6. Section 13A of chapter 90 of the General Laws, as so appearing in the
32 Official Edition of 2008, is hereby amended by deleting clause(c) and inserting in its place a
33 new clause (c) as follows:-

34 (c) any person who is physically unable to use safety belts; provided, however, that such
35 condition is duly certified by a Massachusetts registered and licensed doctor, chiropractor, or
36 nurse practitioner who shall describe why such restraint is inappropriate; and provided that no
37 such physician shall be subject to liability in any civil action for the issuance or for the failure to
38 issue such certificate; and provided further that wheelchair-using passengers shall be seated
39 forward-facing and secured with properly installed and maintained wheelchair tiedown and
40 occupant restraint system.

41 SECTION 7. Section 87AAA of chapter 112 of the General Laws, as so appearing in the
42 Official Edition of 2008, is hereby amended by inserting in line 28 of clause (k) after the word
43 "level", the following:-

44 age, disabilities, sexual orientation, gender identity,

45 SECTION 8. Section 1 of chapter 121B, of the General Laws, as so appearing in the
46 Official Edition of 2008, is hereby amended by inserting after the sentence of the definition
47 "Handicapped persons of low income", the following:-

48 “Handicapped persons of low income” shall have the same meaning as

49 "individuals with disabilities with low income" and "disabled persons

50 with low income”; persons whose annual net income is less than the

51 amount necessary to enable them to maintain decent, safe and sanitary

52 housing, as defined by 24CFR9.103.

53 And, section 32 of chapter 121B is amended in clause (e) of paragraph 3 by deleting the
54 words “or physical handicap”, and inserting in place thereof the following:-

55 disability, sexual orientation and gender identity

56 Additionally, section 32 of chapter 121B is amended in subclause (f) (3) of paragraph 3
57 by inserting after the word “sanitary”, the following:-

58 and architectural access

59 SECTION 9. The title of chapter 151B of the General Laws, as appearing in the Official
60 Edition of 2008, is hereby amended by deleting the words “OR SEX” and inserting in place
61 thereof the following:-

62 , SEX OR DISABILITY

63 And, in section 1 of chapter 151B by inserting after definition 23 the following:-

64 The term "accessible dwelling unit", means an addaptable or accessible unit that is on an
65 accessible route and otherwise in compliance with the standards set forth in 521CMR.

66 And, by deleting definition 17 in section 1 of chapter 151B and inserting in its place the
67 following:-

68 The term "disability" means a physical or mental impairment that substantially limits one
69 or more major life activities without regard to the ameliorative effects of mitigating measures
70 which do not include ordinary eyeglasses or contact lenses. “Handicap” means the same as
71 “disability.”

72 And, by deleting definition 19 in section 1 of chapter 151B and inserting in its place the
73 following:-

74 The term "person with a disability" means a person who has such impairment, a record of
75 such impairment, or is regarded as having such impairment.

76 Moreover, by deleting definition 16 in section 1 of chapter 151B and inserting in its place
77 the following:-

78 The term “qualified handicapped person” means a person with a disability who is capable
79 of performing the essential functions of a particular job with or without reasonable
80 accommodations.

81 And, in subsection 6 of section 3 of chapter 151B by striking out the word “handicap” in
82 line 21 and inserting in place thereof the following:-

83 disability

84 And, by deleting, in line 22 of chapter 151B, the words “handicapped person” and
85 inserting in its place the following:-

86 person with a disability

87 And, by deleting, in line 54 of chapter 151B, the words “handicapped persons” and
88 inserting in place thereof the following:-

89 individuals with disabilities

90 And, by inserting in line 63 of chapter 151B after the word “ancestry” the following:-

91 or disability.

92 And, by inserting on line 82 of chapter 151B, after the word “level” the following:-

93 or disability.

94 Moreover, in section 4 of chapter 151B by striking out on line 5 the words “or ancestry”
95 and inserting in place thereof the following:-

96 ancestry or disability

97 And, by deleting on lines 71-72 of section 4 of chapter 151B, the words starting from “or
98 ancestry of any individual” through “person” and inserting in place thereof the following:-

99 ancestry, or disability

100 And, by deleting on lines 84-85 and 88-89 in section 4 of chapter 151B, the words “the
101 handicap of a qualified person” and inserting in both places the following:-

102 disability

103 Furthermore, by deleting on line 98 in section 4 of chapter 151B, the words or ancestry”
104 and inserting in place thereof the following:-

105 ancestry or disability

106 And, by deleting on line 139 of section 4 of chapter 151B, the word “handicap” and
107 inserting in place thereof the following:-

108 disability

109 And, on lines 165, 171 and 181 of section 4 of chapter 151B, by inserting after the word
110 “ancestry” the following:-

111 disability

112 And, by deleting in lines 166-167, 172-173, and 183-184 of section 4 of chapter 151B the
113 words “or because such person is blind, or hearing impaired or has any other handicap” and
114 inserting in their place the following:-

115 disability

116 Furthermore, by deleting in lines 229-230, 236-237, and 246 of section 4 of chapter 151B
117 the words “blindness, or hearing impairment or other handicap” and inserting in its place the
118 following:-

119 disability

120 And, by deleting in lines 230-231, 237-238, and 247-248 of section 4 chapter 151B the
121 words “possesses a trained dog guide as a consequence of blindness or hearing impairment” and
122 inserting in its place the following:-

123 utilizes a service animal as a consequence of a disability

124 And, in line 266 of subsection 7A of section 4 of chapter 151B, by deleting the word
125 “handicap” and inserting in place thereof the following:-

126 disability

127 And, in line 267-268 of subclause (1) of subsection 7A of section 4 of chapter 151B by
128 deleting the words “handicapped person” and inserting in its place the following:-

129 individual with a disability

130 And by inserting in line 270 of subsection 7A of section 4 of chapter 151B, after the word
131 “enjoyment” the following:-

132 and equal use

133 And, in line 278 of subsection 7A of section 4 of chapter 151B, by deleting the words
134 “handicapped person” and inserting in its place the following:-

135 tenant

136 And, in line 285 of clause (2) of subsection 7A of section 4 of chapter 151B, by deleting
137 the words “a handicapped person equal opportunity to use and enjoy a dwelling” and inserting in
138 place thereof the following:-

139 individual with a disability equal opportunity to use all elements including common areas
140 of such a dwelling;

141 Moreover, in line 288 of clause (3) of subsection 7A of section 4 of chapter 151B, by
142 inserting after the word “for” the following:-

143 an accessible dwelling unit, including through

144 And in line 293 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting
145 after the word “cabinet” the following:-

146 ensuring the entrance is on an accessible route

147 And in line 296 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting
148 after the word “lift” the following:-

149 , unless the request for modifications is in connection with a building which (1) has three
150 or more units and was constructed for first occupancy after March thirteenth, nineteen hundred
151 and ninety-one.

152 And, in line 316 of clause (3) of subsection 7A of section 4 of chapter 151B, by inserting
153 after the word “subsection” the following:-

154 It shall be the owner's burden to prove undue hardship. Notwithstanding any other
155 provisions of this subsection, an accommodation or modification which is paid for by the owner
156 or other person having the right of ownership is considered reasonable if it is requested by an
157 individual with a disability in order to afford such person full enjoyment of the premises; and if
158 such architectural or communications features were otherwise mandated by Federal and State
159 architectural accessibility code at the time of construction or rehabilitation.

160 And, in line 317 of clause (3) of subsection 7A of section 4 of chapter 151B, by deleting
161 the words “wheelchair accessible” and inserting in place thereof the following:-

162 an accessible dwelling unit

163 And, by deleting in line 331 of clause (3) of subsection 7A of section 4 of chapter 151B,
164 the words “handicap-accessible” and inserting in place thereof the following:-

165 accessible or adaptable.

166 Moreover, by deleting in line 342 of subsection 7B of section 4 of chapter 151B, the
167 word “handicap”, and inserting in place thereof the following:-

168 disability

169 And, in lines 351, 355, and 362 of subsection 8 of section 4 of chapter 151B, by deleting
170 the word “handicap” and inserting in place thereof the following:-

171 disability

172 And, by deleting subsection 9A of section 4 of chapter 151B in its entirety and inserting
173 in place thereof the following:-

174 9A. For an employer himself or through his agent to refuse, unless based upon a bonafide
175 occupational qualification, to hire or employ or to bar or discharge from employment any person
176 by reason of his or her failure to furnish information regarding his or her admission, on one or
177 more occasions, voluntarily or involuntarily, to any public or private facility for the care and
178 treatment of mentally ill persons, provided that such person can prove that he is mentally
179 competent to perform the job or the job for which he is applying. No application for employment
180 shall contain any questions or requests for information regarding the admission of an applicant,
181 on one or more occasions, voluntarily or involuntarily, to any public or private facility for the
182 care and treatment of mentally ill persons.

183 And, by deleting in line 475 of subsection 11 of section 4 of chapter 151B, the words “a
184 handicapped person” and inserting in place thereof the following:-

185 disability

186 And by inserting in line 484 in clause (b) of subsection 13 of section 4 of chapter 151B,
187 after the word "sex,” the following:-

188 gender identity or expression,

189 And by deleting on line 485 in clause (b) of subsection 13 of section 4 of chapter 151B,
190 the words “handicapped person” and inserting in place thereof the following:-

191 disability

192 SECTION 10. Section 92A of chapter 272 of the General Laws, as so appearing in the
193 Official Edition of 2008, is hereby amended by inserting after the word “disability” on line 12
194 the following:-

195 , age,

196 SECTION 11. Section 98 of chapter 272 of the General Laws, as so appearing in the
197 Official Edition of 2008, is hereby amended by inserting after the word “disability” on line 5 the
198 following:-

199 , age,

200 And, in the title of section 98A of chapter 272 by deleting the phrase "Physically
201 handicapped persons with dog guides" and inserting in place thereof the following:-

202 individual with disabilities accompanied by their service animal

203 And, in section 98A of chapter 272, by deleting the entire section and inserting in place
204 thereof the following:-

205 Notwithstanding any other provision of law, any individual with

206 one or more disabilities accompanied by their service animal, shall be entitled to any and
207 all accommodations, advantages, facilities and privileges of all public conveyances, public
208 amusements and places of public accommodation, within the commonwealth, to which persons
209 not accompanied by service animals are entitled, subject only to the conditions and limitations
210 applicable to all persons not accompanied by service animals, and no such individual with one or
211 more disabilities shall be required to pay any charge or fare for or on account of the
212 transportation on any public conveyance for himself or herself and their accompanying service
213 animal in addition to the charge or fare lawfully chargeable for his/her own transportation.
214 Whoever deprives any individuals with one or more disabilities of any right conferred by this
215 section shall be punished by a fine of not more than three hundred dollars and shall be liable to
216 any person aggrieved thereby for such damages as are set forth in section five of chapter one
217 hundred and fifty-one B; provided, however, that such civic forfeiture shall be of an amount not
218 less than one hundred dollars.

219 SECTION 12. Section 98B of chapter 272 of the General Laws, as so appearing in the
220 Official Edition of 2008, is hereby amended on line 3 by inserting after the word "religion" the
221 following:-

222 disability

223 SECTION 13. Chapter 3, of the General Laws, as so appearing in the Official Edition of
224 2008, is hereby amended by adding after section 69 the following new section, section 70 as
225 follows:-

226 Section 70. Commission on the status of individuals and families with disabilities

227 (1) There shall be established a permanent commission on the status of individuals
228 and families with disabilities comprised of 17 persons including; 1 person appointed by the
229 president of the senate; 1 person appointed by the speaker of the house of representatives; and
230 the following persons appointed by the governor: 1 person nominated by the joint committee on
231 children, families and persons with disabilities; 6 persons nominated by local and regional
232 disability rights organizations; 1 person nominated by the architectural access board; 1 person
233 nominated by the Massachusetts office on disability; and 6 persons from among the following
234 industries: communications, education, architecture, assistive technologies, arts and engineering

235 who have demonstrated competence in universal or inclusive design within their respective
236 industries.

237 (2) Members of the commission shall be drawn from diverse racial, ethnic, religious,
238 age, disability, sexual orientation, gender identity and expression, and socio-economic
239 backgrounds from throughout the commonwealth and shall have had experience working toward
240 the improvement of the status of individuals with disabilities in society. Members shall be
241 subject to the provisions of chapter 268A as they apply to special state employees.

242 The commission shall be an independent agency of the government of the

243 commonwealth and shall not be subject to the control of any other department or

244 agency.

245 (3)(a) Members shall serve terms of three years and until their successors are appointed.

246 (b) Vacancies in the membership of the commission shall be filled by the original
247 appointing or nominating authority for the balance of the unexpired term. If the position was
248 filled by a nominating body, the replacement member shall be selected from solicited
249 nominations.

250 (c) Nominations shall be solicited between January 1 and February 15 of each year
251 through an open application process using a uniform application that is widely distributed
252 throughout the state. Appointments will be announced on April 1 of each year.

253 (d) The commission shall elect from among its members a chair, a vice-chair, a treasurer
254 and any other officers it deems necessary.

255 (e) An executive director shall be selected by the commission, and shall hire staff,
256 subject to appropriations. The executive director shall be qualified by his or her
257 accomplishments in eradicating barriers to equality for individuals and families with disabilities,
258 in organizing research and reports, and by having demonstrated leadership. The executive
259 director shall not simultaneously serve as a member of the commission on the status of
260 individuals and families with disabilities.

261 (f) The members of the commission shall receive no compensation for their services, but
262 shall be reimbursed for any usual and customary expenses incurred in the performance of their
263 duties.

264 (3) The commission shall work to foster strategic integration of disability diversity within
265 all sectors of the Commonwealth; collect data relevant to short and long-term community
266 support and independent living service delivery programs; continuously monitor and evaluate
267 plans, programs and policies relevant to equalizing access to justice as well as assets and
268 opportunities for minorities; and provide an annual report with recommendations including, but

269 not limited to; (a) tools and guidelines; (b) specific disability benchmarking goals and
270 objectives;(c) necessary legislation, if any; and (d) mechanisms and processes.

271 (4) The commission shall: (a) study, review and report on the status of individuals with
272 disabilities in the commonwealth; (b) evaluate baseline conditions of accessibility and
273 integration throughout the Commonwealth and propose benchmarks, data collection
274 improvements and indicators to further the equal inclusion of individuals with disabilities in
275 economic, housing and environmental programs; (c) establish an informal resource group to
276 provide and support a platform of dialogue and feedback amongst program users and planners;
277 (d) inform leaders of business, education, health care, state and local governments and the
278 communications media of issues pertaining to individuals with disabilities; (e) identify and
279 recommend qualified individuals with disabilities for appointive positions at all levels of
280 government, including boards and commissions, as the commission deems necessary and
281 appropriate; (f) assess programs and practices in all state agencies as they affect individuals with
282 disabilities, as the commission deems necessary and appropriate; (g) advise executive and
283 legislative bodies regarding the impact of proposed legislation on individuals with disabilities, as
284 the commission deems necessary and appropriate; and, (h) promote and facilitate collaboration
285 among local disabilities commissions and among disability rights advocacy organizations in the
286 state, as the commission deems necessary and appropriate. The commission shall annually, on or
287 before June 2, report the results of its findings and activities of the preceding year and its
288 recommendations to the governor, the senate and house committees on ways and means, the
289 clerks of the senate and house of representatives, and the joint committee on children, families
290 and persons with disabilities.

291 (5) The powers of the commission shall include but not be limited to the following: (a) to
292 use such voluntary and uncompensated services of private individuals, agencies and
293 organizations as may from time to time be offered and needed; (b) to recommend policies and
294 make recommendations to agencies and officers of the state and local subdivisions of
295 government to effectuate the purposes of subsection (3); (c) to select an executive director and to
296 acquire adequate staff to perform its duties, subject to appropriation; (d) to establish and
297 maintain such offices as it may deem necessary, subject to appropriation; (e) to enact bylaws for
298 its own governance; (f) to appoint members to regional chapters of the commission; and (g) to
299 hold regular, public meetings and fact-finding hearings and other public forums as it may deem
300 necessary.

301 (6) The commission shall meet once a month for at least eleven months each year. The
302 (i) governor, (ii) president of the senate, (iii) speaker of the house of representatives, (iv) chairs
303 of the joint committee on children, families and persons with disabilities and (v) directors of the
304 state disability offices and commissions, or their designees, shall be invited to attend the monthly
305 meetings.

306 (7)(a) The commission may request from all state agencies such information and
307 assistance as the commission may require.

308 (b) The commission may accept and solicit funds, including any gifts, donations, grants
309 or bequests or any federal funds, for any of the purposes of this section. Such funds shall be
310 deposited in a separate account with the state treasurer, be received by said treasurer on behalf of
311 the commonwealth, and be expended by the commission in accordance with law.