HOUSE DOCKET, NO. 561 FILED ON: 1/18/2011

HOUSE . . . . . No. 491

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 to restore enforcement of civil rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Byron Rushing	*9th Suffolk*
Russell E. Holmes	*6th Suffolk*
Ruth B. Balser	*12th Middlesex*
James B. Eldridge	☐ *[District]* ☐
Linda Dorcena Forry	*12th Suffolk*
Sonia Chang-Diaz	☐ *[District]* ☐
Carlos Henriquez	*5th Suffolk*
Frank I. Smizik	*15th Norfolk*
Martha M. Walz	*8th Suffolk*
Gloria L. Fox	*7th Suffolk*
Kay Khan	*11th Middlesex*
Peter V. Kocot	*1st Hampshire*
Benjamin Swan	*11th Hampden*
Ellen Story	*3rd Hampshire*

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HOUSE . . . . . No. 491

By Mr. Rushing of Boston, a petition (accompanied by bill, House, No. 491) of Byron Rushing and others relative to the enforcement of certain civil rights laws. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3533* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to restore enforcement of 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:

Section 11 of Chapter 12 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting a new section 11M as follows:—

(a) No unit of State, county, or local government shall:—

(1) exclude a person from participation in, deny a person the benefits of, or otherwise subject a person 4 to discrimination in any program or activity on the grounds of that person's race, color, national origin, or sex; or

(2) utilize criteria or methods of administration that have the effect of excluding persons from participation in, denying persons the benefits of, or otherwise subjecting persons to discrimination in any program or activity because of their race, color, national origin, or sex.

(b) Any person aggrieved by conduct that violates subsection (a) may bring a civil lawsuit, in a State court, against the offending unit of government. This lawsuit must be brought not later than 3 years after the violation of subsection (a). A violation of this section is established if, based on the totality of the circumstances, it is shown that any individual has been denied any of the rights protected by subsection (a). If the court finds that a violation of paragraph (1) of subsection (a) has occurred, the court may award to the plaintiff actual and punitive damages and if the court finds that a violation of paragraph (2) of subsection (a) has occurred, the court may award to the plaintiff actual damages. The court, as it deems appropriate,

18 may grant as relief any permanent or preliminary injunction, temporary restraining order, or
19 other order.

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

23 (1) pursuant to subsection (b); or (2) to enforce a right arising under the Massachusetts
24 Constitution.

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

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

28 (1) who obtains some of his or her requested relief through a judicial judgment in his or
29 her favor;

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

32 (3) whose pursuit of a non-frivolous claim was a catalyst for a unilateral change in
33 position by the unit of State, county, or local government relative to the relief sought.

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