SENATE DOCKET, NO. 42 FILED ON: 1/13/2011

SENATE . . . . . No. 1559

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Baddour

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 relative to the Massachusetts Commission Against Discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven A. Baddour	
	☐ *[District]*
	☐

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SENATE . . . . . No. 1559

By Mr. Baddour, a petition (accompanied by bill, Senate, No. 1559) of Steven A. Baddour for legislation relative to the Massachusetts Commission Against Discrimination. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

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:

SECTION 1. Section 2 of Chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding after the word "purposes" in line 4 the following:- ", provided that Commission policies are subjected to public review in draft form for ninety (90) days prior to final adoption"

SECTION 2. Section 3 of Chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby further amended by adding to the end of paragraph (5), prior to the period the following:- " , provided that Commission policies and practices are subjected to public review in draft form for ninety (90) days prior to final adoption"

SECTION 3. Section 5 of chapter 151B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding at the end thereof the following paragraph:--

In the case of a public hearing in an employment discrimination matter that was held prior to May 6, 2004, and where the parties to the public hearing have not yet exhausted all avenues of judicial review, remand or appeal available under chapter 30A of the General Laws, or otherwise entered into a binding resolution of the matter, the commissioner shall immediately serve notice upon a complainant and respondent of their right to elect judicial determination of the complaint. Upon notification, if a complainant or respondent wishes to elect judicial determination, they shall do so in writing within 20 days of receipt of the notice. The person making the election shall give notice of the election to the commission and to all other complainants and respondents to whom the probable cause finding relates. The commission, upon receipt of the notice, shall dismiss the complaint filed and/or vacate the finding of the commission arising out of the public hearing as to all parties without prejudice and the complainant shall be barred from subsequently bringing a complaint on the same matter before the commission. If any complainant or respondent elects judicial determination, the commission

24 shall authorize, and not later than 30 days after the election is made the complainant, through
25 counsel, or the attorney general, in the case of an unrepresented complainant, to commence and
26 maintain, a civil action on behalf of the complainant in the superior court for the county in which
27 the unlawful practice occurred. The complainant may intervene as of right in the civil action.
28 Any party to any civil action shall be entitled to a trial by jury, if so elected.

29 SECTION 4. Chapter 151B of the General Laws, as appearing, is hereby further
30 amended by adding the following new section:-

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

44 After the filing of the complaint, the commissioner shall cause to be issued and served in
45 the name of the commission, a written notice, together with a copy of such complaint, as the
46 same may have been amended, requiring the person, employer, labor organization, or
47 employment agency named in such complaint, hereinafter referred to as the respondent, to
48 answer the charges and state its position regarding such complaint in writing within 45 days of
49 receipt of the written notice. Within five days of the commission's receipt of the respondent?s
50 position statement, the chairman of the commission shall designate an investigative officer to
51 make a prompt investigation in connection therewith, including a scheduling of an investigative
52 conference within 90 days from receipt of respondent's position statement and if it is not so held
53 within 90 days, or the complainant fails to attend the investigative conference, the complaint is
54 dismissed, unless good cause is shown for the absence. If an attorney represents either the
55 complainant or the respondent, the investigative officer will also be an attorney with the
56 commission.

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

62 If the commissioner shall determine after such investigation and no more than
63 365 days from receipt of the complaint, that probable cause exists for crediting the allegations of
64 any complaint, the commissioner may allow for limited discovery provided that, based on
65 traditional rules of evidence, discovery orders be issued or denied within 30 days of request by
66 the investigative officer and provided that the investigative officer state in writing the reasons
67 why discovery will materially benefit resolution of the complaint, both parties will be given a 90
68 day discovery period. Both parties will submit a pre-determination memorandum of fact and law
69 30 days after close of the discovery period.

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

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

82 If, upon all the evidence at the public hearing, the commission shall find that a
83 respondent has engaged in any unlawful practice as defined above, the commission shall state its
84 findings of fact and shall issue and cause to be served on such respondent an order requiring such
85 respondent to cease and desist form such unlawful practice and will take such affirmative action
86 including but not limited to, hiring, reinstatement, or upgrading of employees, with or without
87 back pay, or restoration to membership in any respondent labor organization, as, in the judgment
88 of the commission, will effectuate the purposes of his chapter. Such cease and desist orders and
89 orders for affirmative relief may be issued to operate prospectively. In addition to any such
90 relief, the commission shall award reasonable attorney fee and costs to any prevailing
91 complainant.

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

96 SECTION 5. Section 9 of Chapter 151B of the General Laws, as appearing in the 2008
97 Official Edition, is hereby further amended by adding in line 19, following "commission," the
98 following: " or the respondent to a complaint"