

By Mr. Flaherty of Cambridge, petition of Charles F. Flaherty, Jr., for legislation to prohibit discrimination against certain persons in employment on account of physical or mental handicaps. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT PROHIBITING DISCRIMINATION AGAINST CERTAIN PERSONS IN EMPLOYMENT ON ACCOUNT OF PHYSICAL OR MENTAL HANDICAP.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 149 of the General Laws is hereby amended by striking
2 out section 24K and inserting in place thereof the following new
3 caption and sections: —

4 **DISCRIMINATION AGAINST CERTAIN PERSONS**
5 **IN EMPLOYMENT ON ACCOUNT OF PHYSICAL**
6 **OR MENTAL HANDICAP.**

7 **24K. Definitions.**

8 As used in this section and in sections twenty-four L and twenty-
9 four M

10 1. The term "qualified handicapped individual" means a
11 handicapped individual who is capable of performing a particular
12 job, or who would be capable of performing a particular job with
13 reasonable accommodation to his or her handicap.

14 2. The term "handicapped individual" means any person who
15 has a physical or mental impairment which substantially limits one
16 or more of such person's major life activities; has a record of such
17 impairment; or is regarded as having such impairment.

18 All medical documentation of handicap required under this
19 section or sections twenty-four L and twenty-four M shall be based
20 upon the medical standards of the Division of Vocational

21 Rehabilitation of the Massachusetts Rehabilitation Commission,
22 provided that the standards shall be used only to determine the
23 existence of impairment without regard to the degree of impair-
24 ment.

25 3. Physical or mental job qualification requirements in hiring,
26 promotion, demotion or dismissal from employment shall be
27 related to the specific job or jobs for which the individual is being
28 considered and shall be consistent with business necessity and the
29 safe performance of the job.

30 24L. *Unlawful Practice.*

31 It shall be an unlawful practice for any employer, personally or
32 through an agent, to dismiss from employment or refuse to hire,
33 rehire or advance in employment, solely because of his or her
34 handicap, any qualified handicapped individual, unless the
35 employer can demonstrate that a reasonable accommodation to
36 the physical and/or mental limitation of an employee or applicant
37 would impose an undue hardship on the conduct of the employer's
38 business.

39 Nothing in this section or section twenty-four M shall prohibit
40 an employer from conducting a comprehensive medical examina-
41 tion prior to employment provided that the results of such an
42 examination shall be used only in accordance with the re-
43 quirements of this section. Whenever an employer inquires into an
44 applicant's or employee's physical or mental condition or conducts
45 a medical examination prior to employment or change in
46 employment status information obtained in response to such
47 inquiries or examination shall be kept confidential except that
48 supervisors and managers may be informed regarding restrictions
49 on the work or duties of handicapped individuals and regarding
50 accommodations, and first aid and safety personnel may be
51 informed, where and to the extent appropriate, if the condition
52 might require emergency treatment.

53 24M. *Complaint Alleging Unlawful Practice; Proceedings*
54 *before Commissioner; Injunctive Relief; Judicial Review of Order*
55 *of Commissioner; Damages or Injunctive Relief.*

56 The department shall receive and investigate all complaints of
57 discrimination arising under section 24L. After investigating, if in
58 the opinion of the Commissioner the employer in question is

59 subject to section 503 of section 504 or the Federal Rehabilitation
60 Act of 1973 (Public Law 93-112) and any rule, regulation or
61 executive order issued pursuant thereto, the Commissioner shall
62 refer the complaint to the appropriate Federal Agency or
63 Authority. If that Federal Agency or Authority establishes
64 jurisdiction and so notifies the Commissioner, the complainant
65 shall be precluded from pursuing any remedy under Section 24M
66 and 24N and the complainant shall be so notified by the
67 Commissioner. The Commissioner shall advise the complainant of
68 the rights and remedies available to him by virtue of section 503
69 and section 504 of the Federal Rehabilitation Act of 1973 (Public
70 Law 93-112). If the Commissioner determines that Federal
71 jurisdiction is lacking and the Commissioner further determines
72 that probable cause exists for crediting the allegations of the
73 complaint, the commissioner shall immediately endeavor to
74 eliminate the unlawful practice by conference, conciliation and
75 persuasion. In case of failure to eliminate the unlawful practice, the
76 commissioner may conduct hearings at which all parties or their
77 counsel may appear and testify in person or otherwise. If, upon all
78 the evidence at the hearing the commissioner shall find that a
79 respondent has engaged in an unlawful practice as defined in
80 section twenty-four L, the commissioner shall state the finding of
81 fact and shall order the respondent to cease and desist from such
82 unlawful practice and to take such affirmative action, including,
83 but not limited to, hiring, reinstatement, or upgrading of
84 employees, with or without back pay, as, in the judgment of the
85 commissioner, will effectuate the purpose of section twenty-four L.
86 Any complaint filed pursuant to this section must be so filed within
87 six months of the alleged act of discrimination. The department
88 shall, after notice and public hearing as provided in section two of
89 chapter thirty A, establish rules of practice to govern the procedure
90 under this section and sections twenty-four K and twenty-four L
91 and further defining, if necessary, the meanings of terms in said
92 sections.

93 Any complainant, respondent or other person aggrieved by such
94 order of the commissioner may obtain judicial review thereof, by
95 proceeding in the superior court of any county in which the
96 unlawful practice that is the subject of the commissioner's order

97 took place, or in which the respondent lives or transacts business.

98 24N. *Judicial Remedies:*

99 Any person alleging to be aggrieved by a practice made unlawful
100 under section 24L may at the exhaustion of any administrative
101 remedy available pursuant to section 24M of this Chapter bring a
102 civil action for damages or injunctive relief or both in the superior
103 court or probate court for the county in which the alleged unlawful
104 practice occurred, or in which the respondent lives or transacts
105 business.

106 Any such action shall be advanced for a speedy trial at the
107 request of the petitioner. If the court finds for the petitioner it shall,
108 in addition to any other relief and irrespective of the amount in
109 controversy, award the petitioner reasonable attorney's fees and
110 costs unless special circumstances would render such an award
111 unjust. The department shall, upon the filing of any complaint with
112 it, notify the aggrieved person of his or her rights under this
113 section. Such action shall not be filed later than six months from
114 the date the petitioner's administrative remedy has been ex-
115 hausted.