

HOUSE No. 1356

By Mr. Bigelow of Brookline (by request), petition of William E. Spofford and others for establishment of a state bureau for enforcement of the law prohibiting discrimination against persons in employment on account of their age. Labor and Industries.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING A BUREAU FOR THE ENFORCEMENT OF THE LAW PROHIBITING DISCRIMINATION AGAINST CERTAIN PERSONS IN EMPLOYMENT ON ACCOUNT OF THEIR AGE.

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 one hundred and forty-nine of the Gen-
2 eral Laws is hereby amended by inserting after
3 section twenty-four J, inserted by section two of
4 chapter three hundred and sixty-seven of the acts
5 of nineteen hundred and thirty-seven, the following
6 new section:—

7 *Section 24K.* (a) There is hereby established in
8 the department a bureau of three persons, for the
9 enforcement of the provisions of law prohibiting dis-
10 crimination against certain persons in employment
11 on account of age, as defined in sections twenty-
12 four A to twenty-four J. The bureau is empowered

13 to prevent any person from engaging in any such
14 discrimination. The governor shall appoint the
15 members of such bureau and fix their salaries.

16 (b) Whenever it is charged that any person has
17 engaged in or is engaging in any such discrimination,
18 the bureau, or any agent or agency designated by
19 the bureau for such purposes, shall have power to
20 issue and cause to be served upon such person a
21 complaint stating the charges in that respect, and
22 containing a notice of hearing before the commission
23 or a member thereof, or before a designated agent
24 or agency, at a place therein fixed, not less than five
25 days after the serving of said complaint. Any such
26 complaint may be amended by the member, agent,
27 or agency conducting the hearing or the commission
28 in its discretion at any time prior to the issuance of
29 an order based thereon. The person so complained
30 of shall have the right to file an answer to the origi-
31 nal or amended complaint and to appear in person
32 or otherwise and give testimony at the place and
33 time fixed in the complaint. In the discretion of the
34 member, agent or agency conducting the hearing or
35 the commission, any other person may be allowed to
36 intervene in the said proceeding and to present
37 testimony. In any such proceeding the rules of evi-
38 dence prevailing in courts of law or equity shall not
39 be controlling.

40 (c) The testimony taken by such member, agent
41 or agency or the commission shall be reduced to
42 writing and filed with the commission. Thereafter,
43 in its discretion, the commission upon notice may
44 take further testimony or hear argument. If upon
45 all the testimony taken the commission shall be of
46 the opinion that any person named in the complaint

47 has engaged in or is engaging in any such unfair
48 labor practice, then the commission shall state its
49 findings of fact and shall issue and cause to be served
50 on such person an order requiring such person to
51 cease and desist from such discrimination, and to
52 take such affirmative action, including reinstatement
53 of employees with or without back pay, as will ef-
54 fectuate the policies of this act. Such order may
55 further require such person to make reports from
56 time to time showing the extent to which it has
57 complied with the order. If upon all the testimony
58 taken the commission shall be of the opinion that
59 no person named in the complaint has engaged in or
60 is engaging in any such discrimination, then the
61 commission shall state its findings of fact and shall
62 issue an order dismissing the said complaint.

63 (d) Until a transcript of the record in a case shall
64 have been filed in a court, as hereinafter provided,
65 the bureau may at any time, upon reasonable notice
66 and in such manner as it shall deem proper, modify
67 or set aside, in whole or in part, any finding or order
68 made or issued by it.

69 (e) The bureau shall have power to petition the
70 superior court in any county wherein the discrimina-
71 tion in question occurred or wherein such person
72 resides or transacts business, for the enforcement of
73 such order and for appropriate temporary relief or
74 restraining order, and shall certify and file in the
75 court a transcript of the entire record in the proceed-
76 ing, including the pleadings and testimony upon
77 which such order was entered and the findings and
78 order of the commission. Upon such filing, the court
79 shall cause notice thereof to be served upon such
80 person, and thereupon shall have jurisdiction of the

81 proceeding and of the question determined therein,
82 and shall have power to grant such temporary relief
83 or restraining order as it deems just and proper, and
84 to make and enter upon the pleadings, testimony,
85 and proceedings set forth in such transcript a decree
86 enforcing, modifying, and enforcing as so modified,
87 or setting aside in whole or in part the order of the
88 commission. No objection that has not been urged
89 before the commission, its member, agent or agency,
90 shall be considered by the court, unless the failure
91 or neglect to urge such objection shall be excused
92 because of extraordinary circumstances. The find-
93 ings of the bureau as to the facts, if supported by
94 evidence, shall be conclusive. If either party shall
95 apply to the court for leave to adduce additional
96 evidence and shall show to the satisfaction of the
97 court that such additional evidence is material and
98 that there were reasonable grounds for the failure to
99 adduce such evidence in the hearing before the com-
100 mission, its member, agent, or agency, the court
101 may order such additional evidence to be taken
102 before the commission, its member, agent, or agency,
103 and to be made a part of the transcript. The bureau
104 may modify its findings as to the facts, or make new
105 findings, by reason of additional evidence so taken
106 and filed, and it shall file such modified or new find-
107 ings, which, if supported by evidence, shall be con-
108 clusive, and shall file its recommendations, if any,
109 for the modification or setting aside of its original
110 order. The jurisdiction of the court shall be exclu-
111 sive and its judgment and decree shall be final,
112 except that the same shall be subject to review by
113 the supreme judicial court for the commonwealth.

114 (f) Any person aggrieved by a final order of the
115 bureau granting or denying in whole or in part the
116 relief sought may obtain a review of such order in
117 the superior court for the county wherein the unfair
118 labor practice in question was alleged to have been
119 engaged in, or wherein such person resides or trans-
120 acts business, by filing in such court a written peti-
121 tion praying that the order of the bureau be modified
122 or set aside. A copy of such petition shall be forth-
123 with served upon the bureau, and thereupon the
124 aggrieved party shall file in the court a transcript of
125 the entire record in the proceeding, certified by the
126 bureau, including the pleading and testimony upon
127 which the order complained of was entered and the
128 findings and order of the bureau. Upon such filing,
129 the court shall proceed in the same manner as in the
130 case of an application by the commission under sub-
131 section (e), and shall have the same exclusive juris-
132 diction to grant to the commission such temporary
133 relief or restraining order as it deems just and proper,
134 and in like manner to make and enter a decree en-
135 forcing, modifying, and enforcing as so modified, or
136 setting aside in whole or in part the order of the com-
137 mission; and the findings of the commission as to the
138 facts, if supported by evidence, shall in like manner
139 be conclusive.

