HOUSE . . . . . No. 2617

By Mr. Rotenberg of Brookline, petition of Jon Rotenberg relative to establishing an action in court to remedy certain unlawful practices. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT ESTABLISHING AN ACTION IN COURT TO REMEDY CERTAIN UNLAWFUL PRACTICES.

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 151B of the General Laws is hereby amended by
2 striking out section 9, as most recently amended by chapter 397
3 of the acts of 1965, and inserting in place thereof the following
4 new section: –
5 *Section 9.* Construction of statute; inconsistent laws; repeals,
6 exclusive procedure; action barring resort to procedure.
7 The provisions of this chapter shall be construed liberally for
8 the accomplishment of the purposes thereof, and any law
9 inconsistent with any provision hereof shall not apply, but
10 nothing contained in this chapter shall be deemed to repeal any
11 provision of chapter one hundred and forty-nine which estab-
12 lishes standards, terms or conditions of employment which are
13 applicable to females, section ninety-eight of chapter two
14 hundred and seventy-two or any other law of this commonwealth
15 relating to discrimination because of race, color, religious creed,
16 national origin, or ancestry, and nothing contained in this
17 chapter shall be deemed to repeal sections twenty-four A to
18 twenty-four J, inclusive, of chapter one hundred and forty-nine
19 or any other law of the commonwealth relating to discrimination
20 because of age; but, as to acts declared unlawful by section four,
21 the procedure provided in this chapter shall, while pending, be
22 exclusive and the final determination therein shall exclude any

23 other action, civil or criminal, based on the same grievance of the
24 individual concerned.
25 Any person claiming to be aggrieved by a violation of this
26 chapter or of chapter one hundred fifty-one C or a violation of
27 clause E, section 32 of chapter one hundred and twenty-one B,
28 or sections ninety-two B and ninety-eight of chapter two
29 hundred and seventy-two, or of any other unlawful practice
30 within the jurisdiction of the commission, may bring a cause of
31 action for damages or for injunctive relief, or both, in the
32 superior court or the district court within whose district the
33 violation occurred. Provided however that any person who
34 institutes any action for damages shall be barred from sub-
35 sequently bringing a complaint on the same matter before the
36 commission. Any person who has filed a complaint with the
37 commission may, upon written notification to the commission
38 within ninety days of the date of such filing, withdraw said
39 complaint and bring a cause of action for damages or for
40 injunctive relief in the superior court or the district court within
41 whose district the violation occurred. Provided, however, that
42 any person who has not withdrawn his complaint from the
43 commission, in writing, within ninety days, shall subsequently be
44 barred from instituting any action for damages on the same
45 matter before any state court unless said person receives written
46 assent from the commission. Upon the institution of such action
47 for damages, the complaintant's complaint before the commis-
48 sion shall be dismissed without prejudice.
49 Persons entitled to bring an action under the preceding
50 paragraph may, if the alleged violation or similar violations has
51 caused similar injury to other persons similarly situated and if
52 they adequately and fairly represent such other persons, bring
53 the action on behalf of themselves and such other similarly
54 injured and similarly situated persons. Provided that the court
55 shall require that reasonable notice of the action be given to such
56 of the remainder of the class as can be practicably identified and
57 located. The action shall not be dismissed, settled or com-
58 promised without the approval of the court, and notice of any
59 proposed dismissal, settlement or compromise shall be given to
60 all members of the class of petitioners in the most effective

61 practicable manner. Such proceedings may be instituted even if
62 only a single named petitioner has filed a complaint based on the
63 alleged violation, or if the complaint was initiated by the
64 commission. If the court finds for the plaintiff, it shall, in
65 addition to other relief provided for by this section and
66 irrespective of the amount in controversy, award to the plaintiff
67 his reasonable attorneys fees and costs. The commission shall,
68 upon the filing of any complaint with it, notify the complainant
69 of his rights under this section.