

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 113) of Joseph F. Timilty and other members of the General Court for legislation to prohibit discrimination in employment against certain persons because of age or handicap. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT TO PROHIBIT DISCRIMINATION IN EMPLOYMENT AGAINST CERTAIN PERSONS BECAUSE OF AGE OR 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
2 striking out sections 24A to 24K, inclusive, and inserting in
3 place thereof the following twelve sections: —

4 *Section 24A.* It is declared to be against the public policy
5 for any employer within the Commonwealth and including the
6 Commonwealth and any of its political sub-divisions to dis-
7 criminate against any person between the ages of forty-five
8 and sixty-five because of his age, or against any rehabilitated
9 person, solely because of his handicap, who possesses the
10 physical and mental capacity to perform the functions re-
11 quired of an employment-related situation including, but not
12 limited to hiring, promoting, laying-off, dismissing, or recom-
13 mending such person.

14 *Section 24B.* Any provision in any contract, agreement or
15 understanding entered into on or after October 1, 1937 which
16 shall prevent or tend to prevent the employment of any per-
17 son between the ages of forty-five and sixty-five because of
18 his age shall be null and void.

19 Any provision in any contract, agreement or understanding
20 entered into on or after October 1, 1977 which shall prevent,
21 or tend to prevent, the employment, solely because of his
22 handicap, any rehabilitated handicapped person, who possesses
23 the mental and physical capacity to perform the functions re-
24 quired of said employment shall be null and void.

25 *Section 24C.* Every person shall keep true and accurate

26 records of all persons employed by him, as far as practicable
27 to do so, and shall upon demand furnish to the commissioner
28 or his authorized representative a true copy of any such rec-
29 ord, verified upon oath. Such records shall be open to investi-
30 gation by the commissioner or the commissioner's authorized
31 representative at any reasonable time. Whoever violates any
32 provision of this section shall be punished by a fine of not less
33 than twenty-five or more than one hundred dollars and each
34 day of failure to keep such records or to furnish such copies
35 thereof, upon demand, to the commissioner or an authorized
36 representative shall constitute a separate offense.

37 *Section 24D.* The Department shall investigate all complaints
38 of discrimination, and for that purpose, the commissioner or
39 an authorized representative shall have full power and au-
40 thority to enter any place of business or employment, other
41 than places of employment of persons engaged in domestic
42 service in the home of the employer, within the Common-
43 wealth for the purpose of examination and making a transcript
44 of records in any way appertaining to or having a bearing
45 upon a complaint.

46 *Section 24E.* Whoever, personally or by an agent, shall dis-
47 charge an employee for the reason that such an employee has
48 furnished evidence in connection with a complaint under any
49 provision of said sections twenty-four A to twenty-four L, in-
50 clusive, or that such employee has testified in a judicial pro-
51 ceeding under any such provision, shall be punished by a fine
52 of not less than fifty nor more than two hundred dollars.

53 *Section 24F.* Whoever hinders or delays an inspector of the
54 department, or a duly authorized representative of the com-
55 missioner, in the performance of any duties in the investiga-
56 tion of a complaint under any provision of section twenty-
57 four A to section twenty-four L, inclusive, or refuses to admit
58 any such inspector or representative to any place necessary
59 to be entered in the performance of such duty, or whoever re-
60 fuses to give such inspector or representative such informa-
61 tion that may be required for the proper enforcement of any
62 provision of said sections shall be punished by a fine of not
63 less than twenty-five nor more than two hundred dollars.

64 *Section 24G.* If commissioner or any authorized representa-

65 tive has reason to believe that any employer has dismissed
66 from employment or has refused to employ any person be-
67 tween the age of forty-five and sixty-five because of such per-
68 son's age, or any rehabilitated handicapped person, solely be-
69 cause of his handicap who possesses the physical and mental
70 capacity to perform the functions required by such employ-
71 ment because of such handicap, the commissioner may, on ten
72 days notice summon such employer to appear before him to show
73 cause why the name of such employer should not be published
74 as having failed to observe the provisions of section twenty-
75 four A to twenty-four L, inclusive. After such hearing and the
76 finding by the commissioner of non-observance of the pro-
77 visions of said sections, the commissioner may cause to be
78 published in a newspaper or newspapers circulating within
79 this Commonwealth or in such other manner as such com-
80 missioner may deem appropriate, the name of such employer
81 as having failed to observe the provisions of said sections.
82 Neither the commissioner nor any authorized representative,
83 nor any newspaper publisher, proprietor, editor, nor employee
84 there of shall be liable to an action for damages for publish-
85 ing the name of any employer as provided for in this section,
86 unless guilty of some willfull misrepresentation.

87 *Section 24H.* Any person aggrieved by any decision of the
88 commissioner under any provision of sections twenty-four A
89 to twenty-four L, inclusive, may appeal to the superior court,
90 for a review thereof within thirty days after the recommenda-
91 tion of such decision. Sections sixteen to twenty, inclusive, of
92 chapter one hundred and fifty-one shall apply to and govern
93 any such appeal.

94 *Section 24I.* Any employee or prospective employee who has
95 been discriminated against in violation of section twenty-
96 four A may bring suit against the employer in the superior
97 court of the county wherein occurred the act or practice com-
98 plained of or wherein is located the employer's place of busi-
99 ness. If the court finds for the plaintiff in such suit, such
100 court may award to such plaintiff a sum of money not to ex-
101 ceed the total of court costs, legal costs and the amount of
102 gross salary said plaintiff would have received in the course
103 of one year's employment had such plaintiff not been so dis-

104 criminated against.

105 *Section 24J.* Any employer subject to section 503 or section
106 504 of the Federal Rehabilitation Act of 1973, (public law 93-
107 112) and rules and regulations pursuant thereto, who is in
108 compliance with said provisions, shall be deemed to be in
109 compliance with sections twenty-four A to twenty-four C.

110 *Section 24K.* Sections twenty-four A to twenty-four G, in-
111 clusive, shall not apply to: —

112 (1) — The United States Government; however employers
113 receiving government contracts are not exempt from the pro-
114 visions of sections twenty-four A to twenty-four G;

115 (2) — Any employer whose normal employee level is fifteen
116 or fewer persons:

117 (3) — Exempt situations as determined, upon petition of
118 the individual employer, by the Commissioner of the Mas-
119 sachusetts Commission for the Blind or of the Commissioner
120 of the Massachusetts Rehabilitation Commission, or in the
121 case of persons between the age of forty-five and sixty-five
122 by the Commissioner Against Discrimination, as the case
123 may be.

124 Such petition of exemption shall be composed by the in-
125 dividual employer and sent by registered mail to the appro-
126 priate commissioner. The commissioner shall, within sixty
127 days of his receipt of said petition, notify the employer of his
128 decision.

129 *Section 24L.* If any part or sub-division of any of sections
130 twenty-four A to twenty-four K, inclusive, or the application
131 thereof shall be held invalid, unconstitutional or inoperative
132 as to any particular person, condition or circumstance, the re-
133 mainder thereof, or the application of any such part or sub-
134 division to any other person, condition or circumstance, shall
135 not be affected thereby.