

# HOUSE . . . . . No. 78

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## The Commonwealth of Massachusetts

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COMMISSION AGAINST DISCRIMINATION

120 TREMONT STREET, BOSTON, 02108, OCTOBER 29, 1971.

The Honorable John F. X. Davoren, *Secretary of State*, State House,  
Boston, Massachusetts

DEAR MR. SECRETARY: — Attached hereto are recommendations for legislation, together with drafts of the bills embodying the legislation recommended.

Very truly yours,

GLENDORA M. PUTNAM,  
*Chairman.*

## RECOMMENDATIONS.

1. AN ACT DEFINING THE INVESTIGATING COMMISSIONER'S FUNCTION WITH RESPECT TO COMPLAINTS OF HOUSING DISCRIMINATION FILED WITH THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION AGAINST NON-RESIDENT RESPONDENTS.

Section 5 of chapter 151B of the General Laws sets forth the procedure to be followed by the Commission in investigating conciliating and conducting public hearing of complaints alleging unlawful discrimination in connection with the investigatory process; the section specifically provides that the "Chairman of the Commission shall designate one of the commissioners to make . . . (a) prompt investigation . . ." of each complaint filed with the Commission. Thereafter, the section provides in essence that the same investigating commissioner if he finds probable cause to believe the complaint is valid, may attempt to eliminate the alleged discriminatory conduct and its effects by informal conferences, conciliation and persuasion. If these informal conciliatory methods fail to remedy the situation the investigating commissioner may then certify the matter for a public hearing on its merits before the commissioners.

There is a significant aberration in section 5, however, with respect to the applicability of the above-described procedure to complaints of housing discrimination when the owner of the subject property is a non-resident of the state. Section 5 as presently written makes specific reference to such a situation and provides that —

"If a hearing commissioner determines that probable cause exists to credit the allegations of a complainant . . . and if he determines that (the) respondent is a non-resident of the Commonwealth and cannot be personally served with process in the Commonwealth, such hearing commissioner may file a petition in equity in the nature of an in rem proceeding seeking appropriate injunctive relief against such property . . . including orders or decrees restraining and enjoining any sale, rental, lease or other disposition of such property pending the final determination of proceedings . . ."

The Commission's view is that since the fact of out-of-state ownership is usually revealed by the investigating commissioner during the early stages of the investigation it is more appropriate that the investigating commissioner be authorized to petition the court for relief. For that reason we recommend that legislation be adopted changing the references to a "hearing" commissioner to read "investigating" commissioner.

2. AN ACT RESTATING THE INVESTIGATIVE POWERS OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION AND AUTHORIZING THE COMMISSION TO ISSUE INTERROGATORIES AND TO REPRODUCE EVIDENCE IN CONNECTION WITH COMPLAINTS OF EMPLOYMENT AND HOUSING DISCRIMINATION.

The investigatory powers and authority which the Commission seeks by the above-captioned legislation concerning employment and housing discrimination parallel the powers and authority also sought in connection with the commission's obligation in the area of education (see G.L. 151C and the proposed legislation attached hereto styled AN ACT DEFINING THE INVESTIGATIVE POWERS OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION AUTHORIZING THE COMMISSION TO ISSUE INTERROGATORIES AND TO REPRODUCE EVIDENCE IN CONNECTION WITH COMPLAINTS OF EDUCATION DISCRIMINATION). Therefore, it is convenient to discuss here both pieces of proposed legislation.

The Commission's present powers with respect to investigations include, among other things, the power to subpoena "the production for examination of any books or papers relating to any matter under investigation or in question before the Commission." This device is essential to the Commission's investigatory function. To be effective, however, the Commission must (1) be able to sufficiently describe the materials sought prior to the issuance of the subpoena and (2) have effective access to the materials produced in compliance with the subpoena.

Because of the traditional requirement that subpoenas, to be enforceable, must adequately describe the materials required to be produced, our efforts to obtain relevant information may be thwarted by respondents who refuse to cooperate by either volun-

tarily producing the materials or describing them with sufficient specificity so that the Commission can subpoena them as necessary. In this context the power to issue interrogatories is a corollary to the existing power to subpoena materials. We believe it is appropriate therefore that the Commission be given the authority to issue interrogatories to parties which would require the respondents, among other things, to identify relevant books, papers, records, etc. and to describe the nature of their contents. It is anticipated that such interrogatories may also be employed to secure other forms of information relevant to the particular allegations in the matter at hand.

With respect to the second item raised above (e.g. effective access to materials) it may be sufficient to note that in many instances where the Commission is concerned with substantial volume of records, books, etc. the power to merely compel their production is insufficient when the respondent refuses to allow their reproduction by the Commission's staff. Reproduction may be essential, in such instances if the Investigating Commissioner and his staff are to have "effective" access to these materials. Although the vast majority of respondents do not object to the reproduction of such materials, a significant number have objected, necessitating resort to the courts and causing unreasonable delays in the administrative process. We believe these situations can be avoided with the adoption of our proposed legislation which explicitly authorizes the Commission to reproduce books, papers or other records relating to any matter under investigation or in question before the Commission.

3. AN ACT DEFINING THE INVESTIGATIVE POWERS OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION AND AUTHORIZING THE COMMISSION TO ISSUE INTERROGATORIES AND TO REPRODUCE EVIDENCE IN CONNECTION WITH COMPLAINTS OF EDUCATION DISCRIMINATION.

The Commission's recommendation with respect to the above styled proposed legislation is set out in the recommendation accompanying the Act captioned AN ACT RESTATING THE INVESTIGATIVE POWERS OF THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION AND AUTHORIZING THE

COMMISSION TO ISSUE INTERROGATORIES AND TO REPRODUCE EVIDENCE IN CONNECTION WITH COMPLAINTS OF EMPLOYMENT AND HOUSING DISCRIMINATION.

4. AN ACT RELATIVE TO MAKING CERTAIN CHANGES IN THE PROCEEDINGS IN CASES OF ALLEGED UNFAIR EDUCATIONAL PRACTICES BY THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION.

Section 3 of chapter 151C of the General Laws sets forth the procedure to be followed by the Commission in investigating, conciliating and conducting public hearing of complaints alleging unlawful discrimination in educational institutions.

The procedure set forth in section 3 of chapter 151C of the General Laws deviates and is substantially different than the procedures set forth and provided in section 5 of chapter 151B with respect to complaints of unlawful discrimination in employment and housing.

It is the Commission's view that the procedures for the handling of all complaints alleging unlawful discrimination should be consistent. For this reason we recommend that legislation be adopted changing the procedures under chapter 151C, section 3 to parallel the procedures set forth in section 5 of chapter 151B.





