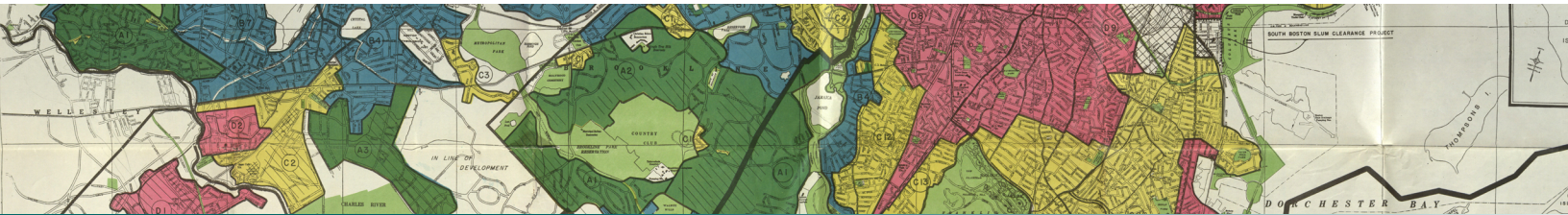


# AN ACT PROMOTING FAIR HOUSING BY PREVENTING DISCRIMINATION AGAINST AFFORDABLE HOUSING

H.1373 / S.867

Sponsors: Representative Christine Barber & Senator Sonia Chang-Díaz



## WHY IS ENSURING FAIR HOUSING CRITICAL?

Restrictive local zoning and permitting decisions that decide who gets to live where have created and perpetuated segregation based on race, socioeconomic status, and familial status in Massachusetts. Per The Greater Boston Housing Report Card 2019, the majority of the area's Latino and Black households live in just 10 municipalities across the state.

Too often, families with children, people with low incomes, and people of color are intentionally excluded when new housing is created by limiting housing type and affordability. By creating only studio apartments or only age-restricted homes in new development, for example, communities are furthering segregation and perpetuating exclusion.

## WHAT WILL THIS BILL DO?

**MORE INCLUSIVE  
COMMUNITIES**

**ACCESS &  
OPPORTUNITY**

**FAIR  
HOUSING**

This legislation will strengthen our fair housing laws and foster more inclusive communities by prohibiting municipal and state discriminatory zoning bylaws, ordinances, and land use decisions.



**Questions?** Contact CHAPA's  
Director of Public Policy, Eric Shupin at  
[eshupin@chapa.org](mailto:eshupin@chapa.org) or 617-682-9712

*Image courtesy of Mapping Inequality*

**CONTACT YOUR STATE LEGISLATORS & ASK THEM TO SUPPORT THESE BILLS:**  
<https://malegislature.gov/search/findmylegislator>

**HOUSE . . . . . No. 1373**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Christine P. Barber***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting fair housing by preventing discrimination against affordable housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/16/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/24/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/25/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/26/2021</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/26/2021</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/1/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>4/8/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>5/6/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>5/11/2021</i>

**HOUSE . . . . . No. 1373**

By Ms. Barber of Somerville, a petition (accompanied by bill, House, No. 1373) of Christine P. Barber and others relative to preventing discrimination against affordable housing. Housing.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act promoting fair housing by preventing discrimination against affordable housing.

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

1 Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by  
2 adding the following paragraph:-

3 20. For a local or state administrative, legislative or regulatory body or instrumentality to  
4 engage in a discriminatory land use practice. For the purposes of this paragraph, a  
5 “discriminatory land use practice” shall mean: (i) enacting or enforcing any land use regulation,  
6 policy or ordinance; (ii) making a permitting or funding decision with respect to housing or  
7 proposed housing; or (iii) taking any other action the purpose or effect of which would limit or  
8 exclude: (a) housing accommodations for families or individuals with incomes at or below 80 per  
9 cent of the area median income as defined by the United States Department of Housing and  
10 Urban Development; (b) housing accommodations with sufficient bedrooms for families with  
11 children including those with more than two bedrooms; or (c) families or individuals based on  
12 race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall  
13 not include persons whose sexual orientation involves minor children as the sex object, age,

14 genetic information, ancestry, marital status, veteran status or membership in the armed forces,  
15 familial status, disability condition, blindness, hearing impairment or because a person possesses  
16 a trained dog guide as a consequence of blindness, hearing impairment or other handicap.

17         It shall not be a violation of this chapter if a local or state government entity whose action  
18 or inaction has an unintended discriminatory effect proves that the action or inaction was  
19 motivated and justified by a substantial, legitimate, nondiscriminatory, bona fide governmental  
20 interest and that the government entity is unable to prove that those interests cannot be served by  
21 any other policy or practice that has a less discriminatory effect; or (ii) demonstrates that it has  
22 consistently supported housing described in (iii) above and that the entity's action or inaction  
23 was motivated and justified by a substantial, legitimate nondiscriminatory bona fide  
24 governmental interest

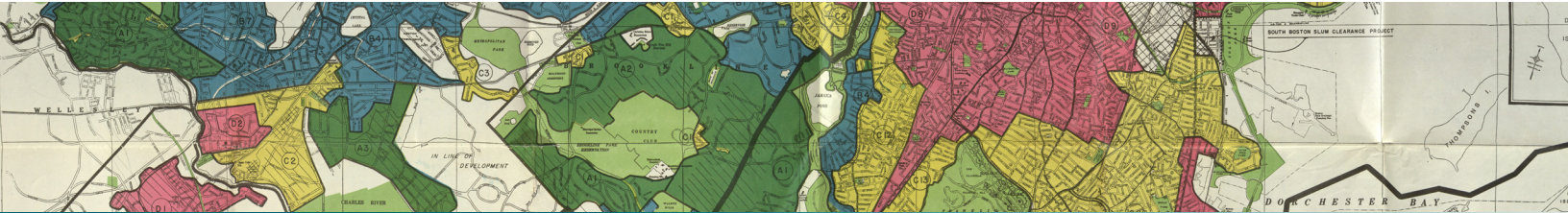
25         Any person or class of persons claiming to be aggrieved by a violation of this Section  
26 may institute and prosecute a civil action in the District, Superior, Housing, Probate or Land  
27 Court Department for injunctive and other appropriate equitable relief including an award of  
28 actual damages, including, where the violation includes intentional discrimination, an award of  
29 punitive damages. This civil action must be filed not later than three years after a violation of this  
30 section. Any aggrieved person who prevails in an action authorized by this Section shall be  
31 entitled to an award of the costs of the litigation including expert witness fees, reasonable  
32 attorneys' fees in an amount to be fixed by the court, and prejudgment and post judgment  
33 interest. The attorney general may, in like manner, also commence a civil action to seek relief for  
34 a violation of this Section. Nothing in this Section is intended to require a person seeking to  
35 enforce the protections afforded herein to exhaust any administrative remedies applicable to

36 discrimination claims under this Section or other laws, or to prevent or limit a person from filing  
37 a complaint at the Massachusetts Commission Against Discrimination.

# AN ACT TO AFFIRMATIVELY FURTHER FAIR HOUSING

H.1441 / S.861

Sponsors: Representatives Dave Rogers and Jon Santiago & Senator Joseph Boncore



## WHY IS ENSURING FAIR HOUSING CRITICAL?

Affirmatively furthering fair housing means taking a proactive approach to creating diverse, inclusive communities with access to good jobs, schools, health care, transportation, and housing. By ensuring access and opportunity through more equitable planning from the very start, cities and towns can reshape the policies that have created and perpetuated segregation for decades. We can create protections for the future and begin to right the wrongs of the past, rooting out both intentional and unintentional discrimination in our housing policies and land use decisions.

## WHAT WILL THIS BILL DO?

This legislation creates a state-level duty to affirmatively further fair housing to make sure that the state, cities, towns, local housing authorities, and other public entities do not discriminate in their programs. It also creates a commission to establish how communities can meet this duty. This bill would make fair housing duties and recommendations explicit for every city and town while thoughtfully engaging the community in the planning process.



**Questions?** Contact CHAPA's  
Director of Public Policy, Eric Shupin at  
eshupin@chapa.org or 617-682-9712

*Image courtesy of Mapping Inequality*

**CONTACT YOUR STATE LEGISLATORS & ASK THEM TO SUPPORT THESE BILLS:**  
<https://malegislature.gov/search/findmylegislator>

**HOUSE . . . . . No. 1441**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***David M. Rogers and Jon Santiago***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to affirmatively further fair housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/19/2021</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/26/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/25/2021</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>	<i>2/25/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/26/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/26/2021</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>3/15/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/26/2021</i>

**HOUSE . . . . . No. 1441**

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By Messrs. Rogers of Cambridge and Santiago of Boston, a petition (accompanied by bill, House, No. 1441) of David M. Rogers, Jon Santiago and others for legislation to establish a special commission (including members of the General Court) to determine how public entities fulfill obligations to affirmatively further fair housing. Housing.

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act to affirmatively further fair housing.

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

1 SECTION 1. Chapter 23B of the General Laws, as so appearing, is hereby amended by  
2 adding the following section:-

3 Section 31. As used in sections 31 to 32, inclusive, the following words shall have the  
4 following meanings:

5 “Affirmatively further fair housing” means taking meaningful actions, in addition to  
6 combating discrimination, that overcome patterns of segregation and foster inclusive  
7 communities free from barriers that restrict access to opportunity based on protected  
8 characteristics. Specifically, to affirmatively further fair housing means to take meaningful  
9 actions that, taken together, address significant disparities in housing needs and in access to  
10 opportunity, replacing segregated living patterns with truly integrated and balanced living



11 patterns, transforming racially and ethnically concentrated areas of poverty into areas of  
12 opportunity, and fostering and maintaining compliance with civil rights and fair housing laws.

13 “Meaningful actions” means significant actions that are designed and can be reasonably  
14 expected to achieve a material positive change that affirmatively furthers fair housing by, for  
15 example, increasing fair housing choice or decreasing disparities in access to opportunity.

16 “Public entity” means (i) any department or office of a state or municipal government and  
17 any council, division, board, bureau, commission, institution, tribunal or other instrumentality  
18 thereof or thereunder; and (ii) any other political subdivision of the state that is a grantee or sub-  
19 grantee receiving funds provided by the United States Department of Housing and Urban  
20 Development under the Community Development Block Grant program, the Emergency  
21 Solutions Grants program, the HOME Investment Partnerships program, or the Housing  
22 Opportunities for Persons With AIDS program or the successors to these programs.

23 “Protected characteristics” means any characteristic enumerated in chapter 151B of the  
24 Massachusetts General Laws.

25 SECTION 2. Chapter 23B of the General Laws, as so appearing, is hereby amended by  
26 adding the following section:-

27 Section 32. (a) A public entity affecting housing and community development shall  
28 administer its programs and activities in a manner to affirmatively further fair housing, and take  
29 no action that is materially inconsistent with its obligation to affirmatively further fair housing.

30 (b) There shall be a commission to determine how a public entity shall fulfill its  
31 obligation to affirmatively further fair housing as created by this section. The commission shall

32 establish different categories of public entities based on criteria identified by the commission.  
33 The categories shall include, but not be limited to exclusionary municipal governments, local  
34 governments where there is a high risk of displacement, and local housing authorities. The  
35 commission shall establish lists of meaningful actions that a public entity may take to fulfill the  
36 obligation to affirmatively further fair housing created by this section, with such lists being  
37 specific to the types of public entities and specific protected characteristics. The commission  
38 shall establish the minimum number of actions a public entity must take in order to fulfill its  
39 obligation to affirmatively further fair housing as created by this section.

40           The commission shall be chaired by the secretary of housing and economic development,  
41 or a designee. The commission shall consist of, but not be limited to, the following members or  
42 their designees: the house and senate chairs of the joint committee on housing; one member of  
43 the house of representatives who shall be appointed by the minority leader and one member of  
44 the senate who shall be appointed by the minority leader; the undersecretary of housing and  
45 community development; the Massachusetts Attorney General; a member from each of the  
46 Massachusetts regional planning agencies; the executive director of the Massachusetts Housing  
47 Partnership; one member from Citizens' Housing and Planning Association; one member from  
48 the Massachusetts Municipal Association; one member from the Massachusetts Chapter of the  
49 National Association of Housing and Redevelopment Officials; one member from the  
50 Massachusetts Union of Public Housing Tenants; at least six members representing those with  
51 protected characteristics; and at least two experienced civil rights practitioners.

52           The commission shall submit its report and findings to the joint committee on housing  
53 and the clerks of the house of representatives and senate no later than one year following the  
54 passage of this act.

55 (c) Compliance by a public entity with its obligation to affirmatively further fair housing  
56 as created by this section shall be evaluated every three years.

57 (d) Any person, as defined by Chapter 151B, may institute and prosecute a civil action  
58 for injunctive and other appropriate equitable relief for a public entity's failure to affirmatively  
59 further fair housing as described in this section and regulations promulgated by the department of  
60 housing and community development. A prevailing plaintiff shall be entitled to an award of the  
61 costs of the litigation and reasonable attorneys' fees in an amount fixed by the court or by  
62 agreement of the parties.

63 (e) The compliance of a public entity with the duty to affirmatively further fair housing as  
64 created in this section shall not relieve a public entity from any obligation to affirmatively further  
65 fair housing under federal law.

66 (f) The compliance of a public entity with any obligation to affirmatively further fair  
67 housing created under federal law shall not relieve a public entity from the obligation to  
68 affirmatively further fair housing as created in this section. The provisions of this section shall be  
69 construed liberally for the accomplishment of the remedial purposes thereof, regardless of  
70 whether federal laws, including those laws with provisions comparably worded to the provisions  
71 of this section, have been so construed.

72 (g) The department of housing and community development shall promulgate guidelines  
73 to implement this section and to incorporate the report and findings of the commission created by  
74 this section.

# AN ACT ESTABLISHING A FAIR HOUSING DISPARATE IMPACT STANDARD

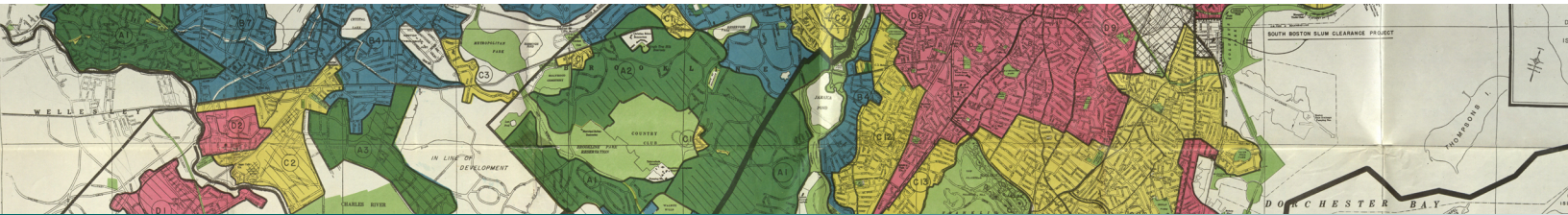
H.1854

*Sponsors: Representative Dave Rogers*

# AN ACT PROHIBITING DISCRIMINATORY EFFECTS IN HOUSING & COMMUNITY DEVELOPMENT

S.860

*Sponsors: Senator Joseph Boncore*



## WHY IS ENSURING FAIR HOUSING CRITICAL?

Despite not being overtly discriminatory, housing policies can have unintended consequences that are very difficult to prove in court. When only white families are getting approved for mortgages based on seemingly objective lending standards, or insurance rates are higher for certain groups based on “risk factors,” for example, inequities and segregation persist in our communities. By rooting out the intended impacts of policies of the past and preventing unintentionally discriminatory policies for the future, we can ensure housing for all really means housing for all.

## WHAT WILL THIS BILL DO?

This legislation strengthens protections against discrimination for renters, creating a state fair housing disparate impact standard. This will allow people to challenge a housing policy or program that has a discriminatory impact on them because of their race, sex, gender identity, disability, family status, or other protected class – even if the policy or program appears on its face to apply to everyone equally. This will protect against policies and practices that, intentionally or unintentionally, keep people from homes they can afford simply because of who they are.



**Questions?** Contact CHAPA's  
Director of Public Policy, Eric Shupin at  
eshupin@chapa.org or 617-682-9712

*Image courtesy of Mapping Inequality*

**CONTACT YOUR STATE LEGISLATORS & ASK THEM TO SUPPORT THESE BILLS:**  
<https://malegislature.gov/search/findmylegislator>

**HOUSE . . . . . No. 1854**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*David M. Rogers*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a fair housing disparate impact standard.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>2/19/2021</i>
<i>Lindsay N. Sadosa</i>	<i>1st Hampshire</i>	<i>2/25/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/25/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/26/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>3/16/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/26/2021</i>

**HOUSE . . . . . No. 1854**

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1854) of David M. Rogers and others relative to discrimination against members of protected groups that creates, increases, reinforces or perpetuates segregated housing patterns. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Second General Court  
(2021-2022)**

An Act establishing a fair housing disparate impact standard.

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

1 SECTION 1. Section 1 of chapter 151B of the General Laws, as so appearing, is hereby  
2 amended by adding the following:-

3 24. The term “discriminatory effect” means a decision, program, policy or practice that  
4 actually or predictably results in a disparate impact on a group of persons because of their  
5 membership in a protected class or a decision, program, policy or practice that creates, increases,  
6 reinforces, or perpetuates segregated housing patterns.

7 25. The term “disparate impact” means when a decision, program, policy or practice  
8 disproportionately disadvantages members of a protected class, without regard for the intention  
9 behind or purpose of the decision, program, policy or practice.

10 26. The term “legally sufficient justification” means that a justification for a challenged  
11 decision, program, policy or practice: (a) is necessary to achieve one or more substantial,  
12 legitimate, nondiscriminatory interests of the respondent or defendant; (b) effectively carries out

13 the identified interest, (c) is sufficiently compelling to override the discriminatory effect; (d)  
14 there is no feasible alternative policy or practice that would equally or better accomplish the  
15 identified interest with a less discriminatory effect; and (e) is supported by evidence and may not  
16 be hypothetical or speculative. The burdens of proof for establishing each of the elements of a  
17 legally sufficient justification are set forth Section 4 of this chapter.

18 SECTION 2. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby  
19 amended by adding the following:-

20 20. For any person to adopt any housing, community development, lending or insurance  
21 decision, program, policy or practice that has a discriminatory effect on members of protected  
22 groups or that creates, increases, reinforces, or perpetuates segregated housing patterns  
23 independently of the extent to which it produces a disparate impact on protected groups.

24 In discriminatory effects cases the complainant has the burden of proving by a  
25 preponderance of evidence that a challenged housing, community development, lending or  
26 insurance decision, program, policy or practice caused or predictably will cause a disparate  
27 impact. The complainant need not prove that the challenged decision, program, policy or practice  
28 is arbitrary, artificial, and unnecessary to achieve a valid interest or legitimate objective such as a  
29 practical business, profit, policy consideration, or requirement of law or third party.

30 Once the complainant satisfies the burden of proof, the respondent has the burden of  
31 proving that the challenged decision, program, policy or practice meets all of the elements of a  
32 legally sufficient justification as defined in Section 1 and that no other policy or practice that has  
33 a less discriminatory effect could serve the substantial, legitimate, nondiscriminatory interest  
34 identified. A demonstration by the respondent that a practice was reasonably necessary to

35 comply with a third party's requirement of law, or to support an interest in business or profit may  
36 not be used as a justification or defense against a claim of discrimination.

37 A challenged decision, program, policy or practice must be a contributing cause of the  
38 disparate impact complained of but not necessarily the direct, proximate or robust cause. A  
39 challenged policy or practice may have a discriminatory effect even if there are intervening  
40 causes that contribute to the result.

41 A single person may pursue a claim based on a decision, program, policy or practice that  
42 has a disparate impact on a group of individuals if that person has or predictably will be injured  
43 by the decision, program, policy or practice.

44 Nothing in this subsection is intended to require a person seeking to enforce the  
45 protections afforded herein to exhaust any administrative remedies applicable to discrimination  
46 claims under this Section or other laws, or to prevent or limit a person from filing a complaint at  
47 the Massachusetts Commission Against Discrimination.