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### Lending heft to an anti-bias campaign

#### Massachusetts bill aims to stem discrimination against the overweight, but some don't want a 'green light' to be fat

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NEW YORK — In an overwhelmingly overweight nation that worships thinness, many describe prejudice against the obese as one of the last socially acceptable biases. Advocates for the plus-sized, particularly activists in the "fat acceptance" movement, want obesity to become a category legally protected against discrimination, like religion, race, age and sex. But not everyone agrees.

One such law, to ban discrimination against weight and height, is pending in Massachusetts.

"I think it would help mostly because it would send a message that fat people are equal citizens. It's not in the litigation rates, but the rights consciousness that comes after legislation," said Anna Kirkland, an assistant professor of women's studies and political science at the University of Michigan.

Kirkland, who said she is not overweight, is the author of the just-published "Fat Rights: Dilemmas of Difference and Personhood," which examines the question of whether weight should be a protected category.

Currently, people can seek protection under the Americans with Disabilities Act, but they must prove their obesity is a disability and, in some cases, that it is caused by physical traits beyond their control.

"Right now, fat is just a marker of bad character, an undesirable personal trait that people bring on themselves," said Kirkland, who prefers the word fat to the ambiguity of overweight and the clinical-sounding obese. "What you're doing is forcing the law to force social change."

According to generally accepted medical standards, about two-thirds of Americans are overweight (a body mass index of 25 to 30) or obese (a BMI over 30). It is a situation so entrenched in popular culture that it provides the basis for such reality shows as "Bulging Brides" and "The Biggest Loser" and for 242-pound Texas yoga teacher Abby Lentz to provide classes in "HeavyWeight Yoga: For the Body You Have Today" in her Austin studio.

But not everyone, including the corpulent, considers anti-weight-bias legislation a good idea.



"Legislation happens when people are too childish to police themselves," said Sue Ann Jaffarian, author of the Odelia Grey mystery series starring a 220-pound heroine who is a reflection of her creator.

"But, as a fat woman, I don't want a green light," said Jaffarian, 55, who worries that such a law would validate what some consider unhealthy weight. "The downside of legislation is that the prejudice would go more underground."

## **Bias hard to prove**

It's already difficult to prove weight discrimination because often it occurs when people are not hired, rather than fired, because of weight. But a law would stop "people from using weight as a shortcut, a quick and dirty way of making stereotypical assessments of a person," said Mark Roehling, an attorney and associate professor of human resource management at Michigan State University. Roehling, who has studied weight discrimination, testified last month in Boston at a public hearing on the proposed law.

Sherry Johnson, a customer service representative in Statesville, N.C., is skeptical. "I'm just afraid [legislation] becomes another barrier, another layer in the denial. No, I'm definitely opposed to it, even though I've definitely had my fair share of discrimination."

At 5 feet 6 inches, Johnson once weighed as much as 355 pounds and currently is a much lighter, but still overweight, 185 pounds.

"I know of one job for which I was the best candidate," she said, recalling how the prospective employers, after numerous phone conversations, flew her to their New Jersey offices for a meeting that was only a formality. "I was the perfect candidate until I walked through that office door and it was over, because of my weight," Johnson said.

The employers didn't say she lost the job for that reason, but they didn't have to, Johnson said. "There's this subtle shift, like a drop of the eyelids. They see the body. They no longer see the mind," she said.

Under an anti-weight-discrimination law, "if the better-qualified, who is protected under some protected class ... is not hired because of whatever that condition is, then there's a problem," said Barry Hartstein, a Chicago attorney specializing in labor relations.

"I think prejudice is a way of dealing with fear and ... separating oneself from the feared group," said Howard Farkas, a clinical health psychologist at Chicago Behavioral Health. "The problem with obesity is that everyone is a potential member of that group."

It doesn't help that many, including the obese, consider weight just a matter of self-control. But Leonard Mastbaum, medical director of the Weight Management Center at Lutheran Hospital in Ft. Wayne, Ind., pointed out that "obesity is about half genetic and about half environmental and behavioral."

## **Employer target**

With health costs rising, employee weight, like smoking, is on many employers' minds. According to a report this month by The Conference Board, obese employees cost U.S. private businesses about \$45 billion annually in medical expenses and absenteeism. The report also said obesity accounts for a greater increase in health-care costs than smoking or problem drinking, and that 40 percent of companies have implemented obesity reduction programs, with another 24 percent to adopt them this year.

"You're getting, I think, a lot of interest from employers and insurance companies, not to actively discriminate against the obese, but to encourage healthy choices which would help people lose weight, cut back on the diabetes risk, cut back on cardiovascular problems and just really [avoid] keeling over dead because you're overweight," said John Robinson, a labor and employment lawyer in Tampa.

"The kind of dark side of that," he said, is a trend toward companies penalizing obese employees or their dependents if they refuse to participate in wellness programs.

If Massachusetts passes the bill, it would join a handful of other states and municipalities with similar laws pertaining to appearance, including Michigan, the District of Columbia, San Francisco and Santa Cruz, Calif., and Madison, Wis.

Such legislation is rare because historically there was little public advocacy for the issue of weight bias. Now, groups such as the National Association to Advance Fat Acceptance have become more active.

"It's not really about litigation, but about taking a stand," said Marilyn Wann, a fat-rights activist and NAAFA board member who testified at the Boston hearing and helped get San Francisco's law passed in 2000. "I do think when a government says it's not OK to dismiss someone as a person because of weight, that's helpful."

Even where there are anti-weight-bias laws, people often not only are too embarrassed to complain or draw public attention to discrimination but, said Roehling, "overweight people tend to share the bias to a greater extent than other groups do. In this case, there really is a sense that 'I really am to blame.' "

Massachusetts state Rep. Byron Rushing, a sponsor of the proposed anti-weight-bias legislation, said he has offered similar bills six times in the last 12 years. He won't know whether the legislation will go forward until later this spring, he said, but this bill has received more attention than any in the past.

"What was clear from the public hearing we had is there is a growing number of people who think this should happen and an even larger number of people who think we should at least be talking about it," he said.

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