

HOUSE No. 3312

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon

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 enhance investigations of sexual harassment and discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Michael S. Day</i>	<i>31st Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>

HOUSE No. 3312

By Mr. Gordon of Bedford, a petition (accompanied by bill, House, No. 3312) of Kenneth I. Gordon and others relative to investigations of sexual harassment and discrimination. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to enhance investigations of sexual harassment and discrimination.

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 as follows:

2 Section 11. In any case where the attorney general has authority to institute an action or
3 proceeding under section five of this chapter, in lieu thereof and with the consent of the
4 commission, the attorney general may accept an assurance of discontinuance of any conduct in
5 violation of this chapter from any person or entity alleged to be engaged or to have been engaged
6 in such conduct. Such assurance may, among other terms, include a stipulation for the voluntary
7 payment by such person or entity of the costs of investigation, or of an amount to be held in
8 escrow pending the outcome of an action or as compensation to aggrieved persons, unless an
9 enforceable contract containing good and valuable consideration accepted by the person alleged
10 to be aggrieved by a violation has been previously executed by said person. Any such assurance
11 of discontinuance shall be in writing and be filed with the commission. Matters thus closed may
12 at any time be reopened by the attorney general for further proceedings in the public interest.

13 Any statute of limitations will be tolled between the date of the filing and reopening of any such
14 matter. Evidence of a violation of such assurance shall be prima facie evidence of a violation of
15 this chapter in any subsequent proceeding brought by the attorney general.

16 Section 12. (1) Whenever the attorney general or the commission believes a person or
17 entity has engaged in or is engaging in any conduct declared to be prohibited by this chapter, the
18 attorney general or commission may conduct an investigation to ascertain whether in fact such
19 person or entity has engaged in or is engaging in such prohibited conduct. In conducting such
20 investigation the attorney general or commission may (a) take testimony under oath concerning
21 such alleged unlawful method, act or practice; (b) examine or cause to be examined any
22 documentary material of whatever nature relevant to such alleged unlawful method, act or
23 practice; and (c) require attendance during such examination of documentary material of any
24 person having knowledge of the documentary material and take testimony under oath or
25 acknowledgment in respect of any such documentary material. Such testimony and examination
26 shall take place in the county where such person or entity resides or has a place of business or, if
27 the parties consent or such person is a nonresident or has no place of business within the
28 commonwealth, in Suffolk county.

29 (2) Notice of the time, place and cause of such taking of testimony, examination or
30 attendance shall be given by the attorney general or commission at least ten days prior to the date
31 of such taking of testimony or examination.

32 (3) Service of any such notice may be made by (a) delivering a duly executed copy
33 thereof to the person to be served or to a partner or to any officer or agent authorized by
34 appointment or by law to receive service of process on behalf of such person; (b) delivering a

35 duly executed copy thereof to the principal place of business in the commonwealth of the person
36 to be served; or (c) mailing by registered or certified mail a duly executed copy thereof addressed
37 to the person to be served at the principal place of business in the commonwealth or, if said
38 person has no place of business in the commonwealth, to his principal office or place of business.

39 (4) Each such notice shall (a) state the time and place for the taking of testimony or the
40 examination and the name and address of each person or entity to be examined, if known, and, if
41 the name is not known, a general description sufficient to identify him or the particular class or
42 group to which he belongs; (b) state the statute and section thereof, the alleged violation of
43 which is under investigation and the general subject matter of the investigation; (c) describe the
44 class or classes of documentary material to be produced thereunder with reasonable specificity,
45 so as fairly to indicate the material demanded; (d) prescribe a return date within which the
46 documentary material is to be produced; and (e) identify the members of the attorney general's
47 staff to whom such documentary material is to be made available for inspection and copying.

48 (5) No such notice shall contain any requirement which would be unreasonable or
49 improper if contained in a subpoena duces tecum issued by a court of the commonwealth; or
50 require the disclosure of any documentary material which would be privileged, or which for any
51 other reason would not be required by a subpoena duces tecum issued by a court of the
52 commonwealth.

53 (6) Any documentary material or other information produced by any person or entity
54 pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for
55 good cause shown, be disclosed to any person other than the authorized agent or representative
56 of the attorney general, unless with the consent of the person producing the same; provided,

57 however, that such material or information may be disclosed by the attorney general in court
58 pleadings or other papers filed in court.

59 (7) At any time prior to the date specified in the notice, or within twenty-one days after
60 the notice has been served, whichever period is shorter, the court may, upon motion for good
61 cause shown, extend such reporting date or modify or set aside such demand or grant a protective
62 order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil
63 Procedure. The motion may be filed in the superior court of the county in which the person
64 served resides or has his usual place of business, or in Suffolk county. This section shall not be
65 applicable to any criminal proceeding nor shall information obtained under the authority of this
66 section be admissible in evidence in any criminal prosecution for substantially identical
67 transactions.

68 (8) The provisions of this section are to be interpreted consistent with the provisions of
69 Chapter 93A of the general laws in addition to the provisions of this chapter.

70 (9) Upon request of the commission, the attorney general will provide any discovery
71 obtained pursuant to this section to the commission.

72 Section 13. (a) Except as may be placed under protective order by the commission or
73 processed as a pseudonym complaint, any charge of discrimination filed pursuant to section five
74 of this chapter which has resulted in a finding of Probable Cause for Crediting the Allegations,
75 along with the investigative or other determination rendered pursuant to sections five and six of
76 this chapter, shall be available for public inspection upon making arrangements with the
77 commission as soon as practicable as of the date of filing. The name of any person alleging to
78 have been the victim of sexual harassment or discrimination, including the charging party, must

79 be redacted from any record to be released under this section unless prior written authority is
80 provided to the commission by the person whose name is to be released; (b) The commission
81 will provide the attorney general with the name of any person or entity who has been subject to
82 civil penalties pursuant to clauses (b) and (c) of Section 5 of this Chapter each time any such
83 person becomes subject to the provisions of those clauses, whether or not such civil penalties
84 were in fact imposed, along with each Charge of Discrimination and any finding by the
85 commission; (c) any public statement about an investigation conducted under this chapter shall
86 not identify the victim of any alleged sexual harassment, sexual assault or any other
87 discriminatory conduct without the written assent of the victim.

88 Section 14. Section 10B of chapter 66 shall be amended as follows at line 40:

89 The name, home address, telephone number, personal email address or place of
90 employment or education of any person who filed a claim of discrimination under chapter 151B
91 shall not be public records in the custody of a government agency which maintains records
92 identifying such persons as falling within such categories and shall not be disclosed.