

SENATE No. 691

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relative to Defense Against Abusive Waivers ..

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 149 of the General Laws is hereby amended by inserting the
2 following new section:--

3 Section 188. A provision in any contract waiving any substantive or procedural right or
4 remedy relating to a claim of discrimination, retaliation, harassment or violation of public policy
5 in employment shall be deemed unconscionable, void and unenforceable, with respect to any
6 such claim arising after the waiver is made. Such a right or remedy may not be prospectively
7 waived to the extent that it arises under this section, this chapter, chapter 151B, common law,
8 any other provision of law or rule of procedure, or the Constitution of the Commonwealth.

9 This section shall not render void or unenforceable the remainder of the contract or
10 agreement.

11 Whoever attempts to enforce a waiver deemed unconscionable, void, or unenforceable
12 under this section shall be liable for reasonable attorneys fees and costs.

13 No person shall take any retaliatory action, including but not limited to failure to hire,
14 discharge, suspension, demotion or other adverse action taken against an individual in the terms
15 and conditions of employment, because an individual has refused to enter into an agreement or
16 contract that contains a waiver deemed unconscionable, void, or unenforceable under this
17 section. An individual aggrieved of a violation of this section may avail herself of the
18 substantive and procedural rights and remedies contained in G.L. c. 149, § 185(d). The rights
19 and remedies contained herein are not exclusive, and are not intended to preempt, and are not
20 preempted by, other available procedures and remedies for retaliatory actions such as those
21 contained in G.L. c. 151B, §§ 4(4), 4(4A) and 4(5).

22 This section shall be construed liberally for the accomplishment of its purposes. Nothing
23 in G.L. c. 251 shall limit the operation of this section.

24 Nothing in this section shall expand or limit the use of collective bargaining agreements.

25 This section shall apply to all claims arising after its effective date.