

SENATE No. 2407

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to defense against abusive waivers act.

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 adding the
2 following section:-

3 Section 189. 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. No right or remedy arising under this section, this
7 chapter, chapter 151B, common law, any other provision of law or rule of procedure or the
8 constitution shall be prospectively waived. This section shall not render void or unenforceable
9 the remainder of the contract or agreement.

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

12 No employer shall take any retaliatory action, including, but not limited to, failure to hire,
13 discharge, suspension, demotion or other adverse employment action, against a person in the

14 terms and conditions of employment, because the person does not enter into an agreement or
15 contract that contains a waiver deemed unconscionable, void or unenforceable under this section.
16 A person aggrieved of a violation of this section may, within 3 years after the violation, institute
17 and prosecute in such person's own name and on such person's own behalf a civil action for
18 injunctive relief, and for the costs of litigation and reasonable attorneys fees. The rights and
19 remedies contained in this section shall not be exclusive and shall not preempt other available
20 procedures and remedies for retaliatory actions, including, without limitation, those contained in
21 section 4 of chapter 151B.

22 The Massachusetts commission against discrimination may enforce this section when the
23 substantive or procedural right or remedy at issue arises under chapter 151B.

24 A person aggrieved of a violation under chapter 151B who seeks a remedy that is not (i)
25 non-enforcement of a provision prohibited by this section or (ii) reasonable attorneys fees and
26 costs for enforcement of a provision prohibited by this section, shall seek such remedy under
27 chapter 151B. Nothing in this section shall expand or limit the use of collective bargaining
28 agreements.

29 SECTION 2. This act shall apply to all agreements entered into on or after the effective
30 date of this act.