

SENATE No. 972

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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 relative to defense against abusive waivers act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Steven A. Tolman</i>	
<i>Sonia Chang-Diaz</i>	
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Daniel A. Wolf</i>	
<i>Thomas M. McGee</i>	<i>Third Essex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>William N. Brownsberger</i>	
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Cynthia S. Creem</i>	

SENATE No. 972

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 972) of Steven A. Tolman, Sonia Chang-Diaz, Denise Andrews, Denise Provost and other members of the General Court for legislation relative to an employee protection act. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 726 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 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.

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

No person, entity or employer shall take any retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion or other adverse action taken against an individual in the terms and conditions of employment, because an individual has refused to enter into an agreement or contract that contains a waiver deemed unconscionable, void, or unenforceable under this section. An individual aggrieved of a violation of this section may avail herself of the substantive and procedural rights and remedies contained in G.L. c. 149, ? 185(d). The rights and remedies contained herein are not exclusive, and are not intended to preempt, and are not preempted by, other available procedures and remedies for retaliatory actions, including, without limitation, those contained in G.L. c. 151B, ?? 4(4), 4(4A) and 4(5).

The Courts are authorized to enforce this section, and the Massachusetts Commission Against Discrimination is authorized to enforce this section when the substantive or procedural right or remedy at issue arises under G.L. c. 151B.

Notwithstanding the foregoing, to the extent that the substantive or procedural right or remedy at issue arises under G.L. c. 151B, or pertains to a current or possible future c. 151B claim, and to the extent that the individual aggrieved of a violation of this section seeks any remedy for violation of this section other than non-enforcement of the offending provision and/or an award of reasonable attorneys fees and/or costs, the rights, remedies and procedures contained in G.L. c. 151B, ?? 5, 6 and 9, shall represent exclusive avenues for recovery for such additional types of remedies and relief.

- 32 This section shall be construed liberally for the accomplishment of its purposes. Nothing
33 in G.L. c. 251 shall limit the operation of this section.
- 34 Nothing in this section shall expand or limit the use of collective bargaining agreements.
- 35 This section shall apply to all claims arising after its effective date.