

**SENATE . . . . . No. 848**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Katherine M. Clark***

*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 elative to defense against abusive waivers act.

PETITION OF:

| NAME:                     | DISTRICT/ADDRESS:      |
|---------------------------|------------------------|
| <i>Katherine M. Clark</i> | <i>Fifth Middlesex</i> |
| <i>Sonia Chang-Diaz</i>   | <i>Second Suffolk</i>  |
| <i>Kenneth I. Gordon</i>  | <i>21st Middlesex</i>  |
| <i>Denise Andrews</i>     | <i>2nd Franklin</i>    |
| <i>Benjamin Swan</i>      | <i>11th Hampden</i>    |

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By Ms. Clark, a petition (accompanied by bill, Senate, No. 848) of Katherine M. Clark, Sonia Chang-Diaz, Kenneth I. Gordon, Denise Andrews and other members of the General Court for legislation relative to an employee protection act. Labor and Workforce Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 972 OF 2011-2012.]

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
\_\_\_\_\_

An Act elative 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 after section  
2 188 the 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, non-payment of wages or benefits, retaliation,  
5 harassment or violation of public policy in employment shall be deemed unconscionable, void  
6 and unenforceable, with respect to any such claim arising after the waiver is made. No right or  
7 remedy arising under this section, this chapter, Chapter 151B, common law, any other provision  
8 of law or rule of procedure or the constitution shall be prospectively waived. This section shall  
9 not render void or unenforceable 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 person or employer shall take any retaliatory action, including, but not limited to,  
13 failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions or  
14 privileges of employment, or other adverse action, against a person, because the person does not  
15 enter into an agreement or contract that contains a waiver deemed unconscionable, void or  
16 unenforceable under this section. A person aggrieved of a violation of this section may, within 3

17 years after the violation, institute and prosecute in such person’s own name and on such person’s  
18 own behalf a civil action for “torts remedies,” for injunctive relief, and for the costs of litigation  
19 and reasonable attorneys fees. The rights and remedies contained in this section shall not be  
20 exclusive and shall not preempt other available procedures and remedies for retaliatory actions,  
21 including, without limitation, those contained in section 4 of chapter 151B and section 150 of  
22 chapter 149.

23           The Massachusetts attorney general may enforce this section when the substantive or  
24 procedural right or remedy at issue arises under section 150 of chapter 149.

25           The Massachusetts Commission Against Discrimination may enforce this section when  
26 the substantive or procedural right or remedy at issue arises under Chapter 151B.

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

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