SENATE . . . . . No. 2153

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Thursday, March 3, 2016

The committee on Ways and Means, to whom was referred the Senate relative to defense against abusive waivers (Senate, No. 958),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2153).

For the committee,
Karen E. Spilka

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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:

SECTION 1. Chapter 149 of the General Laws is hereby amended by adding the following section:-

Section 192. (a) To the extent not preempted by federal law, a provision in a contract waiving a substantive or procedural right or remedy relating to a claim of discrimination, nonpayment of wages or benefits, retaliation, harassment or violation of public policy in employment shall be unconscionable, void and unenforceable with respect to any such claim arising after the waiver is made. No right or remedy arising under this section, chapter, chapter 151B, common law, the constitution or a rule of procedure may be prospectively waived. If a provision of a contract is found to be unconscionable, void or unenforceable under this section, the remaining provisions of the contract shall continue in full force and effect.

(b) Whoever enforces or attempts to enforce a waiver found to be unconscionable, void or unenforceable under this section shall be liable for reasonable attorneys' fees and costs.

13 (c) No person or employer shall take retaliatory action including, but not limited to,
14 failure to hire, discharge, suspend, demote or discriminate in the terms, conditions or privileges
15 of employment, or any other adverse action, against a person because the person refuses to enter
16 into a contract that contains a waiver that would be unconscionable, void or unenforceable under
17 this section.

18 A person aggrieved by a violation of this section may, within 3 years after the violation,
19 commence a civil action in such person's own name and on such person's own behalf for
20 damages and injunctive relief. If the court finds that a person was aggrieved by a violation of
21 this section, the person may recover reasonable attorneys' fees and costs. The rights and
22 remedies in this section shall not be exclusive and shall not preempt other available procedures
23 and remedies for retaliatory actions including, but not limited to, those contained in section 150
24 and section 4 of chapter 151B.

25 (d) The attorney general may enforce this section if the substantive or procedural right or
26 remedy at issue arises under section 150.

27 (e) The Massachusetts Commission Against Discrimination may enforce this section if
28 the substantive or procedural right or remedy at issue arises under chapter 151B.

29 (f) A person aggrieved by a violation of chapter 151B who seeks a remedy other than: (i)
30 nonenforcement of a provision prohibited by this section; or (ii) reasonable attorneys' fees and
31 costs for enforcement of a provision prohibited by this section shall seek such remedy under said
32 chapter 151B.

33 (g) Nothing in this section shall expand or limit the use of collective bargaining
34 agreements.

35 SECTION 2. Section 192 of chapter 149 of the General Laws shall apply to contracts

36 entered into on or after the effective date of this act.