

SENATE No. 2301

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone Creem

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 to enhance investigations of sexual harassment and discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>1/24/2018</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>1/25/2018</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/25/2018</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2018</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/8/2018</i>

SENATE No. 2301

By Ms. Creem, a petition (accompanied by bill, Senate, No. 2301) (subject to Joint Rule 12) of Cynthia Stone Creem, Kenneth I. Gordon, Walter F. Timilty, Cindy F. Friedman and other members of the General Court for legislation to enhance investigations of sexual harassment and discrimination. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to enhance investigations of sexual harassment and discrimination.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 151B of the General Laws is hereby amended after Section 10 by adding the
2 following sections:

3 Section 11. Whenever the attorney general has reason to believe that any person or entity
4 is engaged in a practice declared by section four to be unlawful, and that proceedings would be
5 in the public interest, the attorney general may bring an action in the name of the commonwealth
6 against such person or entity, or to join in any action brought by any person alleging a violation
7 of section four of this chapter, to restrain by temporary restraining order or preliminary or
8 permanent injunction the use of such method, act or practice. The action may be brought in the
9 superior court of the county in which such person or entity resides or has his principal place of
10 business, or the action may be brought in the superior court of Suffolk county with the consent of
11 the parties or if the person has no place of business within the commonwealth. The action may be
12 brought within three-years of the last date of any conduct alleged to be prohibited by this

13 chapter. If more than one person or entity is joined as a defendant, such action may be brought
14 in the superior court of the county where any one defendant resides or has his principal place of
15 business, or in Suffolk county. Said court may issue temporary restraining orders or preliminary
16 or permanent injunctions and make such other orders or judgments as may be necessary to
17 restore to any person who has suffered any harm by reason of the engagement in conduct
18 prohibited by section four of this chapter. If the court finds that a person or entity has engaged in
19 any conduct prohibited by section four of this chapter, the court may require such person or
20 entity to pay to the commonwealth a civil penalty of not more than fifty-thousand dollars for
21 each such violation and also may require the said person or entity to pay the reasonable costs of
22 investigation and litigation of such violation, including reasonable attorneys' fees, in addition to
23 any damages available pursuant to Section 5 of this chapter.

24 At least five days prior to the commencement of any action brought by the attorney
25 general under this section, except when a temporary restraining order is sought, the attorney
26 general shall notify the person or entity of his intended action, and give the person or entity an
27 opportunity to confer with the attorney general in person or by counsel or other representative as
28 to the proposed action. Such notice shall be given the person or entity by mail, postage prepaid,
29 to his usual place of business, or if he has no usual place of business, to his last known address.

30 Any person or entity who violates the terms of an injunction or other order issued under
31 this section shall forfeit and pay to the commonwealth a civil penalty of not more than fifty-
32 thousand dollars for each violation. For the purposes of this section, the court issuing such an
33 injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the
34 attorney general acting in the name of the commonwealth may petition for recovery of such civil
35 penalty.

36 Section 12. In any case where the attorney general has authority to institute an action or
37 proceeding under sections five or eleven of this chapter, in lieu thereof the attorney general may
38 accept an assurance of discontinuance of any conduct in violation of this chapter from any
39 person or entity alleged to be engaged or to have been engaged in such conduct. Such assurance
40 may, among other terms, include a stipulation for the voluntary payment by such person or entity
41 of the costs of investigation, or of an amount to be held in escrow pending the outcome of an
42 action or as compensation to aggrieved persons, unless an enforceable contract containing good
43 and valuable consideration accepted by the person alleged to be aggrieved by a violation has
44 been previously executed by said person. Any such assurance of discontinuance shall be in
45 writing and be filed with the superior court of Suffolk county. Matters thus closed may at any
46 time be reopened by the attorney general for further proceedings in the public interest. Any
47 statute of limitations will be tolled between the date of the filing and reopening of any such
48 matter. Evidence of a violation of such assurance shall be prima facie evidence of a violation of
49 section four in any subsequent proceeding brought by the attorney general.

50 Section 13. (1) Whenever the attorney general believes a person or entity has engaged in
51 or is engaging in any conduct declared to be prohibited by this chapter, the attorney general may
52 conduct an investigation to ascertain whether in fact such person or entity has engaged in or is
53 engaging in such prohibited conduct. In conducting such investigation they attorney general may
54 (a) take testimony under oath concerning such alleged unlawful method, act or practice; (b)
55 examine or cause to be examined any documentary material of whatever nature relevant to such
56 alleged unlawful method, act or practice; and (c) require attendance during such examination of
57 documentary material of any person having knowledge of the documentary material and take
58 testimony under oath or acknowledgment in respect of any such documentary material. Such

59 testimony and examination shall take place in the county where such person or entity resides or
60 has a place of business or, if the parties consent or such person is a nonresident or has no place of
61 business within the commonwealth, in Suffolk county.

62 (2) Notice of the time, place and cause of such taking of testimony, examination or
63 attendance shall be given by the attorney general at least ten days prior to the date of such taking
64 of testimony or examination.

65 (3) Service of any such notice may be made by (a) delivering a duly executed copy
66 thereof to the person to be served or to a partner or to any officer or agent authorized by
67 appointment or by law to receive service of process on behalf of such person; (b) delivering a
68 duly executed copy thereof to the principal place of business in the commonwealth of the person
69 to be served; or (c) mailing by registered or certified mail a duly executed copy thereof addressed
70 to the person to be served at the principal place of business in the commonwealth or, if said
71 person has no place of business in the commonwealth, to his principal office or place of business.

72 (4) Each such notice shall (a) state the time and place for the taking of testimony or the
73 examination and the name and address of each person or entity to be examined, if known, and, if
74 the name is not known, a general description sufficient to identify him or the particular class or
75 group to which he belongs; (b) state the statute and section thereof, the alleged violation of
76 which is under investigation and the general subject matter of the investigation; (c) describe the
77 class or classes of documentary material to be produced thereunder with reasonable specificity,
78 so as fairly to indicate the material demanded; (d) prescribe a return date within which the
79 documentary material is to be produced; and (e) identify the members of the attorney general's
80 staff to whom such documentary material is to be made available for inspection and copying.

81 (5) No such notice shall contain any requirement which would be unreasonable or
82 improper if contained in a subpoena duces tecum issued by a court of the commonwealth; or
83 require the disclosure of any documentary material which would be privileged, or which for any
84 other reason would not be required by a subpoena duces tecum issued by a court of the
85 commonwealth.

86 (6) Any documentary material or other information produced by any person or entity
87 pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for
88 good cause shown, be disclosed to any person other than the authorized agent or representative
89 of the attorney general, unless with the consent of the person producing the same; provided,
90 however, that such material or information may be disclosed by the attorney general in court
91 pleadings or other papers filed in court.

92 (7) At any time prior to the date specified in the notice, or within twenty-one days after
93 the notice has been served, whichever period is shorter, the court may, upon motion for good
94 cause shown, extend such reporting date or modify or set aside such demand or grant a protective
95 order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil
96 Procedure. The motion may be filed in the superior court of the county in which the person
97 served resides or has his usual place of business, or in Suffolk county. This section shall not be
98 applicable to any criminal proceeding nor shall information obtained under the authority of this
99 section be admissible in evidence in any criminal prosecution for substantially identical
100 transactions.

101 (8) The provisions of this Section are to be interpreted consistent with the provisions of
102 Chapter 93A of the general laws.

103 Section 14. (a) Except as may be placed under protective order by the commission or
104 processed as a pseudonym complaint, any charge of discrimination filed pursuant to section 5 of
105 this chapter which has resulted in a finding of Probable Cause for Crediting the Allegations,
106 along with the investigative or other determination rendered pursuant to sections 5 and 6 of this
107 chapter, shall be available for public inspection upon making arrangements with the commission
108 as soon as practicable as of the date of filing. The name of any person alleging to have been the
109 victim of sexual harassment or discrimination, including the charging party, must be redacted
110 from any record to be released under this section unless prior written authority is provided to the
111 commission by the person whose name is to be released; (b) The commission will provide the
112 attorney general with the name of any person or entity who has been subject to civil penalties
113 pursuant to clauses (b) and (c) of Section 5 of this Chapter each time any such person becomes
114 subject to the provisions of those clauses, whether or not such civil penalties were in fact
115 imposed, along with each Charge of Discrimination and any finding by the commission; (c) any
116 public statement about an investigation conducted under this chapter shall not identify the victim
117 of any alleged sexual harassment, sexual assault or any other discriminatory conduct without the
118 written assent of the victim.