

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:
Cynthia Stone Creem	First Middlesex and Norfolk

SENATE DOCKET, NO. 1927 FILED ON: 1/18/2019

SENATE No. 901

By Ms. Creem, a petition (accompanied by bill, Senate, No. 901) of Cynthia Stone Creem for legislation to enhance investigations of sexual harassment and discrimination. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 2301 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court (2019-2020)

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 as follows:-

2 Section 11. In any case where the attorney general has authority to institute an action or 3 proceeding under section five of this chapter, in lieu thereof and with the consent of the 4 commission, the attorney general may accept an assurance of discontinuance of any conduct in 5 violation of this chapter from any person or entity alleged to be engaged or to have been engaged 6 in such conduct. Such assurance may, among other terms, include a stipulation for the voluntary 7 payment by such person or entity of the costs of investigation, or of an amount to be held in 8 escrow pending the outcome of an action or as compensation to aggrieved persons, unless an 9 enforceable contract containing good and valuable consideration accepted by the person alleged 10 to be aggrieved by a violation has been previously executed by said person. Any such assurance

of discontinuance shall be in writing and be filed with the commission. Matters thus closed may
at any time be reopened by the attorney general for further proceedings in the public interest.
Any statute of limitations will be tolled between the date of the filing and reopening of any such
matter. Evidence of a violation of such assurance shall be prima facie evidence of a violation of
this chapter in any subsequent proceeding brought by the attorney general.

16 Section 12. (1) Whenever the attorney general or the commission believes a person or 17 entity has engaged in or is engaging in any conduct declared to be prohibited by this chapter, the 18 attorney general or commission may conduct an investigation to ascertain whether in fact such 19 person or entity has engaged in or is engaging in such prohibited conduct. In conducting such 20 investigation the attorney general or commission may (a) take testimony under oath concerning 21 such alleged unlawful method, act or practice; (b) examine or cause to be examined any 22 documentary material of whatever nature relevant to such alleged unlawful method, act or 23 practice; and (c) require attendance during such examination of documentary material of any 24 person having knowledge of the documentary material and take testimony under oath or 25 acknowledgment in respect of any such documentary material. Such testimony and examination 26 shall take place in the county where such person or entity resides or has a place of business or, if 27 the parties consent or such person is a nonresident or has no place of business within the 28 commonwealth, in Suffolk county.

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

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

39 (4) Each such notice shall (a) state the time and place for the taking of testimony or the 40 examination and the name and address of each person or entity to be examined, if known, and, if 41 the name is not known, a general description sufficient to identify him or the particular class or 42 group to which he belongs; (b) state the statute and section thereof, the alleged violation of 43 which is under investigation and the general subject matter of the investigation; (c) describe the 44 class or classes of documentary material to be produced thereunder with reasonable specificity, 45 so as fairly to indicate the material demanded; (d) prescribe a return date within which the 46 documentary material is to be produced; and (e) identify the members of the attorney general's 47 staff to whom such documentary material is to be made available for inspection and copying.

48 (5) No such notice shall contain any requirement which would be unreasonable or 49 improper if contained in a subpoena duces tecum issued by a court of the commonwealth; or 50 require the disclosure of any documentary material which would be privileged, or which for any 51 other reason would not be required by a subpoena duces tecum issued by a court of the 52 commonwealth.

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

59 (7) At any time prior to the date specified in the notice, or within twenty-one days after 60 the notice has been served, whichever period is shorter, the court may, upon motion for good 61 cause shown, extend such reporting date or modify or set aside such demand or grant a protective 62 order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil 63 Procedure. The motion may be filed in the superior court of the county in which the person 64 served resides or has his usual place of business, or in Suffolk county. This section shall not be 65 applicable to any criminal proceeding nor shall information obtained under the authority of this 66 section be admissible in evidence in any criminal prosecution for substantially identical 67 transactions.

68 (8) The provisions of this section are to be interpreted consistent with the provisions of
69 Chapter 93A of the general laws in addition to the provisions of this chapter.

(9) Upon request of the commission, the attorney general will provide any discovery
obtained pursuant to this section to the commission.

Section 13. (a) Except as may be placed under protective order by the commission or
processed as a pseudonym complaint, any charge of discrimination filed pursuant to section five
of this chapter which has resulted in a finding of Probable Cause for Crediting the Allegations,

75	along with the investigative or other determination rendered pursuant to sections five and six of
76	this chapter, shall be available for public inspection upon making arrangements with the
77	commission as soon as practicable as of the date of filing. The name of any person alleging to
78	have been the victim of sexual harassment or discrimination, including the charging party, must
79	be redacted from any record to be released under this section unless prior written authority is
80	provided to the commission by the person whose name is to be released; (b) The commission
81	will provide the attorney general with the name of any person or entity who has been subject to
82	civil penalties pursuant to clauses (b) and (c) of Section 5 of this Chapter each time any such
83	person becomes subject to the provisions of those clauses, whether or not such civil penalties
84	were in fact imposed, along with each Charge of Discrimination and any finding by the
85	commission; (c) any public statement about an investigation conducted under this chapter shall
86	not identify the victim of any alleged sexual harassment, sexual assault or any other
87	discriminatory conduct without the written assent of the victim.
88	Section 14. Section 10B of chapter 66 shall be amended as follows at line 40:-
89	The name, home address, telephone number, personal email address or place of
90	employment or education of any person who filed a claim of discrimination under chapter 151B
91	shall not be public records in the custody of a government agency which maintains records
92	identifying such persons as falling within such categories and shall not be disclosed.