SENATE No. 1049

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 the defense against abusive waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Harriette L. Chandler	First Worcester	
Kenneth I. Gordon	21st Middlesex	
Lori A. Ehrlich	8th Essex	1/23/2019
Jason M. Lewis	Fifth Middlesex	1/23/2019
Rebecca L. Rausch	Norfolk, Bristol and Middlesex	1/24/2019
Anne M. Gobi	Worcester, Hampden, Hampshire and Middlesex	1/29/2019
Michael J. Barrett	Third Middlesex	1/29/2019
James B. Eldridge	Middlesex and Worcester	1/30/2019
Thomas M. Stanley	9th Middlesex	1/30/2019
Kay Khan	11th Middlesex	1/30/2019
David Henry Argosky LeBoeuf	17th Worcester	1/31/2019
Denise Provost	27th Middlesex	1/31/2019
Michael O. Moore	Second Worcester	2/1/2019
Jack Patrick Lewis	7th Middlesex	2/1/2019
Mike Connolly	26th Middlesex	2/1/2019
Sal N. DiDomenico	Middlesex and Suffolk	2/4/2019

SENATE No. 1049

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 1049) of Harriette L. Chandler, Kenneth I. Gordon, Lori A. Ehrlich, Jason M. Lewis 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. 989 OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act relative to the 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:

- 1 SECTION 1. Chapter 149 of the General Laws, as appearing in the 2016 Official Edition,
- 2 is hereby amended by inserting after section 191 following section:-
- 3 Section 192.
- 4 (a) To the extent not preempted by federal law, a provision in a contract waiving a
- 5 substantive or procedural right or remedy relating to a claim of discrimination, nonpayment of
- 6 wages or benefits, retaliation, or harassment in employment shall be unconscionable, void and
- 7 unenforceable with respect to any such claim arising after the waiver is made. No right or
- 8 remedy arising under this section, chapter, chapter 151B, common law, the constitution or a rule
- 9 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.
- (c) No person or employer shall take retaliatory action including, but not limited to, failure to hire, discharge, suspend, demote or discriminate in the terms, conditions or privileges of employment, or any other adverse action, against a person because the person refuses to enter into a contract that contains a waiver that would be unconscionable, void or unenforceable under this section. A person aggrieved by a violation of this section may, within 3 years after the violation, commence a civil action in such person s own name and on such person s own behalf for damages and injunctive relief. If the court finds that a person was aggrieved by a violation of this section, the person may recover reasonable attorneys fees and costs. The rights and remedies in this section shall not be exclusive and shall not preempt other available procedures and remedies for retaliatory actions including, but not limited to, those contained in section 150 of chapter 149 and section 4 of chapter 151B.
- (d) The attorney general may enforce this section if the substantive or procedural right or remedy at issue arises under section 150.
- (e) The Massachusetts Commission Against Discrimination may enforce this section if the substantive or procedural right or remedy at issue arises under chapter 151B.
- (f) A person aggrieved by a violation of chapter 151B who seeks a remedy other than: (i) nonenforcement of a provision prohibited by this section or (ii) reasonable attorneys fees and

- costs for enforcement of a provision prohibited by this section shall seek such remedy under said
 chapter 151B.
- 33 (g) Nothing in this section shall expand or limit the use of collective bargaining34 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.