

SENATE No. 1036

The Commonwealth of Massachusetts

PRESENTED BY:

Cindy F. Friedman

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 sexual harassment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>3/16/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/22/2021</i>

SENATE No. 1036

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 1036) of Cindy F. Friedman and Michelle L. Ciccolo for legislation relative to sexual harassment. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 939 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to sexual harassment.

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. The General Laws are hereby amended by inserting after Chapter 151F the
2 following chapter:-

3 Chapter 151G.

4 UNLAWFUL SEXUAL HARASSMENT AND DISCRIMINATION IN
5 PROFESSIONAL INVESTING.

6 Section 1. As used in this chapter, the following words shall have the following meanings
7 unless the context clearly requires otherwise:

8 “Historically disadvantaged members of protected classes”, members of protected classes
9 that have historically received less in venture capital funding than their respective shares of the
10 population.

11 “Professional investor”, one or more persons, including but not limited to, a bank, bank
12 holding company, savings institution, trust company, insurance company, investment company
13 registered under the Federal Investment Company Act of 1940, pension or profit-sharing trust or
14 other financial institution or institutional buyer, licensee under the Federal Small Business
15 Investment Act of 1958, partnership, association, corporation, legal representative, trustee,
16 trustee in bankruptcy, receiver, and venture capital fund, whose business includes sponsoring,
17 guaranteeing or granting funds or engaging in investment transactions.

18 “Protected classes”, race; color; religious creed; national origin; sex; gender identity;
19 sexual orientation, which shall not include sexual orientation involving minor children as the sex
20 object; age; genetic information; ancestry; status as a veteran; handicap; or pregnancy or a
21 condition related to said pregnancy including, but not limited to, lactation or the need to express
22 breast milk for a nursing child.

23 “Venture capital fund”, shall have the same meaning as defined in 17 CFR § 275.203(l)-
24 1.

25 Section 2. (a) It shall be unlawful for a professional investor doing business in the
26 commonwealth to:

27 (1) make sexual advances, requests for sexual favors, and other verbal or physical
28 conduct of a sexual nature either directly or indirectly through an intermediary when: (i)
29 submission to or rejection of such advances, requests or conduct is made explicitly or implicitly a

30 basis for business investment transactions, including the sponsoring, guaranteeing or granting of
31 funds; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably
32 interfering with an individual's working relationship with a person by creating an intimidating,
33 hostile, humiliating or sexually offensive environment; provided, that discrimination on the basis
34 of sex shall include, but not be limited to, sexual harassment; and

35 (2) discriminate against a member of a protected class in the sponsoring, guaranteeing or
36 granting of funds or in making available funds; provided, however, that it shall not be unlawful
37 under this clause for a professional investor to designate certain funds solely for historically
38 disadvantaged members of protected classes and companies that historically disadvantaged
39 members of protected classes direct, own or manage.

40 Section 3. (a) A professional investor who commits an unlawful act under section 2 shall
41 be liable for damages, including, but not limited to, compensatory, incidental, consequential, and
42 punitive damages and injunctive and other appropriate equitable relief. A plaintiff may seek to
43 recover such liability in any court of competent jurisdiction. The court shall, in addition to any
44 judgment awarded to the plaintiff, award reasonable attorneys' fees to be paid by the defendant
45 and the costs of the action.

46 (b) The attorney general may bring an action for damages, together with the costs of the
47 action and reasonable attorneys' fees, against a professional investor who commits an unlawful
48 act under section 2. Those costs and attorneys' fees shall be paid to the commonwealth. The
49 attorney general shall not be required to pay any filing fee or other cost in connection with such
50 action.

51 (c) Any action based upon or arising under this chapter shall be instituted within 3 years
52 after the date of the last alleged unlawful act.

53 (d) A professional investor against whom an action is brought alleging an unlawful act
54 under paragraph (2) of subsection (a) of section 2 and who, within the previous 3 years and
55 before the commencement of the action, has completed a self-evaluation of its investment
56 decisions in good faith and can demonstrate that the professional investor has made reasonable
57 progress towards providing a greater share of their funding to historically disadvantaged
58 members of protected classes and companies that historically disadvantaged members of
59 protected classes direct, own or manage, shall have an affirmative defense to liability under this
60 section. For purposes of this section, a professional investor's self-evaluation may be of the
61 investor's own design, so long as it is reasonable in detail and scope in light of the size of the
62 investor's financial assets.

63 An investor who has completed a self-evaluation in good faith within the previous 3 years
64 and prior to the commencement of the action, and can demonstrate that reasonable progress has
65 been made towards providing a greater share of their funding to historically disadvantaged
66 members of protected classes and companies that historically disadvantaged members of
67 protected classes direct, own or manage in accordance with that evaluation, but cannot
68 demonstrate that the evaluation was reasonable in detail and scope and consistent with standards
69 issued by the attorney general, shall not be entitled to an affirmative defense, but may not be
70 liable for punitive damages under this section.