HOUSE DOCKET, NO. 1377 FILED ON: 1/18/2023

HOUSE . . . . . No. 1778

The Commonwealth of Massachusetts

PRESENTED BY:

Alyson M. Sullivan-Almeida

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 concerning nondisclosure agreements relative to sexual harassment and discrimination.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Alyson M. Sullivan-Almeida	*7th Plymouth*	*1/18/2023*
Michelle M. DuBois	*10th Plymouth*	*1/19/2023*
Joseph D. McKenna	*18th Worcester*	*1/31/2023*
David F. DeCoste	*5th Plymouth*	*2/9/2023*
Donald R. Berthiaume, Jr.	*5th Worcester*	*2/15/2023*

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By Representative Sullivan-Almeida of Abington, a petition (accompanied by bill, House, No. 1778) of Alyson M. Sullivan-Almeida and others relative to nondisclosure agreements relative to sexual harassment and discrimination. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1887* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act concerning nondisclosure agreements relative to 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:

SECTION 1. Chapter 151B of the General Laws is hereby amended by inserting after section 10 the following new section:-

Section 11. Nondisclosure agreements relative to sexual harassment and discrimination

Section 11. (a) Notwithstanding any general or special law to the contrary, a settlement agreement or a provision within a settlement agreement that prevents the disclosure of information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:

(1) A sex offense, as defined in section 178C of chapter 6, between the employer and an employee or between employees occurring in the workplace or at work-related events off the employment premises coordinated by or through the employer, or between the employer and an employee off the employment premises.

(2) An act of sexual harassment, as defined in subsection 18 of section 1 of this chapter, between the employer and an employee or between employees occurring in the workplace or at work-related events off the employment premises coordinated by or through the employer, or between the employer and an employee off the employment premises.

(3) An act of discrimination based on sex, gender identity or sexual orientation, as described in section 4 of this chapter, between the employer and an employee or between employees occurring in the workplace or at work-related events off the employment premises coordinated by or through the employer, or between the employer and an employee off the employment premises.

(4) An act of retaliation against a person for reporting any incident described in paragraphs (1) through (3), inclusive, or against a person for cooperating in the investigation of the report of any incident described in paragraphs (1) through (3), inclusive.

(b) Notwithstanding any general or special law to the contrary, in a civil matter described in subsection (a), a court shall not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subsection (a).

(c) Notwithstanding subsections (a) and (b), a provision that shields the identity of the claimant/victim and all facts that could lead to the discovery of the claimant's/victim's identity, including pleadings filed in court, may be included within a settlement agreement at the written, informed request of the claimant/victim. This subsection shall not be construed to limit the right of the claimant/victim to disclose this information.

(d) Except as authorized by subsection (c), a provision within a settlement agreement that prevents the disclosure of factual information related to a claim described in subsection (a) that is entered into on or after the effective date of this Act is void as a matter of law and against public policy.

(e) With respect to agreements entered into before the effective date of this Act, disclosure by a claimant/victim of any information subject to a nondisclosure agreement that would be void as a matter of law and against public policy pursuant to this Act may not be used to invalidate the claimant's/victim's right to consideration under the agreement or to require the return of consideration that has already been provided to the claimant/victim.

(f) In determining the factual foundation of a cause of action for civil damages under subsection (a), a court may consider the pleadings and other papers in the record, or any other findings of the court.

(g) A claimant/victim shall be entitled to a trial by jury on any issue of fact in an action for damages. A prevailing claimant/victim shall be awarded reasonable attorney's fees and costs. A person who enforces or attempts to enforce a provision that would be void as a matter of law and against public policy pursuant to this Act shall be liable for the claimant's/victim's reasonable attorney's fees and costs.

(h) Notwithstanding any general or special law to the contrary, no public funds shall be expended for the purposes of settling a claim described in subsection (a) against a public employee.

(i) An attorney's failure to comply with the requirements of this section by demanding that a provision be included in a settlement agreement that prevents the disclosure of factual information related to an action described in subsection (a) that is not otherwise authorized by subsection (c) as a condition of settlement, or advising a client to sign an agreement that includes such a provision, may be grounds for professional discipline and the Massachusetts Board of Bar Overseers shall investigate and take appropriate action in any such case brought to its attention.

(j) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

SECTION 2. This Act shall take effect immediately upon enactment.