

HOUSE No. 1890

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon

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 defense against abusive waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>1/10/2023</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>1/25/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/26/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/31/2023</i>
<i>Tricia Farley-Bouvier</i>	<i>2nd Berkshire</i>	<i>2/8/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/9/2023</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>2/10/2023</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>2/14/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/20/2023</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/21/2023</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>2/23/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>7/5/2023</i>

HOUSE No. 1890

By Representative Gordon of Bedford, a petition (accompanied by bill, House, No. 1890) of Kenneth I. Gordon and others relative to employment contracts waiving certain substantive or procedural rights or remedies. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1984 OF 2021-2022.]

The Commonwealth of Massachusetts

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

An Act relative to 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 is hereby amended by adding the
2 following section:-

3 Section 204. (a) Any provision in a contract waiving any substantive right or remedy, or
4 any procedural right, remedy, standard or practice, that would otherwise apply to a claim of
5 employment discrimination, retaliation or harassment, nonpayment of wages or benefits, or
6 violation of public policy in employment, shall be unconscionable, void and unenforceable with
7 respect to any such claim arising after the waiver is made. No right or remedy arising under this
8 section, this chapter, chapter 151B, common law, the constitution or a rule of procedure may be
9 prospectively waived. If a provision of a contract is found to be unconscionable, void or

10 unenforceable under this section, the remaining provisions of the contract shall continue in full
11 force and effect.

12 (b) Whoever requests an employee to agree to, enforces, or attempts to enforce a waiver
13 found to be unconscionable, void or unenforceable under this section shall be liable for damages,
14 reasonable attorneys' fees and costs.

15 (c) No individual, employer or prospective employer shall take any retaliatory action
16 including, without limitation, discharge, suspension, demotion, refusal to hire, or discrimination
17 in the terms, conditions or privileges of employment, or any other adverse action, against an
18 individual because the individual refuses to enter into a contract that contains a waiver that
19 would be unconscionable, void or unenforceable under subsection (a).

20 An individual aggrieved by a violation of this subsection may, within 3 years after the
21 violation, commence a civil action for damages and injunctive relief. If the court finds that an
22 individual was aggrieved by a violation of this section, the individual shall recover reasonable
23 attorneys' fees and costs. The rights and remedies in this section shall not be exclusive and shall
24 not preempt other available procedures and remedies for retaliatory actions including, but not
25 limited to, those contained in section 150 and section 4 of chapter 151B.

26 (d) The attorney general may enforce this section if the substantive or procedural right or
27 remedy at issue arises under section 150.

28 (e) The Massachusetts Commission Against Discrimination may enforce this section if
29 the substantive or procedural right or remedy at issue arises under chapter 151B.

30 (f) An individual aggrieved by a violation of chapter 151B who seeks a remedy other
31 than: (i) nonenforcement of a provision prohibited by this section; or (ii) reasonable attorneys'
32 fees and costs for enforcement of any provision of this section, shall seek such remedy under
33 said chapter 151B.

34 (g) With respect to any agreement presented to an employee with the purpose of
35 requiring the employee to bring to arbitration a matter that has not yet occurred purporting to
36 apply to one or more claims of employment discrimination, retaliation or harassment or
37 nonpayment of wages or benefits arising under this chapter or chapter 151B, or violation of
38 public policy in employment, any party to the agreement may elect to void the agreement after
39 the dispute has arisen. If a party elects to void an agreement requiring the employee to bring to
40 arbitration a matter void under subsection (a), the remaining provisions of the contract shall
41 continue in full force and effect, unless such remaining provision is void under subsection (a).
42 The remedy contained in this subsection is duplicative of any remedies contained in subsections
43 (a) and (c), and this subsection shall not be interpreted to limit the scope of any other part of this
44 section. Any issue as to whether this section applies to a claim shall be determined by a court,
45 rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the
46 arbitration agreement specifically or in conjunction with other terms of the contract containing
47 such agreement, and irrespective of whether the agreement purports to delegate such
48 determinations to an arbitrator.

49 (h) Nothing in this section shall expand or limit the use of collective bargaining
50 agreements.

51 SECTION 2. Section 1 of this act shall apply to contracts executed on or after the
52 effective date of this act.