

HOUSE No. 1728

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth I. Gordon and Katherine M. Clark

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 passage of the accompanying bill:

An Act relative to defense against abusive waivers act.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Katherine M. Clark</i>	<i>Fifth Middlesex</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>
<i>Michael Barrett</i>	<i>Third Middlesex</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

HOUSE No. 1728

By Mr. Gordon of Bedford and Senator Clark, a joint petition (accompanied by bill, House, No. 1728) of Kenneth I. Gordon and others for legislation to prevent contracts of waivers in employment cases of claims concerning discrimination, non-payment of wages or benefits, retaliation or harassment or violation of public policy. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to defense against abusive waivers act.

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 189. A provision in any contract waiving any substantive or procedural right or
4 remedy relating to a claim of discrimination, non-payment of wages or benefits, retaliation,
5 harassment or violation of public policy in employment shall be deemed unconscionable, void
6 and unenforceable, with respect to any such claim arising after the waiver is made. No right or
7 remedy arising under this section, this chapter, Chapter 151B, common law, any other provision
8 of law or rule of procedure or the constitution shall be prospectively waived. This section shall
9 not render void or unenforceable the remainder of the contract or agreement.

10 Whoever enforces or attempts to enforce a waiver deemed unconscionable, void or
11 unenforceable under this section shall be liable for reasonable attorneys fees and costs.

12 No person or employer shall take any retaliatory action, including, but not limited to,
13 failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions or
14 privileges of employment, or other adverse action, against a person, because the person does not
15 enter into an agreement or contract that contains a waiver deemed unconscionable, void or
16 unenforceable under this section. A person aggrieved of a violation of this section may, within 3
17 years after the violation, institute and prosecute in such person’s own name and on such person’s
18 own behalf a civil action for “torts remedies,” for injunctive relief, and for the costs of litigation
19 and reasonable attorneys' fees. The rights and remedies contained in this section shall not be

20 exclusive and shall not preempt other available procedures and remedies for retaliatory actions,
21 including, without limitation, those contained in section 4 of chapter 151B and section 150 of
22 chapter 149.

23 The Massachusetts attorney general may enforce this section when the substantive or
24 procedural right or remedy at issue arises under section 150 of chapter 149.

25 The Massachusetts Commission Against Discrimination may enforce this section when
26 the substantive or procedural right or remedy at issue arises under Chapter 151B.

27 A person aggrieved of a violation under chapter 151B who seeks a remedy that is not (i)
28 non-enforcement of a provision prohibited by this section or (ii) reasonable attorneys' fees and
29 costs for enforcement of a provision prohibited by this section, shall seek such remedy under
30 chapter 151B Nothing in this section shall expand or limit the use of collective bargaining
31 agreements.

32 SECTION 2. This act shall apply to all agreements entered into on or after the effective
33 date of this act.