

**SENATE . . . . . No. 1036**

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**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>

**SENATE . . . . . No. 1036**

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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.

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[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.