

SENATE No. 00972

The Commonwealth of Massachusetts

PRESENTED BY:

Steven A. Tolman

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>Steven A. Tolman</i>	<i>Second Suffolk and Middlesex</i>
<i>Sonia Chang-Diaz</i>	<i>Second Suffolk</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>

SENATE No. 00972

By Mr. Tolman, petition (accompanied by bill, Senate, No. 972) of Creem, Khan, Turner and other members of the General Court for legislation relative to an employee protection act [Joint Committee on Labor and Workforce Development].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 726 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 inserting the
2 following new section:--

3 Section 188. A provision in any contract waiving any substantive or procedural right or
4 remedy relating to a claim of discrimination, retaliation, harassment or violation of public policy
5 in employment shall be deemed unconscionable, void and unenforceable, with respect to any
6 such claim arising after the waiver is made. Such a right or remedy may not be prospectively
7 waived to the extent that it arises under this section, this chapter, chapter 151B, common law,
8 any other provision of law or rule of procedure, or the Constitution of the Commonwealth.

9 This section shall not render void or unenforceable the remainder of the contract or
10 agreement.

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

13 No person, entity or employer shall take any retaliatory action, including but not limited
14 to failure to hire, discharge, suspension, demotion or other adverse action taken against an
15 individual in the terms and conditions of employment, because an individual has refused to enter
16 into an agreement or contract that contains a waiver deemed unconscionable, void, or
17 unenforceable under this section. An individual aggrieved of a violation of this section may
18 avail herself of the substantive and procedural rights and remedies contained in G.L. c. 149, ?
19 185(d). The rights and remedies contained herein are not exclusive, and are not intended to
20 preempt, and are not preempted by, other available procedures and remedies for retaliatory
21 actions, including, without limitation, those contained in G.L. c. 151B, ?? 4(4), 4(4A) and 4(5).

22 The Courts are authorized to enforce this section, and the Massachusetts Commission
23 Against Discrimination is authorized to enforce this section when the substantive or procedural
24 right or remedy at issue arises under G.L. c. 151B.

25 Notwithstanding the foregoing, to the extent that the substantive or procedural right or remedy at
26 issue arises under G.L. c. 151B, or pertains to a current or possible future c. 151B claim, and to
27 the extent that the individual aggrieved of a violation of this section seeks any remedy for
28 violation of this section other than non-enforcement of the offending provision and/or an award
29 of reasonable attorneys fees and/or costs, the rights, remedies and procedures contained in G.L.

30 c. 151B, ?? 5, 6 and 9, shall represent exclusive avenues for recovery for such additional types of
31 remedies and relief.

32 This section shall be construed liberally for the accomplishment of its purposes. Nothing
33 in G.L. c. 251 shall limit the operation of this section.

34 Nothing in this section shall expand or limit the use of collective bargaining agreements.

35 This section shall apply to all claims arising after its effective date.