

**SENATE . . . . . No. 978**

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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 fair investment practices.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>1/26/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/31/2023</i>
<i>Pavel M. Payano</i>	<i>First Essex</i>	<i>2/8/2023</i>

**SENATE . . . . . No. 978**

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By Ms. Friedman, a petition (accompanied by bill, Senate, No. 978) of Cindy F. Friedman, Paul W. Mark, Joanne M. Comerford and Pavel M. Payano for legislation relative to sexual harassment. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1036 OF 2021-2022.]

**The Commonwealth of Massachusetts**

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

An Act relative to fair investment practices.

*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           FAIR INVESTMENT PRACTICES.

5           Section 1. As used in this chapter, the following words shall have the following meanings  
6 unless the context clearly requires otherwise:

7           “Commission”, the Massachusetts commission against discrimination, established by  
8 section 56 of chapter 6.

9           “Historically disadvantaged members of protected classes”, members of protected classes  
10 that have historically received less in professional investor funding than their respective shares of  
11 the population.

12           “Professional investor”, one or more persons, including but not limited to, a bank, bank  
13 holding company, savings institution, trust company, insurance company, investment company  
14 registered under the Federal Investment Company Act of 1940, pension or profit-sharing trust or  
15 other financial institution or institutional buyer, licensee under the Federal Small Business  
16 Investment Act of 1958, partnership, association, corporation, legal representative, trustee,  
17 trustee in bankruptcy, receiver, and venture capital fund, whose business includes sponsoring,  
18 guaranteeing or granting funds or engaging in investment transactions.

19           “Protected characteristic”, race; color; religious creed; national origin; sex; gender  
20 identity; sexual orientation, which shall not include sexual orientation involving minor children  
21 as the sex object; age; genetic information; ancestry; status as a veteran; handicap; or pregnancy  
22 or a condition related to said pregnancy including, but not limited to, lactation or the need to  
23 express breast milk for a nursing child.

24           “Protected class”, a group of people sharing a protected characteristic.

25           “Venture capital fund”, shall have the same meaning as defined in 17 CFR § 275.203(l)-  
26 1.

27           Section 2. (a) It shall be unlawful for a professional investor doing business in the  
28 commonwealth to:

29 (1) make sexual advances, requests for sexual favors, and other verbal or physical  
30 conduct of a sexual nature either directly or indirectly through an intermediary when: (i)  
31 submission to or rejection of such advances, requests or conduct is made explicitly or implicitly a  
32 basis for business investment transactions, including the sponsoring, guaranteeing or granting of  
33 funds; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably  
34 interfering with an individual's working relationship with a person by creating an intimidating,  
35 hostile, humiliating or sexually offensive environment; provided, that discrimination on the basis  
36 of sex shall include, but not be limited to, sexual harassment; and

37 (2) discriminate on the basis of a protected characteristic in the sponsoring, guaranteeing  
38 or granting of funds or in making available funds; provided, however, that it shall not be  
39 unlawful for a Professional Investor to designate certain funds solely for historically  
40 disadvantaged members of protected classes and companies that historically disadvantaged  
41 members of protected classes direct, own or manage.

42 Section 3. (a) A professional investor who commits an unlawful act under paragraph (1)  
43 of subsection (a) of section 2 shall be liable for damages, including, but not limited to,  
44 compensatory, incidental, consequential, and punitive damages and injunctive and other  
45 appropriate equitable relief. A plaintiff may seek to recover such liability in any court of  
46 competent jurisdiction. The court shall, in addition to any judgment awarded to the plaintiff,  
47 award reasonable attorneys' fees to be paid by the defendant and the costs of the action.

48 (b) The attorney general shall have the sole authority to bring enforcement action for  
49 violations of paragraph (2) of subsection (a) of section 2, and may bring an action for damages,  
50 together with the costs of the action and reasonable attorneys' fees, against a professional

51 investor who commits an unlawful act under paragraph (2) of subsection (a) of section 2. Those  
52 costs and attorneys' fees shall be paid to the commonwealth. The attorney general shall not be  
53 required to pay any filing fee or other cost in connection with such action.

54 (c) Any action based upon or arising under this chapter shall be instituted within 3 years  
55 after the date of the last alleged unlawful act.

56 (d) A professional investor against whom an action is brought by the attorney general  
57 alleging an unlawful act under paragraph (2) of subsection (a) of section 2 and who can  
58 demonstrate that the professional investor has complied with the commission's compliance  
59 guidelines, established in section 4, including a completed self-evaluation, as described in  
60 paragraph (3) of subsection (a) of section 4, within the previous 3 years, shall have an affirmative  
61 defense to liability under this section.

62 A professional investor who has not fully complied with the commission's compliance  
63 guidelines, established in section 4, but who has partially complied with such guidelines and can  
64 demonstrate reasonable progress toward full compliance with such guidelines, shall not be  
65 entitled to an affirmative defense, but may not be liable for punitive damages under this section.

66 Section 4. The commission, in consultation with the attorney general and the secretary of  
67 state shall establish compliance guidelines to assist professional investors in complying with the  
68 requirements of this chapter. At a minimum, the guidelines shall advise professional investors to:

69 (1) include a policy in the professional investor's organizational charter that details how  
70 the professional investor will comply with the requirements of this chapter;

71 (2) adopt clear procedures for the professional investor's operations to ensure that the  
72 professional investor's employees and agents comply with the requirements of this chapter;

73 (3) complete a self-evaluation, at least once every 3 years, of the professional investor's  
74 investment decisions in good faith, including an evaluation that demonstrates that the  
75 professional investor has made reasonable progress towards providing a greater share of the  
76 professional investor's funding to historically disadvantaged members of protected classes and  
77 companies that historically disadvantaged members of protected classes direct, own or manage,  
78 provided, that the professional investor's self-evaluation may be of the investor's own design, so  
79 long as it is reasonable in detail and scope in light of the size of the professional investor's  
80 financial assets; and

81 (4) comply with the rules, regulations, and other guidance developed by the commission  
82 under subsection (c).

83 (b) As needed, but not less than every 3 years, the commission, in consultation with the  
84 attorney general and the secretary of state, shall update the compliance guidelines required by  
85 this section.

86 (c) The commission shall promulgate rules, regulations or other guidelines to implement  
87 this section. Such rules, regulations or other guidelines may include model templates for a  
88 professional investor to modify and adopt for its particular use.

89 SECTION 3. Notwithstanding any general or special law to the contrary, the  
90 Massachusetts commission against discrimination, in consultation with the attorney general and  
91 the secretary of state, shall publish initial compliance guidelines, as required by section 4 of  
92 chapter 151G of the General Laws, not later than 1 year after the effective date of this act.