

SENATE No. 1049

The Commonwealth of Massachusetts

PRESENTED BY:

Harriette L. Chandler

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 the defense against abusive waivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>1/23/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/23/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/24/2019</i>
<i>Anne M. Gobi</i>	<i>Worcester, Hampden, Hampshire and Middlesex</i>	<i>1/29/2019</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/29/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>1/30/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/1/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/1/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/4/2019</i>

SENATE No. 1049

By Ms. Chandler, a petition (accompanied by bill, Senate, No. 1049) of Harriette L. Chandler, Kenneth I. Gordon, Lori A. Ehrlich, Jason M. Lewis and other members of the General Court for legislation relative to an employee protection act. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 989 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the 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, as appearing in the 2016 Official Edition,
2 is hereby amended by inserting after section 191 following section:-

3 Section 192.

4 (a) To the extent not preempted by federal law, a provision in a contract waiving a
5 substantive or procedural right or remedy relating to a claim of discrimination, nonpayment of
6 wages or benefits, retaliation, or harassment in employment shall be unconscionable, void and
7 unenforceable with respect to any such claim arising after the waiver is made. No right or
8 remedy arising under this section, chapter, chapter 151B, common law, the constitution or a rule
9 of procedure may be prospectively waived. If a provision of a contract is found to be

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

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

14 (c) No person or employer shall take retaliatory action including, but not limited to,
15 failure to hire, discharge, suspend, demote or discriminate in the terms, conditions or privileges
16 of employment, or any other adverse action, against a person because the person refuses to enter
17 into a contract that contains a waiver that would be unconscionable, void or unenforceable under
18 this section. A person aggrieved by a violation of this section may, within 3 years after the
19 violation, commence a civil action in such person s own name and on such person s own behalf
20 for damages and injunctive relief. If the court finds that a person was aggrieved by a violation of
21 this section, the person may recover reasonable attorneys fees and costs. The rights and remedies
22 in this section shall not be exclusive and shall not preempt other available procedures and
23 remedies for retaliatory actions including, but not limited to, those contained in section 150 of
24 chapter 149 and section 4 of chapter 151B.

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

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

29 (f) A person aggrieved by a violation of chapter 151B who seeks a remedy other than: (i)
30 nonenforcement of a provision prohibited by this section or (ii) reasonable attorneys fees and

31 costs for enforcement of a provision prohibited by this section shall seek such remedy under said
32 chapter 151B.

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

35 SECTION 2. Section 192 of chapter 149 of the General Laws shall apply to contracts
36 entered into on or after the effective date of this act.