



Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the House Committee on Judiciary

In Support of SB1041 SD2, HD1
Wednesday, March 27, 2019, at 2:05 p.m. in Room 325

Dear Honorable Members,

The Hawai'i State Commission on the Status of Women writes in **support** of SB1041 SD2, HD1, which would ban written nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's conditions of employment. SB1041 SD2 would also prohibit employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

Nondisclosure agreements (NDAs) enforce a legal and cultural code of silence around sex discrimination, including sexual harassment and sexual assault. NDAs allow illegal forms of sexism to flourish in the workplace by shielding sexual predators from liability. For example, high profile abusers such as Harvey Weinstein and Bill O'Reilly relied on NDAs to conceal years of sexualized abuse.

On an individual level, NDAs are a Hobson's choice for victims, who must choose between critical monetary compensation or costly, arduous, and uncertain litigation. On a societal level, NDAs collectively harm all women in the workplace who are kept ignorant of serial abusers. Accordingly, the Commission respectfully urges the Committee to pass SB1041 SD2, HD1.

Sincerely,

Khara Jabola-Carolus



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 • PHONE: 586-8636 • FAX: 586-8655 • TDD: 568-8692

March 27, 2019
Rm. 325, 2:05 p.m.

To: Hon. Chris Lee, Chair
Hon. Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 1041, S.D. 2, H.D. 1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports the intent of S.B. No. 1041, S.D. 2, H.D. 1.

S.B. No. 1041, S.D. 2, H.D. 1, amends HRS chapter 378 to add a new section prohibiting employers from requiring nondisclosure agreements that prevents disclosure of sexual assault or sexual harassment as a condition of employment. The bill prohibits employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

This measure prohibits such nondisclosure agreements as a condition of employment, but subsection (c) of the new section expressly allows confidential settlements of individual complaints. Confidential dispositions silence victims of sexual harassment, sometimes allowing harassers to continue sexual harassment of other employees. In recent news, we have seen numerous stories about repeated offenses by individuals who settled multiple sexual harassment complaints with confidential agreements. It is a common standard practice to include confidentiality or nondisclosure provisions in settlement agreements in employment discrimination cases, including sexual harassment cases, but there is growing concern that the use confidentiality provisions in settlement of sexual harassment cases might enable repeat offenders who engage in a pattern of sexual harassment. By expressly allowing nondisclosure agreements in confidential settlements between an employee and an employer, this bill does not completely prohibit the use and effect of nondisclosure agreements.

The HCRC supports the intent of S.B. No. 1041, S.D. 2, H.D. 1.

LATE



March 25, 2019

Representative Chris Lee, Chair
House Committee on Judiciary

Re: S.B. 1041, S.D. 2, H.D. 1, RELATING TO EMPLOYMENT PRACTICES.

Hearing: Wednesday, March 27, 2019, 2:05 p.m., Room 325

Dear Chair Lee and Members of the Committee on Judiciary:

Hawaii Women Lawyers (“HWL”) **supports the intent** of S.B.1041, S.D. 2, H.D. 1, which is to prohibit written nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's condition of employment; and prohibit employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

The mission of Hawaii Women Lawyers is to improve the lives and careers of women in all aspects of the legal profession, influence the future of the legal profession, and enhance the status of women and promote equal opportunities for all.

Last year, HWL conducted a survey of its members as to the incidences and experiences of sexual harassment in the legal community.¹ 76 attorneys responded to the survey. Nearly 60% (42 attorneys) reported being sexually harassed at some time during their legal career, with approximately 13% (10 attorneys) reporting having been sexually harassed in the workplace within the last two years.

It is common for victims of sexual assault and harassment not to report abuse for fear of retaliation. Nondisclosure agreements that prevent the disclosure of sexual harassment as

¹ HWL has 357 active members, who are all members of the Hawaii State Bar Association. The survey was conducted between January 12, 2018 and February 4, 2018. The survey was done on a strictly voluntary and anonymous basis, and with the understanding that any stories provided by survey respondents may be shared publicly to raise awareness of the occurrence of sexual harassment in the legal community. The survey was conducted for informational purposes only, and HWL has not conducted an independent investigation as to and cannot guarantee the accuracy of the results of the survey or the specific instances of harassment shared by survey respondents. HWL recognizes that terminology may carry different connotations for different parties and did not define “sexual harassment” in the survey. HWL also recognizes that men are victims of sexual harassment as well as women, but as the mission of HWL is to improve the lives and careers of women in all aspects of the legal profession, the main focus of the article is on the experiences of female victims.

a condition of employment have the impact and effect of further silencing victims. They can also allow repeat offenders to continue to engage in serial harassment.

While HWL supports the intent of this bill, HWL notes that subsection (c) expressly allows nondisclosure agreements in confidential settlements between an employee and an employer. HWL comments that, to adequately protect victims and prevent the silencing of victims, the Committee may consider allowing the condition of confidentiality in any settlement concerning sexual harassment to be at the sole request or election of the victim.

Thank you for the opportunity to submit testimony on this measure.

LATE

SB-1041-HD-1

Submitted on: 3/26/2019 9:52:42 AM

Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Younghi Overly	AAUW of Hawaii	Support	No

Comments:

Dear Chair Lee, Vice-Chair San Buenaventura, and members of the committee,

Thank you for this opportunity to submit a testimony in SUPPORT of SB1041 SD2 HD1, which would prohibit written nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's conditions of employment, and prohibit employers from retaliating against an employee for disclosing or discussing sexual harassment or sexual assault.

NDA's involving sexual assault and sexual harassment is another form of silencing victims and Hawaii should join other 16 states with legislations to ban this outdated practice (Source: [SHRM "States Take Action Against Nondisclosure Agreements"](#)).

Please pass this bill and thank you for your time and consideration regarding this important issue.

American Association of University Women (AAUW) of Hawaii is a state-wide organization made up of six branches (Hilo, Honolulu, Kauai, Kona, Maui, and Windward Oahu) and includes just over 450 active members with over 1700 supporters statewide. As advocates for gender equity, AAUW of Hawaii promotes the economic, social, and physical well-being of all persons.

LATE

SB-1041-HD-1

Submitted on: 3/26/2019 9:57:14 AM

Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

LATE

SB-1041-HD-1

Submitted on: 3/25/2019 6:27:08 PM

Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Individual	Support	No

Comments:

I strongly support SB1041. Please pass. Thank you.

Mike Golojuch, Sr.

SB-1041-HD-1

Submitted on: 3/25/2019 2:44:13 PM

Testimony for JUD on 3/27/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

LATE

Chair Lee

Vice Chair San Buenaventura

House Committee on Judiciary

3/27/19, Conference Room 325

TESTIMONY IN SUPPORT OF SB1041 SD2 HD1

Aloha,

My name is Miranda Shelly and I am a graduate student at the UH Manoa school of social work. I am writing to testify in strong support of SB1041 SD2 HD1, which seeks to prohibit employers from using nondisclosure agreements to discourage reports of sexual harassment/assault. Additionally, it prohibits employers from retaliating against employee who do choose to disclose or discuss these incidents.

Sexual harassment and assault can occur to people of all genders, ethnicities, and ages within the workplace. Unfortunately, many victims of sexual violence are unable to tell their stories because they fear retaliation from their employers. According to a 2016 report by the EEOC, the majority of employees who experience harassment do not make a formal complaint against the perpetrator. The studies cited in the report estimated that only 30% of victims reported their experiences to a supervisor or manager, while the other 70% attempted to avoid the abuser, downplay the severity of their actions, or endure/ignore the harassment.

It is vital that we change these statistics by supporting all victims of sexual violence and creating a safe environment in which they can disclose their experiences. I respectfully urge the committee to vote in favor of this measure, as it will help to empower victims by allowing them to report sexual harassment or assault without fear of retribution from their employers.

Thank you for your consideration and the opportunity to testify.

Mahalo,

Miranda Shelly