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PANKAJ BHANOT  
DIRECTOR

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STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 17, 2019

TO: The Honorable Representative Aaron Ling Johanson, Chair  
House Committee on Labor & Public Employment

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 1041 SD2 – RELATING TO EMPLOYMENT PRACTICES**

Hearing: March 19, 2019, Time 9:30 a.m.  
Conference Room 309, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of this measure, as all individuals should have a workplace environment free from harassment, assault, and violence; DHS provides comments and requests clarification. The benefits and services DHS provides to Hawaii's residents support individuals and families with their basic needs so adults are more able to address their children's care and education, and improve their own skills to gain and maintain employment.

**PURPOSE:** The purpose of the bill is to prohibit non-disclosure agreements in cases involving sexual assault and sexual harassment as a condition of employment; prohibits employers from retaliating against employees who report sexual assault or sexual harassment.

Women, men, gender non-conforming, and low-income individuals, all may experience sexual harassment and sexually coercive behavior in the workplace. However, the majority of workplace harassment victims are women. The risk of being sexually harassed in the workplace increases greatly for women of color and women who work in low paying jobs.

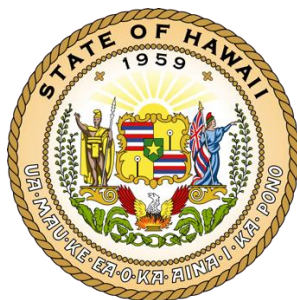
As such, workplace harassment and subsequent retaliation have a direct effect on individual's ability to work and to be economically self-sufficient. Many victims do not report for fear of being retaliated against.

The proliferation of non-disclosure agreements (NDA) has enabled abusers to continue their abuse and in turn, silence their victims from reporting.

DHS provides services to 1 in 4 Hawaii residents, and some of the most vulnerable individuals and families in the State. Through our multi-generational 'Ohana Nui framework, we endeavor to address the multiple factors that contribute to multi-generational poverty including the impact of trauma on individuals and families. Supporting victims in the workplace will further this goal.

However, DHS requests clarification regarding the confidentiality provisions of subsection (c). It is unclear as to whether this applies to personnel in human resources or if the confidentiality provisions would apply to all parties, including the victim. Confidentiality provisions should be to protect the employee victim's privacy versus to protect the corporation.

Thank you for the opportunity to testify in support.



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 Labor

In Support of SB1041 SD2  
Tuesday, March 19, 2019, at 9:30 a.m. in Room 309

Dear Chair Johanson, Vice Chair Eli, and Honorable Members,

The Hawai'i State Commission on the Status of Women writes in **support** of SB1041 SD2, 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.

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 19, 2019  
Rm. 309, 9:30 a.m.

To: Hon. Aaron Ling Johanson, Chair  
Hon. Stacelynn K.M. Eli, Vice Chair  
Members of the House Committee on Labor & Public Employment

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

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

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.

S.B. No. 1041, S.D. 2, 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.



March 15, 2019

Representative Aaron Ling Johanson, Chair  
House Committee on Labor and Public Employment

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

**Hearing: Tuesday, March 19, 2019, 9:30 a.m., Room 309**

Dear Chair Johanson and Members of the Committee on Labor and Public Employment:

Hawaii Women Lawyers (“HWL”) **supports the intent** of S.B.1041, S.D. 2, 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.<sup>1</sup> 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 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.

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<sup>1</sup> 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 guaranty 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.

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.

**SB-1041-SD-2**

Submitted on: 3/16/2019 1:31:29 PM

Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**SB-1041-SD-2**

Submitted on: 3/16/2019 6:24:37 PM

Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lea Minton	Individual	Support	No

Comments:



**SB-1041-SD-2**

Submitted on: 3/18/2019 10:48:03 AM

Testimony for LAB on 3/19/2019 9:30:00 AM

**LATE**

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

Comments:



March 19, 2019

Committee on Labor & Public Employment  
Rep. Johanson, Chair  
Rep. Eli, Vice Chair

**LATE**

The House of Representatives  
The Thirtieth Legislature  
Regular Session of 2019

RE: SB1041 SD2 - RELATING TO EMPLOYMENT PRACTICES

DATE: Tuesday, March 19, 2019

TIME: 9:30 am

PLACE: Conference Room 309

State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Johanson, Vice Chair Eli, and the Members of the Committee,

Thank you for the opportunity to testify in **support** of this measure. [SAG-AFTRA](#) represents over 1000 actors, recording artists, and media professionals in our state.

We support this ban on pre-employment nondisclosure agreements whenever this legal tool is used to cover up sexual harassment and assault in the workplace. These type of pre-employment requirements cover up abuse and act as a restraint on the freedom of speech on Hawaii's workers.

We also support adding a new section to HRS chapter 378 making it unlawful practice to retaliate against employees for disclosing or discussing sexual harassment or sexual assault. An employee's fear that her/his employer will retaliate against them for disclosing or even just discussing sexual assault or harassment acts as a powerful deterrent and silencer. Adding this section goes a long way to protect workers and to shine a light on discriminatory and dangerous practices.

In taking action to encourage open discourse, the state will not only strengthen the civil rights of Hawaii workers that may find themselves in vulnerable and precarious positions but will also allow for the exposure of persons who pose a risk to public safety.

Thank you again for your continued support and please don't hesitate to contact the SAG-AFTRA Hawaii Local office for more information on this issue as it relates to professional performers.

Respectfully,

Mericia Palma Elmore  
Executive Director SAG-AFTRA Hawaii Local

Mericia Palma Elmore, Executive Director  
SAG-AFTRA Hawaii Local  
[mericia.palmaelmore@sagaftra.org](mailto:mericia.palmaelmore@sagaftra.org)  
Ph: 808-596-0388 • Fax: 808-593-2636  
201 Merchant St Suite 2301 Honolulu, HI 96813

SCREEN ACTORS GUILD - AMERICAN FEDERATION OF  
TELEVISION AND RADIO ARTISTS  
SAGAFTRA.org  
Associated Actors & Artistes of America / AFL-CIO

**LATE**

**SB-1041-SD-2**

Submitted on: 3/18/2019 2:46:24 PM  
Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pride Work HI	Pride at Work Hawaii	Support	No

Comments:

Aloha Representatives,

The Pride at Work Hawaii, an affiliate of Hawaii State AFL-CIO, supports the passage of SB 1041 SD 2.

Mahalo for your consideration and for the opportunity to testify in support of SB 1041 SD 2.

Mahalo,

Pride at Work - Hawaii

**LATE**

**SB-1041-SD-2**

Submitted on: 3/19/2019 2:39:27 AM

Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments:

Aloha Chair Johanson, Vice Chair Eli and members,

The Hawaii Women's Coalition is in strong support of this measure. Predators have, for far too long, used NDAs to cover up serial violent sex offenses against women. Please pass.

Mahalo,

Ann S. Freed, Co-Chair, Hawaii Women's Coalition.

**LATE**

**SB-1041-SD-2**

Submitted on: 3/18/2019 9:38:28 PM

Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Darlene Ewan	Aloha State Association of the Deaf	Support	No

Comments:

**LATE**

**SB-1041-SD-2**

Submitted on: 3/18/2019 3:38:09 PM

Testimony for LAB on 3/19/2019 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cyd L. Hoffeld	Individual	Support	No

Comments:

Aloha,

I support SB1041 and urge the committee to vote in support of this bill. It is essential that we take measures to protect employees and ensure that they feel safe reporting cases of workplace sexual harassment.

Mahalo,

Cyd L. Hoffeld