



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 22, 2019
Rm. 016, 9:00 a.m.

To: The Honorable Karl Rhoads, Chair
Members of the Senate Committee on Judiciary

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

Re: S.B. No. 1041, S.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. 1.

S.B. No. 1041, S.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. 1.

SB-1041-SD-1

Submitted on: 2/17/2019 4:18:47 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

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

Comments:

Dear Chair Rhoads, Vice-Chair Wakai, and Members of the Committee,

Thank you for this opportunity to submit a testimony in SUPPORT of SB1041 SD1, 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 SB1041 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.

SB-1041-SD-1

Submitted on: 2/20/2019 7:18:44 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

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

Comments:



February 21, 2019

Committee on Judiciary
Sen. Karl Rhoads, Chair
Sen. Glenn Wakai, Vice Chair

The Senate
The Thirtieth Legislature
Regular Session of 2019

RE: SB 1041 SD1 - RELATING TO EMPLOYMENT PRACTICES

DATE: Friday, February 22, 2019

TIME: 9:00 am

PLACE: Conference Room 016

State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Rhoads, Vice Chair Wakai, 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,

A handwritten signature in black ink, appearing to read "Mericia Palma Elmore".

Mericia Palma Elmore
Executive Director SAG-AFTRA Hawaii Local

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

SB-1041-SD-1

Submitted on: 2/21/2019 8:16:35 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

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February 21, 2019

Representative Karl Rhoads, Chair
House Committee on Judiciary

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

Hearing: Friday, February 22, 2019, 9:00 a.m., Room 016

Dear Chair Rhoads and Members of the Committee on Judiciary:

Hawaii Women Lawyers (“HWL”) **supports the intent** of S.B.1041, S.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 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.

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 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-1

Submitted on: 2/16/2019 6:49:29 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

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

Comments:

SB-1041-SD-1

Submitted on: 2/20/2019 9:12:00 PM

Testimony for JDC on 2/22/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mackenna Cady	Individual	Support	No

Comments: