
A BILL FOR AN ACT

RELATING TO SEXUAL HARASSMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 378, Hawaii Revised Statutes, is
2 amended by adding four new sections to part I to be
3 appropriately designated and to read as follows:
4 "§378- Confidentiality clauses; sexual harassment
5 claims; unenforceable. Except as otherwise provided by federal
6 law, a confidentiality clause in any agreement or contract
7 relating to employment or executed in the course of employment
8 is not enforceable as to sexual harassment or sexual assault
9 claims; provided that nothing in this section shall require any
10 person to involuntarily disclose or disseminate information;
11 provided further that nothing in this section shall prohibit the
12 parties from entering into a confidentiality agreement as part
13 of a legal settlement of a specific claim other than sexual
14 harassment or sexual assault claims.
15 §378- Right to request confidentiality of settlement.
16 An employee may request confidentiality of a legal settlement to
17 protect their privacy.



1 §378- Civil penalties. If an employer, respondent, or
2 defendant makes any request to an employee, complainant, or
3 plaintiff, or pressures the employee, complainant, or plaintiff
4 in any way to enter into a confidentiality agreement as part of
5 a legal settlement relating to a sexual harassment or sexual
6 assault claim, each such request shall constitute a separate
7 violation. An employee, complainant, or plaintiff that brings
8 an action pursuant to this section shall be awarded liquidated
9 damages equal to three times the amount of the legal settlement.
10 The penalties provided in this section are cumulative to the
11 remedies and penalties available under all other laws of this
12 State.

13 §378- Time to review voluntary confidentiality
14 agreement; revocation of consent. If an employee has
15 voluntarily requested a confidentiality agreement, the employee
16 has twenty-one days to review the agreement, and an additional
17 seven days to revoke their consent after executing the
18 confidentiality agreement."

19 SECTION 2. Chapter 658A, Hawaii Revised Statutes, is
20 amended by adding two new sections to be appropriately
21 designated and to read as follows:



1 "§658A- Mandatory arbitration of sexual harassment
2 claims; prohibited. Beginning July 1, 2020, except as otherwise
3 provided by federal law, no agreement to arbitrate shall include
4 language requiring arbitration of sexual harassment or sexual
5 assault claims.

6 §658A- Employers and employees; voluntary arbitration of
7 sexual harassment or sexual assault claims; confidentiality of
8 award; penalties. (a) In an arbitration proceeding concerning
9 an employee's claim or claims against an employer, the employee
10 may request confidentiality of an arbitrator's award to protect
11 their privacy.

12 (b) If an employer that is a party to a voluntary
13 arbitration makes any request to an employee, or pressures an
14 employee in any way to enter into a confidentiality agreement
15 concerning an arbitrator's award relating to a sexual harassment
16 or sexual assault claim, each request shall constitute a
17 separate violation. An employee that brings an action pursuant
18 to this section shall be awarded liquidated damages equal to
19 three times the amount of the arbitrator's award. The penalties
20 provided in this section are cumulative to the remedies and
21 penalties available under all other laws of this State.



1 (c) If an employee has voluntarily requested a
2 confidentiality agreement pursuant to this section as part of an
3 arbitrator's award, the employee has twenty-one days to review
4 the agreement, and an additional seven days to revoke their
5 consent after executing the confidentiality agreement."

6 SECTION 3. Section 658A-6, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[+]§658A-6[+] **Validity of agreement to arbitrate.** (a)
9 [An] Except as provided in subsection (e) and (f), an agreement
10 contained in a record to submit to arbitration any existing or
11 subsequent controversy arising between the parties to the
12 agreement is valid, enforceable, and irrevocable except upon a
13 ground that exists at law or in equity for the revocation of a
14 contract.

15 (b) The court shall decide whether an agreement to
16 arbitrate exists or a controversy is subject to an agreement to
17 arbitrate.

18 (c) An arbitrator shall decide whether a condition
19 precedent to arbitrability has been fulfilled and whether a
20 contract containing a valid agreement to arbitrate is
21 enforceable.



1 (d) If a party to a judicial proceeding challenges the
2 existence of, or claims that a controversy is not subject to, an
3 agreement to arbitrate, the arbitration proceeding may continue
4 pending final resolution of the issue by the court, unless the
5 court otherwise orders.

6 (e) Except as otherwise provided by federal law, an
7 agreement for mandatory arbitration is not enforceable as to a
8 sexual harassment or sexual assault claim; provided that nothing
9 in this subsection shall prohibit the parties from voluntarily
10 entering arbitration in regard to a specific claim other than
11 sexual harassment or sexual assault claims.

12 (f) Except as otherwise provided by federal law, a
13 confidentiality clause in an agreement to arbitrate is not
14 enforceable as to a sexual harassment claim or sexual assault
15 claim; provided that nothing in this subsection shall require
16 any person to involuntarily disclose or disseminate information;
17 provided further that nothing in this subsection shall prohibit
18 the parties from voluntarily entering into a confidentiality
19 agreement as part of an arbitration agreement of a specific
20 claim other than sexual harassment or sexual assault claims."



1 SECTION 4. If any provision of this Act, or the
 2 application thereof to any person or circumstance, is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act that can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 5. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.
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H.B. NO. 2063

Report Title:

Agreements to Arbitrate; Confidentiality Clauses; Sexual Harassment; Ban; Civil Penalties; Liquidated Damages; Time to Review; Revocation

Description:

Makes unenforceable confidentiality clauses in employment contracts when an act of sexual harassment or sexual assault is claimed. Allows employees to request confidentiality of a settlement. Establishes civil penalties if an employer requests a confidentiality agreement as part of a legal settlement or arbitrator's award concerning a sexual harassment or sexual assault claim. Establishes a twenty-one day time period for an employee to review a voluntary confidentiality agreement, and a seven-day time period to revoke consent after executing the agreement.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

