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# 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 a new section to part I to be appropriately  
3 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 a sexual harassment claim; provided  
9 that nothing in this section shall require any person to  
10 involuntarily disclose or disseminate information; provided  
11 further that nothing in this section shall prohibit the parties  
12 from entering into a confidentiality agreement as part of a  
13 legal settlement of a specific claim."

14           SECTION 2. Chapter 658A, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:



1           "§658A-       Mandatory arbitration; sexual harassment claims;  
2 prohibited.   Beginning July 1, 2019, except as otherwise  
3 provided by federal law, no agreement to arbitrate shall include  
4 language requiring arbitration of sexual harassment claims."

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

7           "~~[+]~~§658A-6~~[+]~~   Validity of agreement to arbitrate.   (a)  
8 ~~[An]~~ Except as provided in subsections (e) and (f), an agreement  
9 contained in a record to submit to arbitration any existing or  
10 subsequent controversy arising between the parties to the  
11 agreement is valid, enforceable, and irrevocable except upon a  
12 ground that exists at law or in equity for the revocation of a  
13 contract.

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

17           (c) An arbitrator shall decide whether a condition  
18 precedent to arbitrability has been fulfilled and whether a  
19 contract containing a valid agreement to arbitrate is  
20 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 claim; provided that nothing in this  
9 subsection shall prohibit the parties from voluntarily entering  
10 arbitration in regard to a specific claim.

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

19 SECTION 4. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

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

6 SECTION 6. This Act shall take effect on January 1, 2051.



**Report Title:**

Agreements to Arbitrate; Confidentiality Clauses; Sexual Harassment; Ban

**Description:**

Makes unenforceable confidentiality clauses in employment contracts when an act of sexual harassment is claimed by an employee. Bans mandatory arbitration agreements as to sexual harassment claims beginning July 1, 2019. Makes mandatory confidentiality clauses in an arbitration agreement unenforceable as to sexual harassment claims. Takes effect 1/1/2051. (SD1)

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