

JAN 17 2020

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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 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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INTRODUCED BY:

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# S.B. NO. 2314

**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.*

