

LATE



HAWAI‘I CIVIL RIGHTS COMMISSION

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

February 5, 2019
Rm. 224, 2:45 p.m.

To: The Honorable Brian T. Taniguchi, Chair and The Honorable Les Ihara, Vice Chair
Members of the Senate Committee on Labor, Culture and the Arts

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

Re: S.B. No. 1041

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.B. No. 1041 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 in 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. 1041.

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339



February 5, 2019

TO: The Honorable Senator Brian T. Taniguchi, Chair
Senate Committee on Labor, Culture and the Arts

FROM: Pankaj Bhanot, Director

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

Hearing: Tuesday, February 5, 2019, Time 2:45 p.m.
Conference Room 224, 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.

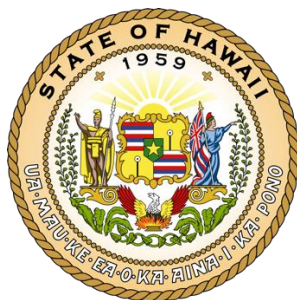
As such, workplace harassment and subsequent retaliation have a direct effect on individual's ability to work and to be economically self-sufficient. Many victims do not report for fear of being retaliated against.

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.



LATE

Testimony on behalf of the
Hawai'i State Commission on the Status of Women
Khara Jabola-Carolus, Executive Director

Prepared for the Senate Committee on Labor, Culture and the Arts (LCA)

In Support of SB1041

Tuesday, February 5, 2019, at 2:45 p.m. in Room 224

Dear Chair Taniguchi, Vice Chair San Ihara, and Honorable Members,

The Hawai'i State Commission on the Status of Women writes in **support** of SB1041, which would ban written nondisclosure agreements involving sexual assault and sexual harassment as part of an employee's conditions of employment. SB1041 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.

Sincerely,

Khara Jabola-Carolus

SB-1041

Submitted on: 2/1/2019 4:37:25 PM

Testimony for LCA on 2/5/2019 2:45:00 PM

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

Comments:



February 4, 2019

Committee on Economic Development,
Tourism and Technology
Sen. Brian T. Taniguchi, Chair
Sen. Les Ihara, Jr., Vice Chair

LATE

The Senate
The Thirtieth Legislature
Regular Session of 2019

RE: SB 1041 - RELATING TO EMPLOYMENT PRACTICES

DATE: Tuesday, February 5, 2019

TIME: 2:45 pm

PLACE: Conference Room 224

State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Taniguchi, Vice Chair Ihara, 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

LATE

SB-1041

Submitted on: 2/4/2019 6:55:49 PM

Testimony for LCA on 2/5/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Midwives Alliance of Hawaii	Testifying for Midwives Alliance of Hawaii	Support	No

Comments:

We strongly support SB1041 and urge you to pass this bill. It is important that employees are not retaliated or discriminated against, penalized or prohibited from discussing sexual assault within their workplace. Thank you for the opportunity to testify.



LATE

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COMMITTEE ON LABOR, CULTURE AND THE ARTS
Tuesday, February 3, 2019, 2:45 p.m., Room 224

SB 1041 RELATING TO EMPLOYMENT PRACTICES

TESTIMONY

Barbara Service, Legislative Committee, League of Women Voters of Hawaii

Aloha Chair Taniguchi, Vice Chair Ihara and committee members:

SB1041 would prohibit written nondisclosure agreements (NDA's) involving sexual harassment or sexual assault as part of an employee's conditions of employment. Additionally, it prohibits employers from retaliating against an employee for disclosing or discussing such sexual harassment or sexual assault. It is estimated that 1/3 of the U.S. workforce is bound to their employers by NDA's, essentially silencing victims.

16 states are looking at similar legislation and California and New Jersey have already passed laws on these subjects.

I urge you to move this bill forward. Thank you for the opportunity to submit testimony.

SB-1041

Submitted on: 2/4/2019 10:47:39 AM

Testimony for LCA on 2/5/2019 2:45:00 PM

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

Comments:

Dear Chair Taniguchi, Vice-Chair Ihara, and members of LCA Committee,

Thank you for this opportunity to submit a testimony in SUPPORT of SB1041, 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"](#)).

The 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.

Please pass SB1041 and mahalo for this opportunity to testify in support of this important bill.

SB-1041

Submitted on: 2/4/2019 10:41:02 AM

Testimony for LCA on 2/5/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amy Monk	Individual	Support	No

Comments:

I support this bill because it frees victims to report sexual harassment or assault. Non-disclosure agreements of sexual misconduct or crime only serve to protect serial sexual predators who will continue to victimize the vulnerable.

LATE

re: SB1041 Relating to Employment Practices February 5, 2019 2:45 p.m.

Aloha Chair Taniguchi, Vice Chair Ihara and committee members

SB1041 would prohibit written nondisclosure agreements (NDA's) involving sexual harassment or sexual assault as part of an employee's conditions of employment. Additionally, it prohibits employers from retaliating against an employee for disclosing or discussing such sexual harassment or sexual assault. It is estimated that 1/3 of the U.S. workforce is bound to their employers by NDA's, essentially silencing victims.

16 states are looking at similar legislation and California and New Jersey have already passed laws on these subjects.

I urge you to move this bill forward.

Barbara J. Service, MSW (Retired)

League of Women Voters

SB-1041

Submitted on: 2/4/2019 6:58:28 PM

Testimony for LCA on 2/5/2019 2:45:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Lea Minton	Individual	Support	No

Comments:

SB-1041

Submitted on: 2/5/2019 9:50:05 AM

Testimony for LCA on 2/5/2019 2:45:00 PM



Submitted By	Organization	Testifier Position	Present at Hearing
Irish Barber	Testifying for IATSE Local 665	Support	No

Comments:

RE: SB 1041 - RELATING TO EMPLOYMENT PRACTICES

DATE: Tuesday, February 5, 2019

TIME: 2:45 pm

PLACE: Conference Room 224

State Capitol 415 South Beretania Street, Honolulu HI

Aloha Chair Taniguchi, Vice Chair Ihara, and the Members of the Committee,

Mahalo to the committee for allowing me to testify on behalf of the men and women of the International Alliance of Theatrical Stage Employees (IATSE) Local 665. We are the technicians who work on live events, television and films.

We have over 1,200 workers in our organization (550 members and about 700 referrals), and about 25% of our organization are women. Being able to work in a safe environment and, more importantly, being able to seek help about discrimination and harassment is a high priority in our industry. We support this measure and all measures at the State and Federal level that protect women in the workplace. Sometimes, that's the only reason why women feel empowered to come forward and speak about these very stressful, demeaning incidents.

Mahalo for your time and consideration. Please vote in SUPPORT of SB1041.

SB-1041

Submitted on: 2/5/2019 12:03:45 PM

Testimony for LCA on 2/5/2019 2:45:00 PM

LATE

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: