

2018 -- S 2687 SUBSTITUTE A

LC004954/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --  
NONDISCLOSURE AGREEMENTS

Introduced By: Senators Sheehan, Nesselbush, Jabour, Euer, and Miller

Date Introduced: March 20, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 9 of the General Laws entitled "COURTS AND CIVIL PROCEDURE  
2 - PROCEDURE GENERALLY" is hereby amended by adding thereto the following chapter:

3 CHAPTER 34

4 NONDISCLOSURE AGREEMENTS PROHIBITED

5 **9-34-1. Definitions.**

6 As used in this chapter, the following words and terms shall have the following  
7 meanings:

8 (1) "Claim" means an internal workplace complaint, potential civil action in a court of  
9 competent jurisdiction, or a charge or complaint before the Rhode Island commission for human  
10 rights related to sexual assault, sexual harassment, retaliation, or stalking.

11 (2) "Commission" means the Rhode Island commission for human rights.

12 (3) "Complainant" means an individual that has made an internal workplace complaint of  
13 sexual harassment, sexual assault, retaliation or stalking, has reported a sexual assault to the  
14 police, has filed a charge with the commission, or has made an allegation of sexual assault, sexual  
15 harassment, retaliation, or stalking.

16 (4) "Factual information" means information and details that are related to a reported or  
17 alleged incident or claim of sexual assault, sexual harassment, retaliation, stalking or the alleged  
18 perpetrator thereof.

1 (5) "Nondisclosure agreement" means a provision within a confidentiality agreement,  
2 settlement agreement, contract, waiver, or other document that prohibits the disclosure of factual  
3 information related to a claim by a party to the agreement.

4 (6) "Perpetrator" means an individual who has sexually assaulted or harassed a  
5 complainant or who has allegedly sexually assaulted or harassed the complainant.

6 (7) "Respondent" means the party entering into the settlement, agreement, or contract  
7 related to the claim with the complainant.

8 (8) "Settlement" means any agreement where anything of value is given to the  
9 complainant raising the claim in exchange for their decision to decline to pursue the claim.

10 **9-34-2. Prohibitions.**

11 (a) A provision within a nondisclosure agreement that prevents the disclosure of factual  
12 information related to a claim is hereby prohibited in any settlement, agreement, or contract after  
13 the passage of this act and is declared void as a matter of law and against public policy.

14 (1) Provisions within nondisclosure agreements preventing the disclosure of factual  
15 information are void when the factual foundation for the claim establishes a cause of action for  
16 any of the following:

17 (i) An act of sexual harassment in violation of chapter 5 of title 28.

18 (ii) An act of sexual harassment in violation of chapter 37 of title 34.

19 (iii) An act of sexual harassment in violation of chapter 112 of title 42.

20 (iv) An act of sexual assault as defined in chapter 37 of title 11.

21 (v) An act of retaliation against a person for reporting harassment as defined in chapter 5  
22 of title 28.

23 (vi) An act of stalking as defined in chapter 59 of title 11.

24 (b) Except as authorized by subsection (c) of this section, a nondisclosure provision  
25 within a settlement agreement that prevents the disclosure of factual information related to the  
26 claim described in subsection (a) of this section that is amended or revised after the passage of  
27 this act is void as a matter of law and public policy.

28 (c) Notwithstanding subsection (a) of this section, a provision that prevents the disclosure  
29 of factual information related to the claim may be included within the settlement agreement upon  
30 the explicit, unilateral request of the complainant and will not render the provision void.

31 (d) This chapter does not apply to the disclosure of a crime victim's medical or personal  
32 identifying information or other information that is specifically protected from disclosure by law.

33 (e) This chapter does not prohibit the entry or enforcement of a provision in any  
34 settlement, agreement, or contract that precludes the disclosure of the amount paid in a settlement

1 of a claim.

2 (f) At any time after the execution of the settlement, agreement, or contract, complainant  
3 maintains the unilateral right to elect to disclose the factual information related to the claim  
4 despite previously having made a request pursuant to subsection (c) of this section.

5 (g) If the complainant elects to disclose the factual information related to the claim  
6 pursuant to subsection (f) of this section, respondent is no longer bound by any nondisclosure  
7 provision previously included at the request of the complainant.

8 (h) Any person who enforces or attempts to enforce a provision deemed void and against  
9 public policy pursuant to this chapter shall be liable for the complainant's reasonable attorneys'  
10 fees and costs.

11 (i) Any person claiming to be aggrieved by a violation of this chapter may initiate suit in  
12 superior court. An action pursuant to this chapter shall be commenced within three (3) years after  
13 the cause of any such action shall have accrued. All remedies available in common tort actions  
14 shall be available to prevailing plaintiffs. A prevailing plaintiff shall be awarded reasonable  
15 attorneys' fees and costs.

16 **9-34-3. Severability.**

17 If any provision of this chapter or the application of this chapter to any person or  
18 circumstance is held invalid by any court of competent jurisdiction, the remainder of the chapter  
19 and the application of the provision to other persons or circumstances shall not be affected. The  
20 invalidity of any section or sections or parts of any section of this chapter shall not affect the  
21 validity of the remainder of the chapter.

22 SECTION 2. This act shall take effect on January 1, 2019.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

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1           This act would void any provision of a settlement that prohibits disclosure of the factual  
2 information related to a claim of sexual harassment, retaliation for reporting sexual harassment,  
3 and stalking as against public policy.

4           This act would take effect upon passage.

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