
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1906 Session of
2023

INTRODUCED BY FLOOD, MAJOR, KLUNK, SCHEUREN, M. MACKENZIE,
KRUPA, OWLETT, STENDER, R. MACKENZIE, HAMM, STEHR, SMITH,
SCHMITT, BENHAM, GAYDOS, GILLEN, DIAMOND, KAZEEM AND GROVE,
DECEMBER 11, 2023

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 11, 2023

AN ACT

1 Providing for limitation on judicial enforceability of
2 nondisclosure and nondisparagement contract clauses regarding
3 sexual assault or sexual harassment.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Judicial
8 Enforceability of Nondisclosure Contracts Involving Sexual
9 Assault Act.

10 Section 2. Declaration of purpose.

11 The General Assembly finds and declares as follows:

12 (1) Sexual harassment and sexual assault remain
13 pervasive in the workplace and throughout civic society,
14 affecting millions of Americans.

15 (2) Eighty-one percent of women and 43% of men have
16 experienced some form of sexual harassment or sexual assault
17 throughout their lifetime.

1 (3) One in three women have faced sexual harassment in
2 the workplace during their career, and an estimated 87% to
3 94% of individuals who experience sexual harassment never
4 file a formal complaint.

5 (4) Sexual harassment in the workplace forces many women
6 to leave their occupation or industry or pass up
7 opportunities for advancement.

8 (5) In order to combat sexual harassment and sexual
9 assault, it is essential that victims and survivors have the
10 freedom to report and publicly disclose their abuse.

11 (6) Nondisclosure and nondisparagement provisions in
12 agreements between employers and current, former and
13 prospective employees and independent contractors and between
14 providers of goods and services and consumers, can perpetuate
15 illegal conduct by silencing those who are survivors of
16 illegal sexual harassment and sexual assault or illegal
17 retaliation, or have knowledge of such conduct, while
18 shielding perpetrators and enabling them to continue their
19 abuse.

20 (7) Prohibiting nondisclosure and nondisparagement
21 clauses will empower survivors to come forward, hold
22 perpetrators accountable for abuse, improve transparency
23 around illegal conduct, enable the pursuit of justice and
24 make workplaces safer and more productive for everyone.

25 Section 3. Definitions.

26 The following words and phrases when used in this act shall
27 have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Nondisclosure clause." A provision in a contract or
30 agreement that requires the parties to the contract or agreement

1 not to disclose or discuss conduct, the existence of a
2 settlement involving conduct or information covered by the terms
3 and conditions of the contract or agreement.

4 "Nondisparagement clause." A provision in a contract or
5 agreement that requires one or more parties to the contract or
6 agreement not to make a negative statement about another party
7 that relates to the contract, agreement, claim or case.

8 "Sexual assault dispute." A dispute involving an offense
9 under 18 Pa.C.S. Ch. 31 (relating to sexual offenses), including
10 when the victim lacks the capacity to consent.

11 "Sexual harassment." Unwelcome sexual advances, requests for
12 sexual favors and other conduct of a sexual nature.

13 "Sexual harassment dispute." A dispute relating to conduct
14 that is alleged to constitute sexual harassment.

15 Section 4. Limitation on judicial enforceability of
16 nondisclosure and nondisparagement contract clauses
17 regarding sexual assault or sexual harassment.

18 (a) Unenforceable clauses.--With respect to a sexual assault
19 dispute or sexual harassment dispute, a nondisclosure clause or
20 nondisparagement clause agreed to before the dispute arises
21 shall not be judicially enforceable in the courts of this
22 Commonwealth in instances in which conduct is alleged to have
23 violated State law.

24 (b) Right to speak freely.--Nothing in this act shall
25 prohibit the Commonwealth or a municipality from enforcing a
26 provision of State law governing nondisclosure clauses or
27 nondisparagement clauses that is at least as protective of the
28 right of an individual to speak freely as provided by this act.

29 (c) Pseudonyms.--Nothing in this act shall be construed to
30 supersede a provision of Federal or State law that governs the

1 use of pseudonyms in the filing of claims involving sexual
2 assault disputes or sexual harassment disputes.

3 (d) Protection of trade secrets or proprietary
4 information.--Nothing in this act shall prohibit an employer and
5 an employee from protecting trade secrets or proprietary
6 information.

7 Section 5. Applicability.

8 This act shall apply with respect to a claim that is filed in
9 a court of competent jurisdiction under State law on or after
10 the effective date of this section.

11 Section 6. Effective date.

12 This act shall take effect in 60 days.