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Rep. Longhurst
Sens. Hansen, Lockman, Pinkney; Reps. Kowalko,
Morrison, K. Williams, Wilson-Anton

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 202

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE PROHIBITION OF
CONFIDENTIALITY PROVISIONS IN CERTAIN SETTLEMENT AGREEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 39, Title 10 of the Delaware Code by making deletions as shown by strike through and
insertions as shown by underline as follows:

§ 3928. Prohibition of Confidentiality Provisions in Certain Settlement Agreements.

(a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of
factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of
the following, is prohibited:

(1) An act of sexual assault.

(2) An act of sexual harassment.

(3) An act of workplace harassment or discrimination, failure to prevent an act of workplace harassment
or discrimination, or an act of retaliation against a person for reporting harassment or discrimination.

(4) An act of harassment or discrimination, or an act of retaliation against a person for reporting
harassment or discrimination.

(5) An act of harassment or discrimination, or an act of retaliation against a person for reporting
harassment or discrimination by the owner of a housing accommodation.

(6) An act that may be prosecuted as a felony or Class A misdemeanor sex offense.

(7) An act of sexual exploitation of a minor.

(b) Notwithstanding any other law, in a civil matter described in paragraphs (a)(1) to (6), a court shall not enter, by
stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with this section.

(c) Notwithstanding paragraphs (a) and (b) above, a provision that shields the identity of the claimant and all facts
that could lead to the discovery of the claimant's identity, including pleadings filed in court, may be included within a
settlement agreement at the request of the claimant.

22 (d) Except as authorized by paragraph (c), a provision within a settlement agreement that prevents the disclosure
23 of factual information related to the claim described in paragraph (a) that is entered into on or after June 30, 2022, is void as
24 a matter of law and against public policy.

25 (e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the
26 disclosure of the amount paid in settlement of a claim.

27 (f) In determining the factual foundation of a cause of action for civil damages under subdivision (a), a court may
28 consider the pleadings and other papers in the record, documents produced in the civil action, depositions taken in the civil
29 action, and any findings of the court.

SYNOPSIS

This act prohibits the inclusion of confidentiality provisions in settlement agreements resolving certain civil claims, including claims related to workplace harassment and discrimination, retaliation for reporting workplace harassment and discrimination, sexual assault, sexual harassment, sexual discrimination, and sexual exploitation of a minor.

The act permits provisions in such settlement agreements that shield the identity of the claimant.

Author: Senator Sturgeon