

LFC Requester:	Mercer-Garcia, Rachel
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/10/25 *Check all that apply:*
Bill Number: SB 324 Original Correction
 Amendment Substitute

Sponsor: Sen. Katy M. Duhigg **Agency Name and Code:** AOC
Short Title: Prohibit Certain Employment Agreements **Number:** 218
Person Writing: Kathleen Sabo **Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 324 amends Section 50-4-36 NMSA 1978 to prohibit a private employer, as a term of employment, to require a prospective, current or former employee or independent contractor to sign a nondisclosure or non-disparagement provision of a settlement agreement relating to a claim of sexual assault, sexual harassment, sexual discrimination or sexual retaliation in the workplace brought by the prospective, current or former employee or independent contractor or prevent the prospective, current or former employee or independent contractor from disclosing a claim of sexual assault, sexual harassment, sexual discrimination or sexual retaliation occurring in the workplace or at a work-related event coordinated by or through the employer.

The SB 324 amendment provides that Section 50-4-36 NMSA 1978 does not prohibit a settlement agreement with a prospective, current or former employee or independent contractor alleging sexual assault, sexual harassment, sexual discrimination or sexual retaliation from containing a confidentiality provision if the provision:

- (1) relates to the monetary amount of a settlement; or
- (2) at the prospective, current or former employee's or independent contractor's request, prohibits disclosure of factual information related to the underlying sexual assault, sexual harassment, sexual discrimination or sexual retaliation claim or facts that could lead to the identification of the prospective, current or former employee or independent contractor.

Subsection C provides that the provisions of Section 50-4-36 NMSA 1978 shall not be construed to prevent disclosure of information that is the subject of the confidentiality provision if disclosure is required to be made in a judicial, administrative or other governmental proceeding pursuant to a valid subpoena or other applicable order as otherwise required by law. Subsection D states that, except as provided in Subsection C, a confidentiality provision in a settlement agreement subject to this section is void and unenforceable as a matter of law.

Subsection E permits a plaintiff in a civil action to present evidence that the employer against whom the action was filed entered into one or more agreements that included a nondisclosure or non-disparagement clause involving the conduct of the same individual or individuals who are alleged to have engaged in the unlawful acts. SB 324 permits the evidence to be used in support of an award of punitive damages.

Subsection F provides that with respect to a claim of sexual assault, sexual harassment, sexual discrimination or sexual retaliation in the workplace, any nondisclosure clause or non-disparagement clause agreed to before the dispute arises shall not be judicially enforceable in instances in which conduct is alleged to have violated federal, tribal or state law.

Subsection G provides that, at the election of the person alleging the conduct or the names representative of a class or in a collective action alleging such conduct, a predispute arbitration or predispute joint-action waiver shall be invalid and unenforceable with respect

to a case that is filed under federal, tribal or state law and relates to the alleged sexual assault, sexual harassment, sexual discrimination or sexual retaliation dispute.

Subsection H states that the provisions of Section 50-4-36 NMSA 1978 are to be liberally construed to fulfill their remedial purpose.

SB 324 provides that the provisions of the Act apply to agreements entered into between a private employer and a prospective, current or former employee or independent contractor on or after June 20, 2025.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and challenges to disclosure or nondisclosure, as well as challenges to the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

- 1) In 2022, President Biden signed the federal Speak Out Act, S. 4524, which prohibits the enforcement of non-disclosure and non-disparagement provisions in *pre-dispute* agreements in cases involving sexual harassment or sexual assault claims, for both employees and independent contractors. The Speak Out Act does not apply to, or otherwise prohibit, non-disclosure and non-disparagement agreements concerning sexual misconduct entered into by an employee *after* a dispute arises.

In 2020, HB 21 was signed into law, embodied in Section 50-4-36 NMSA 1978. Many states have enacted anti-harassment laws since the “#MeToo” movement took off. See *State Workplace Anti-harassment Laws Enacted Since #MeToo Went Viral*, October 2023, National Women’s Law Center, <https://nwlc.org/wp-content/uploads/2022/10/MeToo-State-Bills-2023-10.18.23.pdf>.

SB 324 amends Section 50-4-36 NMSA 1978 to include “non-disparagement agreements” within its prohibited agreements.

- 2) Neither Section 50-4-36 NMSA 1978 or any other related statutory section contain a definition of “non-disparagement” or “non-disparagement clause,” terms which it may be best to define so there is no confusion as to whether statements that are true but still damaging constitute disparagement under the law.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

- 1) The current Section 50-4-36(D) NMSA 1978 provides that “except as provided in Subsections B and C, a confidentiality provision in a settlement agreement subject to this section is void and unenforceable as a matter of law.” SB 324, Section D, as amended, states only that, “except as provided in Subsection C,…” Yet, Subsection B specifically describes settlement agreement confidentiality provisions that are allowable under law. It would seem strange to describe permissible confidentiality provisions and then not include them as an exception to a void and unenforceable settlement agreement confidentiality provision.
- 2) Neither Section 50-4-36 NMSA 1978 or any other related statutory section contain a definition of “non-disparagement” or “non-disparagement clause,” terms which it may be best to define so there is no confusion as to whether statements that are true but still damaging constitute disparagement under the law.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS

- 1) Amend SB 324, Section 1(D) to include both Subsections B and C. (See “Technical Issues” #1, above.)
- 2) Define either one or both of the terms “non-disparagement” or “non-disparagement clause” as used in Section 50-4-36 NMSA 1978. (See “Technical Issues” #2, above.)