



NEW YORK STATE SENATOR

Elaine Phillips

Senator Phillips And Senator Young Propose Historic Strengthening Of New York's Sexual Harassment Laws

ELAINE PHILLIPS December 15, 2017

In the wake of a tidal wave of allegations of sexual abuse and misconduct sweeping the country, Senator Elaine Phillips (R – 7th S.D.) and Senator Catharine Young (R,C,I – 57th S.D.) and have proposed landmark legislation that would strengthen New York State's sexual harassment laws. The measure would enact sweeping new protections for victims including banning secret settlements, establishing a statutory definition of sexual harassment, and expanding the law to protect independent contractors. The measure represents the most significant statewide initiative on the issue in decades.

“Our nation is at a defining moment with respect to the issue of sexual harassment. In the last two months, dozens of courageous individuals have come forward to share painful stories of harassment and abuse they suffered at the hands of those in positions of power. Nearly all of these women and men have been silent for years, either as a result of intimidation by their abusers, or because of the humiliation associated with the abuse – or a combination of both. With each new revelation, our shock grows at the apparent pervasiveness of this problem along with our resolve to take action,” said Senator Young.

“There is no place in our government, or society as a whole, for sexual assault or harassment. It is inspiring to see the movement of women across our country coming forward, sharing

their personal stories, and overcoming the stigma and shame brought on by the inappropriate actions of others. The dialogue must continue and as elected officials we must do all possible, to protect those who have been forced to carry the burden of harassment out of fear for their future,” said Senator Phillips.

“This landmark legislation aims to punish abusers, prevent harassment, and further protect all victims. I applaud the courageous women who have come forward to share their difficult stories and hope this bravery will aid them with their personal healing process,” she added.

“It is important to remember that for each individual who has come forward in the last two months, there are thousands of others who have also been the victims of sexual harassment. While the celebrities’ stories make headlines, the reality is that individuals in low-wage service occupations such as restaurant wait staff and sales clerks have the highest incidence of sexual harassment,” said Senator Young.

“While harassment can take many forms, from innuendo to outright assault, it cannot and must not be tolerated, at any level. As a society and as a state, we need to step forward to protect people from the discrimination and degradation of sexual harassment and abuse. Bringing this issue out of the darkness and into the light is the first step towards addressing this problem. The other component involves changing our laws to help prevent harassment, punish abusers and protect victims,” she added.

The legislation co-sponsored by Senator Phillips and Senator Young would include the provisions below.

Prohibit secret settlements. To help discourage serial predators, this measure would prohibit courts from accepting any settlements that include confidentiality agreements or provisions. This would help ensure that those responsible are held accountable while providing

employers with a greater incentive to institute strong anti-harassment policies and build a workplace culture that discourages such behavior.

“As the Harvey Weinstein case and others have highlighted, serial predators often use confidential settlements to silence their victims and protect their reputations, leaving them free to harass others. In order to affect real and lasting change, these settlements must be removed from the equation,” said Senator Young.

Prohibit mandatory arbitration for sexual harassment complaints. Mandatory arbitration clauses are often used by employers to force sexual harassment victims into private arbitration proceedings, which precludes their ability to seek legal action.

“Mandatory arbitration clauses, much like confidential settlements, are intended to keep sexual harassment incidents under wraps, shielding the company, and often the offender, from negative publicity. Eliminating these clauses is necessary to ensure that justice is served and that these offenses aren’t hidden from view,” said Senator Young.

Expand the definition of “employer” to include those who employ independent contractors. Currently, individuals who are freelance or contract workers cannot file sexual harassment complaints against the enterprises or individuals who have employed their services. This includes a broad and growing range of businesses, including entertainment companies, news and media organizations, construction firms, real estate agencies, and hair salons, among many others. The Government Accountability Office has placed the percentage of freelance and contract workers at approximately 40 percent of the workforce.

This legislation would close this loophole by extending to contract workers the same right to file sexual harassment complaints as individuals who are directly employed by the company or entity.

“Many of the actresses who’ve made allegations against Harvey Weinstein had no legal recourse because they were ‘independent contractors’ working on films his studio was producing. Under this bill, those women, and individuals in any independent working arrangement, would be eligible to file sexual harassment complaints, rightly having access to a process for redress,” said Senator Phillips.

Adopt the definition of “sexual harassment” into state law. Although the NYS Division of Human Rights has a definition it uses administratively, there is currently no definition in statute of what constitutes sexual harassment. That leaves litigants subject to varying interpretations by judges, who may improperly dismiss sexual harassment cases at the outset. One study found that approximately 37 percent of cases are dismissed pretrial.

“Establishing a definition in state law offers protection for everyone involved in sexual harassment cases. With a consistent standard to evaluate claims, the subjectivity is removed, providing a clear benchmark for evaluating the merits of a case. This will benefit both claimants and the accused,” said Senator Young.

“Behind the revelations of recent weeks are real people – women and men who bear emotional scars from the harassment they endured and from the burden of remaining silent for so long. Yet, their stories and experiences have provoked a long-overdue national dialogue on sexual harassment and will lead to important changes in our laws. I am grateful for their courage and Senator Phillips and I will fight to ensure this legislation becomes law,” Senator Young concluded.

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