

Date of Hearing: March 10, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1652 (Patterson) – As Introduced January 28, 2026

PROPOSED CONSENT

SUBJECT: STATE AGENCIES: REGULATIONS AND LEGISLATION:
NONDISCLOSURE AGREEMENTS

KEY ISSUE: SHOULD STATE AGENCY OFFICIALS BE PROHIBITED FROM ENTERING INTO A NONDISCLOSURE AGREEMENT DESIGNED TO KEEP INFORMATION RELATED TO DELIBERATIONS REGARDING LEGISLATION AND REGULATIONS SECRET?

SYNOPSIS

Nondisclosure agreements are contractual provisions that bind the parties to secrecy regarding information specified in the contract. These agreements generally prohibit parties from disclosing the specified information to anyone who is not a party to the contract and often provide for the damages that will be imposed if a party shares information in violation of the nondisclosure agreement. In the past several years, the Legislature has considered several measures designed to limit or prohibit settlement agreements that prevent plaintiffs and complainants from disclosing information about alleged wrongdoing. Secrecy agreements and nondisclosure agreements, even when they serve the interests of the parties involved, raise important public policy questions when they conceal particularly egregious behavior, illegal activity, or an ongoing threat to public safety. Recently, concerns have also been raised regarding the use of nondisclosure agreements in public policy making and that these agreements may be undermining the state's open record laws.

This bill, building on the author's successful legislation to prevent legislators and staff from signing nondisclosure agreements related to bill negotiations, would adopt a similar prohibition for executive branch officials. The bill would prevent executive branch officials from signing nondisclosure agreements regarding deliberations surrounding proposed regulations and legislation. The bill voids, as a matter of public policy, any such agreements. Like last year's measure, this bill provides for a narrow exemption for nondisclosure agreements that protect trade secrets, private financial information, or other proprietary information.

This bill is supported by Oakland Privacy and California Civil Liberties Advocacy. The proponents of the bill highlight the need to ensure transparency in government activities. This bill has no known opposition.

SUMMARY: Prohibits executive branch officials from signing nondisclosure agreements regarding the negotiation of legislation or regulations. Specifically, **this bill:**

- 1) Prohibits an elective or appointive officer of a state agency acting in their official capacity from entering into, or requesting that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of a proposed regulation or legislation.

- 2) Provides that any nondisclosure agreement that violates the prohibitions of 1) is void and unenforceable.
- 3) Exempts from the prohibition in 1) a nondisclosure agreement that prevents only the disclosure of trade secrets, private financial information, or proprietary information.
- 4) Defines the following terms:
 - a) “Discussion” means direct or indirect communications engaged in by individuals for the purpose of reaching a decision regarding a proposed regulation or legislation;
 - b) “Drafting” means developing language for a proposed regulation or legislation, as specified; and
 - c) “Negotiation” means any form of direct or indirect communication whereby individuals who have opposing interests discuss the form of any proposed regulation or legislation that may resolve a dispute involving those interests.

EXISTING LAW:

- 1) Provides that the people have the right of access to information concerning the conduct of the people’s business and, therefore, the writings of public officials and agencies shall be open to public scrutiny. Specifies that any law or rule that limits the public right of access shall be adopted with findings demonstrating the interest protected by the limitation. (California Constitution, art. I, Sec. 3.)
- 2) Provides that, in enacting the California Public Records Act, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state. (Government Code Section 7921.000.)
- 3) Prohibits a Member of the Legislature acting in their official capacity from entering into, or requesting that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed legislation. (Government Code Section 8923 (a).)
- 4) Provides that the prohibition in 4) does not apply to a nondisclosure agreement that prevents only the disclosure of trade secrets, financial information, or proprietary information. (Government Code Section 8923 (c).)
- 5) Establishes the Office of Administrative Law and tasks the Office with reviewing all regulations proposed by state agencies. (Government Code Section 11340.2.)
- 6) Prohibits a state agency from issuing, utilizing, enforcing, or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation, as defined, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State. (Government Code section 11340.5.)
- 7) Defines “regulation” as every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by

any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure. (Government Code Section 11342.600.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Last year, the Legislature enacted AB 1370 (Patterson) Chap. 191, Stats. 2025, to prohibit members and staff of the Legislature from entering into nondisclosure agreements related to legislative negotiations. This measure would extend the prohibition to senior officials within the executive branch for discussions regarding legislation or regulations. In support of this bill, the author states:

Last year the legislature unanimously approved AB 1370 which prohibited members of the legislature from entering or requesting another party to enter into non-disclosure agreements related to the drafting, negotiations, and discussions on legislation. The reason is because we believe in transparency and we wanted to clear up the obvious: NDAs simply don't belong in government; in the same vein, it should apply to the Governor's Office and administrative agencies.

What is a nondisclosure agreement and how has the Legislature addressed their proliferation.

A nondisclosure agreement is a provision in a contract that binds the parties to secrecy regarding information specified in the contract. These agreements generally prohibit parties from disclosing the specified information to anyone who is not a party to the agreement and often provides for contract damages to be imposed if a party shares information in violation of the nondisclosure agreement. Traditionally, these agreements are used to protect sensitive and confidential information, including trade secrets, proprietary information, and negotiation tactics, as well as potentially embarrassing information that is, or could be, the subject of a civil lawsuit.

Following the revelations of the #MeToo movement, it became clear that nondisclosure agreements were being utilized to silence survivors and protect abusers. Notably, many of the #MeToo era's worst offenders including Harvey Weinstein and Larry Nassar, relied on the use of nondisclosure agreements to shield abuse allegations from the public. Largely in response to these revelations, the Legislature enacted SB 820 (Leyva) Chap. 953, Stats. 2018, which prohibited any provision in a settlement agreement that prevents disclosure of factual information related to a cause of action alleging sexual abuse, sexual harassment, or any workplace harassment or discrimination based on sex. Following SB 820, the Legislature adopted SB 331 (Leyva) Chap. 638, Stats. 2021, to prohibit the use of nondisclosure agreements to settle employment and housing-related legal claims involving unlawful harassment, discrimination, or related retaliation of any kind, with limited exceptions when requested by the complainant. Accordingly, the existing law now prohibits the inclusion of a nondisclosure agreement within a settlement agreement of a civil action if the action is based upon an act that could be prosecuted as a felony sexual assault, child abuse, or elder abuse because of the threat that secrecy would pose to particularly vulnerable groups, including sexual assault survivors, children, and the elderly.

Following the #MeToo era, the Legislature began to address the use of nondisclosure agreements in public policy making. Following the enactment of AB 257 (Holden) Chap. 246, Stats. 2022, which authorized the Fast Food Council within the Department of Industrial Relations for the purpose of establishing sector-wide minimum standards, a coalition of franchisors sought to repeal the bill through a ballot initiative. According to investigative reports, allegations surfaced that those involved in negotiating subsequent amendments to AB 257, in return for removing the

referendum measure from the ballot, signed nondisclosure agreements. (Ashley Zavala, *Non-disclosure agreements were used in negotiations of California's landmark fast food worker law*, KCRA News (Mar. 7, 2024), available at <https://www.kcra.com/article/california-fast-food-law-panera-newsom-nda/60117858>.) Seeking to ensure that public policy debates could not be shielded from public view using nondisclosure agreements, last year, this measure's author successfully enacted the aforementioned AB 1370 to ban legislators or their staff from signing nondisclosure agreements related to legislative debates.

This bill extends the AB 1370 framework to the executive branch. The bill prohibits senior executive branch officials from signing nondisclosure agreements, or forcing their staff to sign such agreements, regarding discussions about legislation or regulations. Much like its predecessor, this bill recognizes the longstanding use of these agreements to shield public disclosure of trade secrets, private financial information, and proprietary information by exempting those agreements from the prohibitions of the bill. The bill would provide that any agreement violating the provisions of this bill is void and unenforceable.

Unlike legislation, the regulatory process requires significant public involvement that may reduce the likelihood of a nondisclosure agreement being utilized. This bill prohibits high level officials in the *executive* branch from signing nondisclosure agreements regarding legislative and regulatory discussions. This certainly makes sense in the legislative context in which even the Public Records Act cannot immediately provide public access to some records. However, the bill also applies in the rulemaking context. This may not be as necessary given that the Administrative Procedure Act already requires extensive public input into regulations and the Public Records Act already requires most intra-executive branch communications to be disclosed if requested by the public. Nonetheless, this bill is in keeping with the spirit of California's government transparency laws and is thus appropriate in scope.

ARGUMENTS IN SUPPORT: This bill is supported by Oakland Privacy and California Civil Liberties Advocacy. In support of the bill, Oakland Privacy writes:

While there can be appropriate uses for non-disclosure agreements in certain circumstances, specifically to protect legitimate proprietary information, we agree that legislative debate around bills and significant regulatory rules are almost never going to be one of those appropriate uses.

By its very nature, the legislative and Administrative Procedure Act processes are intended to be an open airing of issues and concerns to arrive at the best possible policy approach. And how decision making bodies engage in that process is the material evidence that voters use to decide if they wish to return those members or their appointees to office. When that process is invisible or obscured, there is a significant democracy deficit that harms both parties and the integrity of government.

We want to be clear that in choosing to support this bill, we are not opining on various politically-motivated charges and counter-charges whose veracity we do not know, nor are we stating that there is or isn't evidence that members of the Legislature or appointed officials have or haven't signed, or caused to be signed, non-disclosure agreements on legislative and regulatory matters.

It is simply that as a matter of public policy, non-disclosure agreements outside of a very narrow window relating to specific proprietary business information, have no place in

legislative and rule-making processes. We acknowledge that negotiations, especially on controversial issues and under time pressure, can be difficult to hammer out in the bright light of an audience, but it is exactly that spotlight that ensures that stakeholders are heard and issues are aired out. These processes are not backroom deals.

We would also add that the Administrative Procedure Act allows and has relatively transparent procedures for holding some materials confidential or filing under seal when necessary and compelling reasons are publicly articulated and ruled on by an administrative law judge. There really should be no need for ad-hoc non-disclosure agreements.

REGISTERED SUPPORT / OPPOSITION:

Support

California Civil Liberties Advocacy
Oakland Privacy

Opposition

None on file.

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