

115TH CONGRESS  
2D SESSION

# S. 2454

To amend the Securities Exchange Act of 1934 to require disclosure of payments for settlements of disputes regarding sexual abuse and certain types of harassment and discrimination, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

Ms. WARREN (for herself, Mr. MARKEY, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. DURBIN, Mr. BLUMENTHAL, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Securities Exchange Act of 1934 to require disclosure of payments for settlements of disputes regarding sexual abuse and certain types of harassment and discrimination, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sunlight in Workplace  
5 Harassment Act”.

1 **SEC. 2. DISCLOSURE OF PAYMENTS FOR SETTLEMENTS OF**  
2 **DISPUTES REGARDING SEXUAL ABUSE AND**  
3 **CERTAIN TYPES OF HARASSMENT AND DIS-**  
4 **CRIMINATION.**

5 Section 13 of the Securities Exchange Act of 1934  
6 (15 U.S.C. 78m) is amended by adding at the end the  
7 following:

8 “(s) DISCLOSURE OF CERTAIN ACTIVITIES REGARD-  
9 ING SETTLEMENTS OF DISPUTES RELATING TO SEXUAL  
10 ABUSE AND CERTAIN TYPES OF HARASSMENT OR DIS-  
11 CRIMINATION.—

12 “(1) DEFINITIONS.—In this subsection—

13 “(A) the term ‘covered discrimination’  
14 means—

15 “(i) discrimination described in any of  
16 clauses (i) through (vi) of subparagraph  
17 (B); or

18 “(ii)(I) a violation of section 704(a) of  
19 the Civil Rights Act of 1964 (42 U.S.C.  
20 2000e-3(a)) that is related to discrimina-  
21 tion described in subparagraph (B)(i) or  
22 (B)(vi)(I);

23 “(II) a violation of section 4(d) of the  
24 Age Discrimination in Employment Act of  
25 1967 (29 U.S.C. 623(d)) that is related to

1 discrimination described in subparagraph  
2 (B)(ii);

3 “(III) a violation of subsection (a) or  
4 (b) of section 503 of the Americans with  
5 Disabilities Act of 1990 (42 U.S.C. 12203)  
6 that is related to discrimination described  
7 in subparagraph (B)(iii);

8 “(IV) a violation of section 207(f) of  
9 the Genetic Information Nondiscrimination  
10 Act of 2008 (42 U.S.C. 2000ff–6(f)) that  
11 is related to discrimination described in  
12 subparagraph (B)(iv);

13 “(V) a violation of section 4311(b) of  
14 title 38, United States Code, that is re-  
15 lated to discrimination described in sub-  
16 paragraph (B)(v); and

17 “(VI) a violation of section  
18 40002(b)(13)(A) of the Violence Against  
19 Women Act of 1994 (34 U.S.C.  
20 12291(b)(13)(A)) that—

21 “(aa) may cover retaliation de-  
22 scribed in a provision specified in any  
23 of subclauses (I) through (V); and

24 “(bb) is related to discrimination  
25 described in subparagraph (B)(vi)(II);

1           “(B) the term ‘covered harassment’ means  
2 harassment that is—

3           “(i) discrimination because of race,  
4 color, religion, sex, or national origin under  
5 title VII of the Civil Rights Act of 1964  
6 (42 U.S.C. 2000e et seq.);

7           “(ii) discrimination because of age  
8 under the Age Discrimination in Employ-  
9 ment Act of 1967 (29 U.S.C. 621 et seq.);

10           “(iii) discrimination on the basis of  
11 disability under—

12           “(I) title I of the Americans with  
13 Disabilities Act of 1990 (42 U.S.C.  
14 12111 et seq.); or

15           “(II) section 501 of the Rehabili-  
16 tation Act of 1973 (29 U.S.C. 791);

17           “(iv) discrimination because of genetic  
18 information under title II of the Genetic  
19 Information Nondiscrimination Act of  
20 2008 (42 U.S.C. 2000ff et seq.);

21           “(v) discrimination on the basis of  
22 status concerning service in a uniformed  
23 service under section 4311(a) of title 38,  
24 United States Code; or

1 “(vi) discrimination because of sexual  
2 orientation or gender identity under—

3 “(I) title VII of the Civil Rights  
4 Act of 1964 (42 U.S.C. 2000e et  
5 seq.); or

6 “(II) section 40002(b)(13)(A) of  
7 the Violence Against Women Act of  
8 1994 (34 U.S.C. 12291(b)(13)(A));

9 “(C) the term ‘covered issuer’ means an  
10 issuer that is required to file Form 10–K;

11 “(D) the term ‘Form 10–K’ means the  
12 form described in section 249.310 of title 17,  
13 Code of Federal Regulations, as in effect on the  
14 date of enactment of this subsection;

15 “(E) the term ‘gender identity’ means the  
16 gender-related identity, appearance, manner-  
17 isms, or other gender-related characteristics of  
18 an individual, regardless of the designated sex  
19 of the individual at birth;

20 “(F) the term ‘settlement’ means any com-  
21 mitment or agreement—

22 “(i) without regard to whether the  
23 commitment or agreement, as applicable, is  
24 in writing; and

1                   “(ii) under which an issuer directly or  
2 indirectly—

3                   “(I) provides to an individual  
4 compensation or other consideration  
5 because of an allegation that the indi-  
6 vidual has been a victim of covered  
7 harassment, covered discrimination, or  
8 sexual abuse; or

9                   “(II) establishes conditions that  
10 affect the terms of the employment,  
11 including by terminating the employ-  
12 ment, of the individual with the  
13 issuer—

14                   “(aa) because of the experi-  
15 ence of the individual with, or the  
16 participation of the individual in,  
17 an alleged act of covered harass-  
18 ment, covered discrimination, or  
19 sexual abuse; and

20                   “(bb) in exchange for which  
21 the individual agrees or commits  
22 not to—

23                   “(AA) bring legal, ad-  
24 ministrative, or any other

1 type of action against the  
2 issuer; or

3 “(BB) publicly disclose,  
4 for a period of time of any  
5 length, any portion of the al-  
6 leged act described in item  
7 (aa) on which the commit-  
8 ment or agreement, as appli-  
9 cable, is based;

10 “(G) the term ‘sexual abuse’ means any  
11 type of sexual contact or behavior that occurs  
12 without the explicit consent of the recipient, in-  
13 cluding forced sexual intercourse, forcible sod-  
14 omy, child molestation, incest, fondling, and at-  
15 tempted rape; and

16 “(H) the term ‘sexual orientation’ means  
17 homosexuality, heterosexuality, or bisexuality.

18 “(2) DISCLOSURE REQUIREMENTS.—

19 “(A) IN GENERAL.—Beginning in the first  
20 fiscal year that begins after the date of enact-  
21 ment of this subsection, each covered issuer  
22 shall disclose annually on Form 10-K, to share-  
23 holders of the covered issuer, and to the pub-  
24 lic—

1                   “(i) with respect to the previous  
2                   year—

3                   “(I) the total number of settle-  
4                   ments entered into by the covered  
5                   issuer, a subsidiary, contractor, or  
6                   subcontractor of the covered issuer, or  
7                   a corporate executive of the covered  
8                   issuer that relate to any alleged act of  
9                   sexual abuse, covered harassment, or  
10                  covered discrimination that—

11                  “(aa) occurred in the work-  
12                  place of the covered issuer or a  
13                  subsidiary, contractor, or subcon-  
14                  tractor of the covered issuer; or

15                  “(bb) involves the behavior  
16                  of an employee of the covered  
17                  issuer, or a subsidiary, con-  
18                  tractor, or subcontractor of the  
19                  covered issuer, toward another  
20                  such employee, without regard to  
21                  whether that behavior occurred in  
22                  the workplace of the covered  
23                  issuer or the subsidiary, con-  
24                  tractor, or subcontractor, as ap-  
25                  plicable;



1           “(II) the total dollar amount  
2           paid with respect to the settlements  
3           described in subclause (I);

4           “(III) the total number of settle-  
5           ments entered into by the covered  
6           issuer, a subsidiary, contractor, or  
7           subcontractor of the covered issuer, or  
8           a corporate executive of the covered  
9           issuer that relate to any alleged act of  
10          sexual abuse, covered harassment, or  
11          covered discrimination that—

12                   “(aa) was committed by a  
13                   corporate executive of—

14                           “(AA) the covered issu-  
15                           er; or

16                           “(BB) a subsidiary,  
17                           contractor, or subcontractor  
18                           of the covered issuer; and

19                           “(bb)(AA) occurred in the  
20                           workplace of the covered issuer  
21                           or a subsidiary, contractor, or  
22                           subcontractor of the covered  
23                           issuer, as applicable; or

24                           “(BB) involved the behavior  
25                           of a corporate executive described

1 in item (aa) toward another em-  
2 ployee of the covered issuer or a  
3 subsidiary, contractor, or subcon-  
4 tractor of the covered issuer, as  
5 applicable, without regard to  
6 whether that behavior occurred in  
7 the workplace of the covered  
8 issuer or a subsidiary, contractor,  
9 or subcontractor of the covered  
10 issuer;

11 “(IV) the total dollar amount  
12 with respect to the settlements de-  
13 scribed in subclause (III); and

14 “(V) the average length of time  
15 required for the covered issuer to re-  
16 solve a complaint relating to covered  
17 discrimination, covered harassment, or  
18 sexual abuse; and

19 “(ii) as of the date on which the dis-  
20 closure is made, the total number of com-  
21 plaints relating to covered discrimination,  
22 covered harassment, and sexual abuse that  
23 the covered issuer is working to resolve  
24 through—

1 “(I) processes that are internal  
2 to the covered issuer; and

3 “(II) litigation.

4 “(B) CATEGORIES.—Subject to subpara-  
5 graph (C), in each disclosure required under  
6 subparagraph (A), a covered issuer shall report  
7 the total number of settlements in subclauses  
8 (I) and (III) of subparagraph (A)(i) and the  
9 total dollar amounts in subclauses (II) and (IV)  
10 of subparagraph (A)(i) in the aggregate and list  
11 each such settlement by any of the following  
12 categories that apply to the settlement:

13 “(i) Settlements relating to sexual  
14 abuse, covered discrimination, or covered  
15 harassment because of sex.

16 “(ii) Settlements relating to covered  
17 discrimination or covered harassment be-  
18 cause of race, color, or national origin.

19 “(iii) Settlements relating to covered  
20 discrimination or covered harassment be-  
21 cause of religion.

22 “(iv) Settlements relating to covered  
23 discrimination or covered harassment be-  
24 cause of age.

1           “(v) Settlements relating to covered  
2           discrimination or covered harassment on  
3           the basis of disability.

4           “(vi) Settlements relating to covered  
5           discrimination or covered harassment be-  
6           cause of genetic information.

7           “(vii) Settlements relating to covered  
8           discrimination or covered harassment on  
9           the basis of status concerning service in a  
10          uniformed service.

11          “(viii) Settlements relating to covered  
12          discrimination or covered harassment be-  
13          cause of sexual orientation or gender iden-  
14          tity.

15          “(C) PROHIBITIONS ON CERTAIN DISCLO-  
16          SURES.—

17                 “(i) PROHIBITION ON DISCLOSURES  
18                 BY COVERED ISSUERS.—

19                         “(I) IN GENERAL.—A covered  
20                         issuer may not—

21                                 “(aa) in any disclosure made  
22                                 under subparagraph (A), or in  
23                                 any other public disclosure, dis-  
24                                 close the name of a victim of an  
25                                 alleged act of sexual abuse, cov-

1           ered harassment, or covered dis-  
2           crimination on which a settle-  
3           ment or complaint, as applicable,  
4           described in subparagraph (A) is  
5           based; or

6                   “(bb) under subparagraph  
7                   (B), categorize a settlement de-  
8                   scribed in subclause (I) or (III)  
9                   of subparagraph (A)(i) if the vic-  
10                  tim of the alleged act of sexual  
11                  abuse, covered harassment, or  
12                  covered discrimination on which  
13                  the settlement is based objects to  
14                  that categorization.

15                   “(II) INDICATION OF OBJEC-  
16                   TION.—A covered issuer shall indicate  
17                   in any disclosure made under sub-  
18                   paragraph (A) whether any objection  
19                   has been made under subclause  
20                   (I)(bb) of this clause.

21                   “(ii) PROHIBITION ON DISCLOSURES  
22                   BY THE COMMISSION.—The Commission  
23                   may not disclose the name of a victim of  
24                   an alleged act of sexual abuse, covered har-  
25                   assment, or covered discrimination on

1           which a settlement or complaint, as appli-  
2           cable, described in subparagraph (A) is  
3           based.

4           “(D) PREVENTION OF SEXUAL ABUSE,  
5           COVERED HARASSMENT, AND COVERED DIS-  
6           CRIMINATION.—In each disclosure required  
7           under subparagraph (A), the covered issuer  
8           making the disclosure shall include a descrip-  
9           tion of the measures taken by the covered  
10          issuer and any subsidiary, contractor, or sub-  
11          contractor of the covered issuer to prevent em-  
12          ployees of the covered issuer and any sub-  
13          sidiary, contractor, or subcontractor of the cov-  
14          ered issuer from committing or engaging in sex-  
15          ual abuse, covered harassment, or covered dis-  
16          crimination.

17          “(3) REGULATIONS.—The Commission may  
18          promulgate such regulations as the Commission con-  
19          siders necessary to implement the requirements  
20          under paragraph (2).”.

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