

115TH CONGRESS
2D SESSION

H. R. 5028

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2018

Ms. ROSEN introduced the following bill; which was referred to the Committee on Financial Services

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
15 issuer; 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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