

118TH CONGRESS
1ST SESSION

S. 1393

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 SENATE OF THE UNITED STATES

MAY 1, 2023

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

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 “(t) 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 a char-
4 acteristic consisting of race, color, religion,
5 sex, sexual orientation, gender identity, or
6 national origin, whether the characteristic
7 is actual or perceived, under title VII of
8 the Civil Rights Act of 1964 (42 U.S.C.
9 2000e et seq.);

10 “(ii) discrimination because of actual
11 or perceived age under the Age Discrimi-
12 nation in Employment Act of 1967 (29
13 U.S.C. 621 et seq.);

14 “(iii) discrimination on the basis of
15 actual or perceived disability under—

16 “(I) title I of the Americans with
17 Disabilities Act of 1990 (42 U.S.C.
18 12111 et seq.); or

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

21 “(iv) discrimination because of actual
22 or perceived genetic information under title
23 II of the Genetic Information Non-
24 discrimination Act of 2008 (42 U.S.C.
25 2000ff et seq.);

1 “(v) discrimination on the basis of ac-
2 tual or perceived status concerning service
3 in a uniformed service under section
4 4311(a) of title 38, United States Code; or

5 “(vi) discrimination because of a char-
6 acteristic consisting of sexual orientation
7 or gender identity, whether the char-
8 acteristic is actual or perceived, under sec-
9 tion 40002(b)(13)(A) of the Violence
10 Against Women Act of 1994 (34 U.S.C.
11 12291(b)(13)(A));

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

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

18 “(E) the term ‘gender identity’ means a
19 characteristic consisting of the gender-related
20 identity, appearance, mannerisms, or other gen-
21 der-related characteristics of an individual,
22 whether the characteristic is actual or per-
23 ceived, regardless of the designated sex of the
24 individual at birth;

1 “(F) the term ‘judgment’ means, with re-
2 spect to an issuer, a judgment entered against
3 the issuer, whether imposed by a court or
4 through arbitration;

5 “(G) the term ‘settlement’ means any com-
6 mitment or agreement—

7 “(i) without regard to whether the
8 commitment or agreement, as applicable, is
9 in writing; and

10 “(ii) under which an issuer directly or
11 indirectly—

12 “(I) provides to an individual
13 compensation or other consideration
14 because of an allegation that the indi-
15 vidual has been a victim of covered
16 harassment, covered discrimination, or
17 sexual abuse; or

18 “(II) establishes conditions that
19 affect the terms of the employment,
20 including by terminating the employ-
21 ment, of the individual with the
22 issuer—

23 “(aa) because of the experi-
24 ence of the individual with, or the
25 participation of the individual in,

1 an alleged act of covered harass-
2 ment, covered discrimination, or
3 sexual abuse; and

4 “(bb) in exchange for which
5 the individual agrees or commits
6 not to—

7 “(AA) bring legal, ad-
8 ministrative, or any other
9 type of action against the
10 issuer; or

11 “(BB) publicly disclose,
12 for a period of time of any
13 length, any portion of the al-
14 leged act described in item
15 (aa) on which the commit-
16 ment or agreement, as appli-
17 cable, is based;

18 “(H) the term ‘sexual abuse’ means a non-
19 consensual sexual act or sexual contact, as such
20 terms are defined in section 2246 of title 18,
21 United States Code, or similar applicable Tribal
22 or State law, including such an act or contact
23 in a circumstance in which the victim lacks ca-
24 pacity to consent; and

1 “(I) the term ‘sexual orientation’ means a
2 characteristic consisting of homosexuality, het-
3 erosexuality, or bisexuality, whether the char-
4 acteristic is actual or perceived.

5 “(2) DISCLOSURE REQUIREMENTS.—

6 “(A) IN GENERAL.—Beginning in the first
7 fiscal year that begins after the date of enact-
8 ment of this subsection, each covered issuer
9 shall disclose annually on Form 10-K, to share-
10 holders of the covered issuer, and to the pub-
11 lic—

12 “(i) for the time periods, and in the
13 manner, described in subparagraph (B)—

14 “(I) the total number of settle-
15 ments entered into by the covered
16 issuer, a subsidiary, contractor, or
17 subcontractor of the covered issuer, or
18 a corporate executive of the covered
19 issuer that relate to any alleged act of
20 sexual abuse, covered harassment, or
21 covered discrimination that—

22 “(aa) occurred in the work-
23 place of the covered issuer or a
24 subsidiary, contractor, or subcon-
25 tractor of the covered issuer; or

1 “(bb) involves the behavior
2 of an employee of the covered
3 issuer, or of a subsidiary, con-
4 tractor, or subcontractor of the
5 covered issuer, toward another
6 such employee, without regard to
7 whether that behavior occurred in
8 the workplace of the covered
9 issuer or the subsidiary, con-
10 tractor, or subcontractor, as ap-
11 plicable;

12 “(II) the total dollar amount
13 paid with respect to the settlements
14 described in subclause (I);

15 “(III) the total number of settle-
16 ments entered into by the covered
17 issuer, a subsidiary, contractor, or
18 subcontractor of the covered issuer, or
19 a corporate executive of the covered
20 issuer that relate to any alleged act of
21 sexual abuse, covered harassment, or
22 covered discrimination that—

23 “(aa) was committed by a
24 corporate executive of—

1 “(AA) the covered
2 issuer; or

3 “(BB) a subsidiary,
4 contractor, or subcontractor
5 of the covered issuer; and

6 “(bb)(AA) occurred in the
7 workplace of the covered issuer
8 or a subsidiary, contractor, or
9 subcontractor of the covered
10 issuer, as applicable; or

11 “(BB) involved the behavior
12 of a corporate executive described
13 in item (aa) toward another em-
14 ployee of the covered issuer or a
15 subsidiary, contractor, or subcon-
16 tractor of the covered issuer, as
17 applicable, without regard to
18 whether that behavior occurred in
19 the workplace of the covered
20 issuer or a subsidiary, contractor,
21 or subcontractor of the covered
22 issuer;

23 “(IV) the total dollar amount
24 with respect to the settlements de-
25 scribed in subclause (III);

1 “(V) the average length of time
2 required for the covered issuer to re-
3 solve a complaint relating to an al-
4 leged act of covered discrimination,
5 covered harassment, or sexual abuse;

6 “(VI) the total number of judg-
7 ments entered against the covered
8 issuer, a subsidiary, contractor, or
9 subcontractor of the covered issuer, or
10 a corporate executive of the covered
11 issuer that relate to any alleged act of
12 sexual abuse, covered harassment, or
13 covered discrimination that—

14 “(aa) occurred in the work-
15 place of the covered issuer or a
16 subsidiary, contractor, or subcon-
17 tractor of the covered issuer; or

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

1 issuer or the subsidiary, con-
2 tractor, or subcontractor, as ap-
3 plicable;

4 “(VII) the total dollar amount
5 paid with respect to the judgments de-
6 scribed in subclause (VI);

7 “(VIII) the total number of judg-
8 ments entered against the covered
9 issuer, a subsidiary, contractor, or
10 subcontractor of the covered issuer, or
11 a corporate executive of the covered
12 issuer that relate to any alleged act of
13 sexual abuse, covered harassment, or
14 covered discrimination that—

15 “(aa) was committed by a
16 corporate executive of—

17 “(AA) the covered
18 issuer; or

19 “(BB) a subsidiary,
20 contractor, or subcontractor
21 of the covered issuer; and

22 “(bb)(AA) occurred in the
23 workplace of the covered issuer
24 or a subsidiary, contractor, or

1 subcontractor of the covered
2 issuer, as applicable; or

3 “(BB) involved the behavior
4 of a corporate executive described
5 in item (aa) toward another em-
6 ployee of the covered issuer or a
7 subsidiary, contractor, or subcon-
8 tractor of the covered issuer, as
9 applicable, without regard to
10 whether that behavior occurred in
11 the workplace of the covered
12 issuer or a subsidiary, contractor,
13 or subcontractor of the covered
14 issuer; and

15 “(IX) the total dollar amount
16 with respect to the judgments de-
17 scribed in subclause (VIII);

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

24 “(I) processes that are internal
25 to the covered issuer;

1 “(II) arbitration; and

2 “(III) litigation; and

3 “(iii) with respect to each alleged act
4 of covered discrimination, covered harass-
5 ment, or sexual abuse that is the subject of
6 a complaint or settlement described in
7 clauses (i) and (ii), the date on which that
8 alleged act occurred, with as much speci-
9 ficity as is practicable under the cir-
10 cumstances.

11 “(B) CATEGORIES.—

12 “(i) IN GENERAL.—Subject to sub-
13 paragraph (C), in each disclosure required
14 under subparagraph (A), a covered issuer
15 shall report the following:

16 “(I) For the fiscal year that is
17 the subject of that disclosure, the fol-
18 lowing:

19 “(aa) The total number of
20 settlements in subclauses (I) and
21 (III) of subparagraph (A)(i), in
22 the aggregate.

23 “(bb) The total dollar
24 amounts in subclauses (II) and

1 (IV) of subparagraph (A)(i), in
2 the aggregate.

3 “(cc) The number of settle-
4 ments in subclauses (I) and (III)
5 of subparagraph (A)(i), individ-
6 ually.

7 “(dd) The dollar amounts in
8 subclauses (II) and (IV) of sub-
9 paragraph (A)(i), individually.

10 “(ee) The total number of
11 judgments in subclauses (VI) and
12 (VIII) of subparagraph (A)(i), in
13 the aggregate.

14 “(ff) The total dollar
15 amounts in subclauses (VII) and
16 (IX) of subparagraph (A)(i), in
17 the aggregate.

18 “(gg) The number of judg-
19 ments in subclauses (VI) and
20 (VIII) of subparagraph (A)(i), in-
21 dividually.

22 “(hh) The dollar amounts in
23 subclauses (VII) and (IX) of sub-
24 paragraph (A)(i), individually.

1 “(II) For the 7-fiscal year period
2 that is comprised of the fiscal year
3 that is the subject of that disclosure
4 and the 6 fiscal years that precede
5 that fiscal year, the following:

6 “(aa) The total number of
7 settlements in subclauses (I) and
8 (III) of subparagraph (A)(i), in
9 the aggregate.

10 “(bb) The total dollar
11 amounts in subclauses (II) and
12 (IV) of subparagraph (A)(i), in
13 the aggregate.

14 “(cc) The total number of
15 judgments in subclauses (VI) and
16 (VIII) of subparagraph (A)(i), in
17 the aggregate.

18 “(dd) The total dollar
19 amounts in subclauses (VII) and
20 (IX) of subparagraph (A)(i), in
21 the aggregate.

22 “(ii) LISTING.—In disclosing informa-
23 tion in the manner described in clause (i),
24 a covered issuer shall list a settlement or
25 judgment, as applicable, by any of the fol-

1 lowing categories that apply to the settle-
2 ment or judgment:

3 “(I) A settlement or judgment
4 relating to an alleged act of sexual
5 abuse, covered discrimination, or cov-
6 ered harassment because of sex.

7 “(II) A settlement or judgment
8 relating to an alleged act of covered
9 discrimination or covered harassment
10 because of race, color, or national ori-
11 gin.

12 “(III) A settlement or judgment
13 relating to an alleged act of covered
14 discrimination or covered harassment
15 because of religion.

16 “(IV) A settlement or judgment
17 relating to an alleged act of covered
18 discrimination or covered harassment
19 because of age.

20 “(V) A settlement or judgment
21 relating to an alleged act of covered
22 discrimination or covered harassment
23 on the basis of disability.

24 “(VI) A settlement or judgment
25 relating to an alleged act of covered

1 discrimination or covered harassment
2 because of genetic information.

3 “(VII) A settlement or judgment
4 relating to an alleged act of covered
5 discrimination or covered harassment
6 on the basis of status concerning serv-
7 ice in a uniformed service.

8 “(VIII) A settlement or judgment
9 relating to an alleged act of covered
10 discrimination or covered harassment
11 because of sexual orientation or gen-
12 der identity.

13 “(C) PROHIBITIONS ON CERTAIN DISCLO-
14 SURES; VICTIM CHOICE.—

15 “(i) PROHIBITION ON DISCLOSURES
16 BY COVERED ISSUERS.—A covered issuer
17 may not—

18 “(I) in any disclosure made
19 under subparagraph (A), or in any
20 other public disclosure, disclose the
21 name of a victim of an alleged act of
22 sexual abuse, covered harassment, or
23 covered discrimination on which a set-
24 tlement, judgment, or complaint, as

1 applicable, described in subparagraph
2 (A) is based; or

3 “(II) under subparagraph (B)(ii),
4 include the categorization of a settle-
5 ment or judgment described in sub-
6 clause (I), (III), (VI), or (VIII) of
7 subparagraph (A)(i), as applicable, in
8 any disclosure made under subpara-
9 graph (A) if the victim of the alleged
10 act of sexual abuse, covered harass-
11 ment, or covered discrimination on
12 which the settlement or judgment is
13 based objects to the disclosure of that
14 categorization.

15 “(ii) PROHIBITION ON DISCLOSURES
16 BY THE COMMISSION.—The Commission
17 may not disclose the name of a victim of
18 an alleged act of sexual abuse, covered har-
19 assment, or covered discrimination on
20 which a settlement, judgment, or com-
21 plaint, as applicable, described in subpara-
22 graph (A) is based.

23 “(iii) VICTIM CHOICE.—

24 “(I) IN GENERAL.—A covered
25 issuer shall not be required to report

1 information under subparagraph
2 (B)(i) if the victim of the alleged act
3 of sexual abuse, covered harassment,
4 or covered discrimination on which the
5 settlement or judgment, as applicable,
6 is based objects to the reporting of
7 that information.

8 “(II) NO EFFECT ON SUBSE-
9 QUENT YEARS.—If information is not
10 reported in a fiscal year because of an
11 objection made under subclause (I),
12 that information shall be reported in
13 subsequent fiscal years under sub-
14 paragraph (B)(ii).

15 “(D) PREVENTION OF SEXUAL ABUSE,
16 COVERED HARASSMENT, AND COVERED DIS-
17 CRIMINATION.—In each disclosure required
18 under subparagraph (A), the covered issuer
19 making the disclosure shall include a descrip-
20 tion of the measures taken by the covered
21 issuer and any subsidiary, contractor, or sub-
22 contractor of the covered issuer to prevent em-
23 ployees of the covered issuer and any sub-
24 sidiary, contractor, or subcontractor of the cov-
25 ered issuer from committing or engaging in sex-

1 ual abuse, covered harassment, or covered dis-
2 crimination.

3 “(3) REGULATIONS.—The Commission may
4 promulgate such regulations as the Commission con-
5 siders necessary to implement the requirements
6 under paragraph (2).”.

○