

SETTLEMENT FOR CLAIM OF SEXUAL ASSAULT OR HARRASSMENT: DISCLOSE NAME OF ACCUSED

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<http://www.house.mi.gov/hfa>

House Bill 4920 (H-1) as reported from committee
Sponsor: Rep. Steven Johnson

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5281 (H-1) as reported from committee
Sponsor: Rep. Andrew Fink

Committee: Oversight
Complete to 11-2-21

BRIEF SUMMARY: House Bills 4920 and 5281 would provide, in cases where a settlement agreement has been entered into because of a claim of sexual assault or sexual harassment committed by a state legislator or an elected executive official, that the settlement amount and the name of the individual identified in the claim must be made available to the public upon request.

FISCAL IMPACT: The bills would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Some believe that there should be more transparency regarding the conduct of legislators and elected officials in the executive branch of state government regarding claims of sexual harassment or sexual assault. In particular, it is felt that, if such a claim results in a settlement, the public has the right to know which elected official was accused of a bad act and how much was paid in the form of a settlement to the person making the claim, as it likely was paid for by taxpayer dollars.

THE CONTENT OF THE BILLS:

House Bills 4920 and 5281 would require, notwithstanding a court order to the contrary, that if a settlement agreement providing for the payment of money is entered into because of a claim of sexual assault or sexual harassment committed by a **legislator** or an **elected executive official**, the Senate or House of Representatives or the state department or agency the elected executive official works for, as applicable, must upon request make available to the public the name of the legislator or elected executive official identified in the claim and the amount of the settlement. The name of an individual claiming sexual assault or sexual harassment by a legislator or elected executive official could not be made available to the public under either bill. Each bill would apply to a settlement agreement entered into on or after its effective date.

Legislator would mean a member of the Michigan Senate or House of Representatives.

Elected executive official would mean an individual who holds elective office in the executive branch of the state. (Elective offices in the executive branch include the offices of governor, lieutenant governor, secretary of state, and attorney general.)

House Bill 4920 would add a new section to 1846 RS 2 (“Of the legislature”) to apply to a claim made against a *legislator*.

Proposed MCL 4.82a

House Bill 5281 would create a new act to apply to a claim against an *elected executive official*.

The bills are tie-barred to each other, which means that neither could take effect unless both were enacted. Each bill would take effect 90 days after its enactment.

ARGUMENTS:

For:

The recent #MeToo movement has shed light on the prevalence of sexual assault and sexual harassment in the workplace and society in general. Some cases come to the forefront because the conduct meets the elements of a crime or is exposed by a high-profile lawsuit. All too often, however, incidents are hidden by settlement agreements between the parties. Some feel that conduct constituting sexual assault or sexual harassment on the part of an elected official is particularly egregious, since public servants should be serving the needs of the public, not using their positions to prey on subordinates or members of the public, and that they and their bad acts should be made known, particularly so since settlements in such cases generally are paid by taxpayers’ dollars.

The bills would apply only to state legislators and elected officials in the executive branch and only if a settlement agreement that provides for a monetary payment is entered into based on a claim of sexual assault or sexual harassment on the part of the legislator or elected official. Only the name of the legislator or elected official would be revealed, as would the amount of the settlement. The name of the person who made a claim of sexual assault or sexual harassment could not be disclosed to the public.

It is believed that knowing that a settlement will open the door to public knowledge of the legislator’s or elected official’s behavior may act as a deterrent against engaging in such conduct in the first place. In that sense, the bills may prevent or lessen the likelihood that some future incidents would happen. In addition, public disclosure of the bad acts of the legislator or elected official may dissuade voters from reelecting that person. In simple language, supporters of the bills argue that people have a right to know if their elected officials are engaging in bad conduct and using their money to cover it up.

Against:

Although the bills would prohibit the public disclosure of the names of those who brought a claim of sexual assault or sexual harassment and subsequently entered a settlement agreement, legislators have small staffs and the immediate staff of executive branch elected officials is often publicly known. The sudden departure of an employee around the time a claim was made could inadvertently reveal the claimant to the public. Coming forward to report a sexual assault or sexual harassment is traumatic in and of itself. Victims often prefer to agree to a settlement rather than going public with a criminal complaint or civil suit. Therefore, some concerns were raised as to whether the bill would inadvertently have a chilling effect on victims coming forward to report their experiences.

In addition, a concern was raised that the bills could increase false claims of sexual assault or harassment in an attempt to force a settlement that would tarnish the reputation of the subject of the claim while protecting the identity of the claimant. Further, it should be noted that agreeing to a settlement is not the same as an admission or a finding of guilt. Many innocent people who are accused of sexual assault or sexual harassment enter into a settlement because they fear it will be hard to prove their innocence in a he said/she said situation and a nonpublic settlement is one way to preserve their reputation. A settlement also is often cheaper than a prolonged court fight and thus could save taxpayers in the long run. Settlements are also agreed upon as a way to spare family members, such as spouses and children, from negative exposure that can occur regardless of whether their loved one is innocent or guilty of the claim.

Response:

Unfortunately, there is no way to eliminate the possibility of rumors and conjecture regarding who brought a claim. However, legislative and executive branch staff often live mobile work lives and may change positions frequently for personal or career reasons. A staffer who recently left cannot be assumed to be the one who brought an assault or harassment claim. It was stated in committee debate on the bills that because elected officials come into contact with many individuals in their communities, any assumptions would likely be incorrect and the claimant would be likely to remain anonymous. Regarding false claims for the purpose of securing a settlement, supporters of the legislation maintain that any person falsely accused should fight the allegation, and the bills, by providing an exemption to nondisclosure clauses in a court order regarding a settlement, should make it clear that they apply to claims that involve a court, thereby offering some level of protection from frivolous allegations.

POSITIONS:

The following entities indicated support for the bills:

- Michigan Domestic and Sexual Violence Prevention and Treatment Board (10-14-21)
- Michigan Coalition to End Domestic and Sexual Violence (10-7-21)
- American Association of University Women of Michigan (10-7-21)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.