



STAND Act: Ending protection of sexual predators

SB 820
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SUMMARY OF THE BILL:

SB 820, known as the STAND (Stand Together Against Non-Disclosures) Act would ban secret settlements (confidentiality provisions in settlement agreements) in cases of sexual harassment, sexual assault and sex discrimination.

Recent amendments do the following: 1) clarify that the bill captures administrative complaints filed with agencies like the DFEH; 2) Covers retaliation under FEHA; 3) Closes a loophole where a stipulated protective order can often seal facts about sexual harassers by stating such orders are also covered; finally 4) Allows for confidentiality in the following limited circumstances: Specifically, 1) the identity of the claimant may be kept confidential in a settlement if the claimant requests it; 2) The amount of money paid pursuant under the terms of a settlement can be kept confidential. However, any other underlying facts about a harassment claim are prohibited from being confidential in a settlement.

BACKGROUND:

Film executive Harvey Weinstein has been accused by at least 80 women of sexual misconduct, including rape, sexual assault and harassment. For decades, his predatory behavior was kept secret in part due to the legal instruments that allowed him to hide behind the guise of confidentiality through secret settlements or lifelong nondisclosure agreements (NDAs) crafted to protect him. The settlements commonly included draconian penalties for breach of confidentiality or disclosure. Such agreements barred victims from ever sharing their stories. The use of NDAs or secret settlements in these cases allows repeat offenders to continue to harass while silencing victims.

Unfortunately, they are all too common. Court orders signed by judges can seal damaging documents. For example, Bill Cosby's deposition was sealed in a secret



settlement in 2004, so the public didn't learn about his abuse for another decade. Last year, 21st Century Fox issued a public apology and reportedly settled confidentially with Fox News anchor Gretchen Carlson after she filed a sexual harassment lawsuit against the late Fox News Chairman and CEO Roger Ailes. The company also confidentially settled with several other women who similarly accused Ailes of workplace sexual

harassment. Over the last few months, other troubling instances of secret settlements enabling ongoing sexual harassment and assault have further confirmed the need for the legislation.

PROBLEM:

Under California law, confidentiality agreements are not enforceable if they involve a felony charge of sexual assault or rape. Likewise, elder and dependent adult abuse cannot be hidden by secret settlements. However, *sexual harassment* and other types of non felony *sexual assault* are still allowed to be shielded from the public eye via secret settlements.

SOLUTION:

SB 820 will prohibit secret settlements in sexual harassment, assault and discrimination cases at the claimant's option. In doing so, it will take the power out of abusers and into the hands of the abused.

CO-SPONSORS:

Consumer Attorneys of California; California Women's Law Center.

SUPPORTERS:

Crime Victims United of California; SAG – American Federation of Television and Radio Artists, AFL-CIO; California NOW; The Women's Foundation of California; Courage Campaign; California Rural Legal Assistance; Equal Rights Advocates; California Employment Lawyers Association.

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