

119TH CONGRESS
2D SESSION

S. _____

To prohibit the enforcement of certain contractual clauses that restrict disclosure of sexual abuse of minors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself, Mrs. GILLIBRAND, Mrs. BRITT, Mr. SCHMITT, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit the enforcement of certain contractual clauses that restrict disclosure of sexual abuse of minors, 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 “Terminating Restrictive Enforcement of Youth Settlements Law” or “TREY’S
5 Law”.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—

1 (1) INSTRUMENTALITIES OF INTERSTATE COM-
2 MERCE.—Congress finds the following:

3 (A) Sexual abuse of minors, including
4 abuse facilitated through instrumentalities of
5 interstate commerce, is a matter of national
6 concern.

7 (B) Agreements containing nondisclosure
8 and confidentiality provisions, frequently con-
9 cluded through the instrumentalities of inter-
10 state commerce, have been used to silence sur-
11 vivors of sexual abuse and conceal ongoing or
12 repeated abuse.

13 (C) The enforcement of such provisions
14 interferes with reporting to law enforcement
15 agencies, child protection authorities, Federal
16 regulators, Members of Congress, and the
17 courts, and frustrates the enforcement of Fed-
18 eral criminal and civil law.

19 (2) NECESSARY AND PROPER CLAUSE AND EN-
20 FORCEMENT OF FEDERAL CRIMINAL LAW.—Con-
21 gress further finds the following:

22 (A) Sexual abuse and trafficking of minors
23 are prohibited under Federal criminal law, in-
24 cluding chapter 110 of title 18, United States

1 Code, and section 1591 of title 18, United
2 States Code.

3 (B) Nondisclosure and confidentiality
4 agreements that prohibit or restrict disclosure
5 of sexual abuse of a minor interfere with re-
6 porting to law enforcement, child protection au-
7 thorities, courts, Federal regulators, and Mem-
8 bers of Congress.

9 (C) Such agreements frustrate the inves-
10 tigation and prosecution of Federal crimes, chill
11 cooperation with law enforcement, and function
12 as private mechanisms to obstruct justice.

13 (D) Congress has authority under clause
14 18 of section 8 of article I of the Constitution
15 of the United States (commonly known as the
16 “Necessary and Proper Clause”) to ensure that
17 private agreements are not used to impede the
18 enforcement of Federal criminal and civil law
19 protecting minors from sexual exploitation and
20 abuse.

21 (3) STATE ACTION AND SECTION 5 OF THE
22 14TH AMENDMENT.—Congress further finds the fol-
23 lowing:

24 (A) Survivors of child sexual abuse possess
25 fundamental constitutional interests, secured by

1 provisions of the Bill of Rights as incorporated
2 against the States through the 14th Amend-
3 ment to the Constitution of the United States,
4 in reporting crimes, seeking redress through the
5 courts, cooperating with law enforcement, and
6 petitioning the government for protection and
7 enforcement.

8 (B) When State courts or other govern-
9 mental authorities enforce nondisclosure or con-
10 fidentiality provisions that prohibit or restrict
11 disclosure of sexual abuse of a minor, such en-
12 forcement constitutes State action for purposes
13 of the 14th Amendment to the Constitution of
14 the United States.

15 (C) Judicial enforcement of such provisions
16 may deprive survivors of due process of law,
17 equal protection of the laws, and meaningful ac-
18 cess to courts, including rights derived from the
19 First Amendment to the Constitution of the
20 United States and incorporated against the
21 States, in violation of the 14th Amendment.

22 (D) Agreements that obstruct justice, sup-
23 press the reporting of crimes, or conceal crimi-
24 nal conduct have long been regarded at common
25 law, including at the time of the founding of the

1 United States, as void and unenforceable as
2 against public policy, and fall outside the tradi-
3 tional scope of protected contractual liberty.

4 (E) At the time of the founding of the
5 United States, private agreements purporting to
6 suppress prosecution, conceal felonies, or re-
7 strain the reporting of crimes were not recog-
8 nized as valid or enforceable contracts, and no
9 party possessed a vested right in their judicial
10 enforcement.

11 (F) Congress has authority under section 5
12 of the 14th Amendment to the Constitution of
13 the United States to enact appropriate remedial
14 and preventive legislation to prevent and rem-
15 edy constitutional violations arising from State
16 judicial enforcement of private agreements that
17 suppress disclosure of criminal conduct involv-
18 ing minors.

19 (b) PURPOSE.—The purpose of this Act is—

20 (1) to enforce the guarantees of the 14th
21 Amendment to the Constitution of the United
22 States, including the right to petition the govern-
23 ment for redress of grievances and the right of ac-
24 cess to courts, by preventing State courts and other
25 governmental authorities from enforcing nondislo-

1 sure or confidentiality provisions that suppress dis-
2 closure of sexual abuse of minors;

3 (2) to ensure, pursuant to the authority of Con-
4 gress under article I of the Constitution of the
5 United States, including the Necessary and Proper
6 Clause, that private agreements are not used to ob-
7 struct the investigation or prosecution of Federal
8 crimes involving the sexual abuse or trafficking of
9 minors;

10 (3) to preserve access to courts and the right
11 to petition the government for redress of grievances;
12 and

13 (4) to ensure that survivors of sexual abuse of
14 minors, and persons with knowledge of such abuse,
15 may disclose such abuse freely and without fear of
16 civil liability.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

19 (1) **MINOR PERSON.**—The term “minor person”
20 means an individual who has not attained 18 years
21 of age.

22 (2) **NONDISCLOSURE CLAUSE.**—The term “non-
23 disclosure clause” means a provision in a contract or
24 agreement that prohibits 1 or more parties to the
25 contract or agreement from disclosing conduct or in-

1 formation covered by the terms and conditions of the
2 contract or agreement.

3 (3) SEXUAL ABUSE AGAINST A MINOR PER-
4 SON.—The term “sexual abuse against a minor per-
5 son” means—

6 (A) conduct that constitutes or allegedly
7 constitutes—

8 (i) an offense under chapter 110 of
9 title 18, United States Code; or

10 (ii) sex trafficking of a minor person
11 under section 1591 of title 18, United
12 States Code; or

13 (B) any sexual act or sexual contact involv-
14 ing a minor person that constitutes a criminal
15 offense under Federal law or the law of the
16 State in which the act or contact occurs.

17 **SEC. 4. NONDISCLOSURE AGREEMENTS VOID AND UNEN-**
18 **FORCEABLE.**

19 (a) IN GENERAL.—A nondisclosure clause shall be
20 void and unenforceable as against public policy only to the
21 extent that the nondisclosure clause prohibits—

22 (1) a victim or alleged victim of sexual abuse
23 against a minor person from disclosing—

24 (A) that act of sexual abuse against a
25 minor person; or

1 (B) facts related to that act of sexual
2 abuse against a minor person; or

3 (2) any other person from disclosing facts re-
4 lated to sexual abuse against a minor person de-
5 scribed in paragraph (1) in support of, in further-
6 ance of, or consistent with the right of a victim or
7 alleged victim to disclose under that paragraph.

8 (b) PERMISSIBLE CONFIDENTIALITY.—Nothing in
9 this section shall be construed to prohibit a person, includ-
10 ing a victim or alleged victim of sexual abuse against a
11 minor person, from entering into a contract or agreement
12 that restricts the disclosure of information, including the
13 amount or payment terms of a settlement, by another
14 party to the contract or agreement, including an alleged
15 perpetrator, so long as such restriction does not prevent
16 disclosure protected under subsection (a).

17 **SEC. 5. RETROACTIVE APPLICATION.**

18 (a) IN GENERAL.—This Act shall apply to any non-
19 disclosure clause in a contract or agreement entered into
20 before, on, or after the date of enactment of this Act.

21 (b) NO ENFORCEMENT ACTIONS.—No person may
22 enforce or attempt to enforce a nondisclosure clause de-
23 scribed in section 4(a), regardless of the date on which
24 the contract or agreement containing the nondisclosure
25 clause was entered into.

1 (c) PREEMPTION.—

2 (1) IN GENERAL.—This Act supersedes any
3 State law to the extent that such law permits en-
4 forcement of a provision, the enforcement of which
5 is prohibited under this Act.

6 (2) RULE OF CONSTRUCTION.—Nothing in this
7 Act shall be construed to prohibit a State or locality
8 from enacting legislation that—

9 (A) is consistent with this Act; or

10 (B) provides greater protection to a victim
11 of sexual abuse against a minor person than is
12 provided under this Act.