

116TH CONGRESS
1ST SESSION

S. 1314

To establish that certain provisions of a nondisclosure agreement between a public sector employer and an employee shall be unenforceable.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2019

Mr. KENNEDY (for himself and Ms. SINEMA) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish that certain provisions of a nondisclosure agreement between a public sector employer and an employee shall be unenforceable.

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 “Stop Silencing Victims
5 Act”.

1 **SEC. 2. NONDISCLOSURE AGREEMENT UNENFORCEABLE**
 2 **UNDER THE CIVIL RIGHTS ACT OF 1964.**

3 Title VII of the Civil Rights Act of 1964 (42 U.S.C.
 4 2000e et seq.) is amended by adding after section 717 the
 5 following:

6 **“SEC. 717A. NONDISCLOSURE AGREEMENT UNENFORCE-**
 7 **ABLE.**

8 “(a) IN GENERAL.—Any covered provision of a non-
 9 disclosure agreement that is entered into by an employee
 10 described in section 717(a) and an entity to which such
 11 section applies shall be unenforceable against that com-
 12 plainant employee.

13 “(b) COVERED PROVISION.—In this section, the term
 14 ‘covered provision’ means a provision of a nondisclosure
 15 agreement—

16 “(1) that is entered into after the date of enact-
 17 ment of the Stop Silencing Victims Act;

18 “(2) that prohibits the disclosure of information
 19 relating to an allegation or series of allegations that
 20 could plausibly give rise to a valid claim of sex dis-
 21 crimination; and

22 “(3) relating to material that is not otherwise
 23 prohibited by law from being disclosed.

24 “(c) DEFENSE.—In any action or proceeding to en-
 25 force a covered provision, an employee described in section
 26 717(a) may raise as a defense the unenforceability of a

1 covered provision of a nondisclosure agreement, as set
2 forth in this section.

3 “(d) CONFIDENTIALITY.—

4 “(1) IN GENERAL.—Personally identifying in-
5 formation about a complainant employee that would
6 otherwise be held confidential in accordance with a
7 covered provision of a nondisclosure agreement shall
8 not be made public, unless the complainant employee
9 chooses to make that information public.

10 “(2) UNLAWFUL RETALIATION.—A violation of
11 the prohibition described in paragraph (1) may be
12 considered evidence of unlawful retaliation against
13 the complainant employee.”.

14 **SEC. 3. NONDISCLOSURE AGREEMENT UNENFORCEABLE**
15 **UNDER THE GOVERNMENT EMPLOYEE**
16 **RIGHTS ACT OF 1991.**

17 Title III of the Government Employee Rights Act of
18 1991 (42 U.S.C. 2000e–16a et seq.) is amended by adding
19 at the end the following:

20 **“SEC. 305. NONDISCLOSURE AGREEMENT UNENFORCE-**
21 **ABLE.**

22 “(a) IN GENERAL.—Any covered provision of a non-
23 disclosure agreement that is entered into by a Presidential
24 appointee described in section 303 or a State employee
25 described in section 304 and an entity employing such ap-

1 pointee or employee, as the case may be, shall be unen-
 2 forceable against that complainant Presidential appointee
 3 or State employee.

4 “(b) COVERED PROVISION.—In this section, the term
 5 ‘covered provision’ means a provision of a nondisclosure
 6 agreement—

7 “(1) that is entered into after the date of enact-
 8 ment of the Stop Silencing Victims Act;

9 “(2) that prohibits the disclosure of information
 10 relating to an allegation or series of allegations that
 11 could plausibly give rise to a valid claim of sex dis-
 12 crimination; and

13 “(3) relating to material that is not otherwise
 14 prohibited by law from being disclosed.

15 “(c) DEFENSE.—In any action or proceeding to en-
 16 force a covered provision, a Presidential appointee de-
 17 scribed in section 303 or a State employee described in
 18 section 304 may raise as a defense the unenforceability
 19 of a covered provision of a nondisclosure agreement, as
 20 set forth in this section.

21 “(d) CONFIDENTIALITY.—

22 “(1) IN GENERAL.—Personally identifying in-
 23 formation about a complainant Presidential ap-
 24 pointee described in section 303 or State employee
 25 described in section 304 that would otherwise be

1 held confidential in accordance with a covered provi-
 2 sion of a nondisclosure agreement shall not be made
 3 public, unless that complainant appointee or em-
 4 ployee chooses to make that information public.

5 “(2) UNLAWFUL RETALIATION.—A violation of
 6 the prohibition described in paragraph (1) may be
 7 considered evidence of unlawful retaliation against
 8 the complainant appointee or employee.”.

9 **SEC. 4. NONDISCLOSURE AGREEMENT UNENFORCEABLE**
 10 **UNDER THE CONGRESSIONAL ACCOUNT-**
 11 **ABILITY ACT OF 1995.**

12 Title II of the Congressional Accountability Act of
 13 1995 (2 U.S.C. 1311 et seq.) is amended by adding at
 14 the end the following:

15 **“SEC. 208. NONDISCLOSURE AGREEMENT UNENFORCE-**
 16 **ABLE.**

17 “(a) IN GENERAL.—Any covered provision of a non-
 18 disclosure agreement that is entered into by a covered em-
 19 ployee and an employing office shall be unenforceable
 20 against that complainant covered employee.

21 “(b) COVERED PROVISION.—In this section, the term
 22 ‘covered provision’ means a provision of a nondisclosure
 23 agreement—

24 “(1) that is entered into after the date of enact-
 25 ment of the Stop Silencing Victims Act;

1 “(2) that prohibits the disclosure of information
2 relating to an allegation or series of allegations that
3 could plausibly give rise to a valid claim of sex dis-
4 crimination; and

5 “(3) relating to material that is not otherwise
6 prohibited by law from being disclosed.

7 “(c) DEFENSE.—In any action or proceeding to en-
8 force a covered provision, a covered employee may raise
9 as a defense the unenforceability of a covered provision
10 of a nondisclosure agreement, as set forth in this section.

11 “(d) CONFIDENTIALITY.—

12 “(1) IN GENERAL.—Personally identifying in-
13 formation about a complainant covered employee
14 that would otherwise be held confidential in accord-
15 ance with a covered provision of a nondisclosure
16 agreement shall not be made public, unless the com-
17 plainant covered employee chooses to make that in-
18 formation public.

19 “(2) UNLAWFUL RETALIATION.—A violation of
20 the prohibition described in paragraph (1) may be
21 considered evidence of unlawful retaliation against
22 the complainant covered employee.”.

1 **SEC. 5. NONDISCLOSURE AGREEMENT UNENFORCEABLE**
 2 **UNDER TITLE 3 OF THE UNITED STATES**
 3 **CODE.**

4 (a) IN GENERAL.—Chapter 5 of title 3, United
 5 States Code, is amended by inserting after section 411 the
 6 following:

7 **“§ 411A. Nondisclosure agreement unenforceable.**

8 “(a) IN GENERAL.—Any covered provision of a non-
 9 disclosure agreement that is entered into by a covered em-
 10 ployee and an employing office shall be unenforceable
 11 against that complainant covered employee.

12 “(b) COVERED PROVISION.—In this section, the term
 13 ‘covered provision’ means a provision of a nondisclosure
 14 agreement—

15 “(1) that is entered into after the date of enact-
 16 ment of the Stop Silencing Victims Act;

17 “(2) that prohibits the disclosure of information
 18 relating to an allegation or series of allegations that
 19 could plausibly give rise to a valid claim of sex dis-
 20 crimination; and

21 “(3) relating to material that is not otherwise
 22 prohibited by law from being disclosed.

23 “(c) DEFENSE.—In any action or proceeding to en-
 24 force a covered provision, a covered employee may raise
 25 as a defense the unenforceability of a covered provision
 26 of a nondisclosure agreement, as set forth in this section.

1 “(d) CONFIDENTIALITY.—

2 “(1) IN GENERAL.—Personally identifying in-
 3 formation about a complainant covered employee
 4 that would otherwise be held confidential in accord-
 5 ance with a covered provision of a nondisclosure
 6 agreement shall not be made public, unless the com-
 7 plainant covered employee chooses to make that in-
 8 formation public.

9 “(2) UNLAWFUL RETALIATION.—A violation of
 10 the prohibition described in paragraph (1) may be
 11 considered evidence of unlawful retaliation against
 12 the complainant covered employee.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 at the beginning of such chapter is amended by inserting
 15 after the item relating to section 411 the following new
 16 item:

“411A. Nondisclosure agreement unenforceable.”.

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