

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4445

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## AN ACT

To amend title 9 of the United States Code with respect to arbitration of disputes involving sexual assault and sexual harassment.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ending Forced Arbi-  
3 tration of Sexual Assault and Sexual Harassment Act of  
4 2021”.

5 **SEC. 2. PREDISPUTE ARBITRATION OF DISPUTES INVOLV-**  
6 **ING SEXUAL ASSAULT AND SEXUAL HARASS-**  
7 **MENT.**

8 (a) IN GENERAL.—Title 9 of the United States Code  
9 is amended by adding at the end the following:

10 **“CHAPTER 4—ARBITRATION OF DISPUTES**  
11 **INVOLVING SEXUAL ASSAULT AND**  
12 **SEXUAL HARASSMENT**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

13 **“§ 401. Definitions**

14 “In this chapter:

15 “(1) PREDISPUTE ARBITRATION AGREEMENT.—

16 The term ‘predispute arbitration agreement’ means  
17 any agreement to arbitrate a dispute that had not  
18 yet arisen at the time of the making of the agree-  
19 ment.

20 “(2) PREDISPUTE JOINT-ACTION WAIVER.—The

21 term ‘predispute joint-action waiver’ means an  
22 agreement, whether or not part of a predispute arbi-  
23 tration agreement, that would prohibit, or waive the  
24 right of, one of the parties to the agreement to par-

1        participate in a joint, class, or collective action in a ju-  
2        dicial, arbitral, administrative, or other forum, con-  
3        cerning a dispute that has not yet arisen at the time  
4        of the making of the agreement.

5            “(3) SEXUAL ASSAULT DISPUTE.—The term  
6        ‘sexual assault dispute’ means a dispute involving a  
7        nonconsensual sexual act or sexual contact, as such  
8        terms are defined in section 2246 of title 18 or simi-  
9        lar applicable Tribal or State law, including when  
10       the victim lacks capacity to consent.

11           “(4) SEXUAL HARASSMENT DISPUTE.—The  
12       term ‘sexual harassment dispute’ means a dispute  
13       relating to conduct that is alleged to constitute sex-  
14       ual harassment under applicable Federal, Tribal, or  
15       State law.

16    **“§ 402. No validity or enforceability**

17           “(a) IN GENERAL.—Notwithstanding any other pro-  
18       vision of this title, at the election of the person alleging  
19       conduct constituting a sexual harassment dispute or sex-  
20       ual assault dispute, or the named representative of a class  
21       or in a collective action alleging such conduct, no  
22       predispute arbitration agreement or predispute joint-ac-  
23       tion waiver shall be valid or enforceable with respect to  
24       a case which is filed under Federal, Tribal, or State law

1 and relates to the sexual assault dispute or the sexual har-  
2 assment dispute.

3 “(b) DETERMINATION OF APPLICABILITY.—An issue  
4 as to whether this chapter applies with respect to a dispute  
5 shall be determined under Federal law. The applicability  
6 of this chapter to an agreement to arbitrate and the valid-  
7 ity and enforceability of an agreement to which this chap-  
8 ter applies shall be determined by a court, rather than  
9 an arbitrator, irrespective of whether the party resisting  
10 arbitration challenges the arbitration agreement specifi-  
11 cally or in conjunction with other terms of the contract  
12 containing such agreement, and irrespective of whether  
13 the agreement purports to delegate such determinations  
14 to an arbitrator.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

16 (1) IN GENERAL.—Title 9 of the United States  
17 Code is amended—

18 (A) in section 2, by inserting “or as other-  
19 wise provided in chapter 4” before the period at  
20 the end;

21 (B) in section 208—

22 (i) in the section heading, by striking  
23 “**Chapter 1; residual application**”  
24 and inserting “**Application**”; and

1 (ii) by adding at the end the fol-  
2 lowing: “This chapter applies to the extent  
3 that this chapter is not in conflict with  
4 chapter 4.”; and

5 (C) in section 307—

6 (i) in the section heading, by striking  
7 “**Chapter 1; residual application**”  
8 and inserting “**Application**”; and

9 (ii) by adding at the end the fol-  
10 lowing: “This chapter applies to the extent  
11 that this chapter is not in conflict with  
12 chapter 4.”.

13 (2) TABLE OF SECTIONS.—

14 (A) CHAPTER 2.—The table of sections for  
15 chapter 2 of title 9, United States Code, is  
16 amended by striking the item relating to section  
17 208 and inserting the following:

“208. Application.”.

18 (B) CHAPTER 3.—The table of sections for  
19 chapter 3 of title 9, United States Code, is  
20 amended by striking the item relating to section  
21 307 and inserting the following:

“307. Application.”.

22 (3) TABLE OF CHAPTERS.—The table of chap-  
23 ters for title 9, United States Code, is amended by  
24 adding at the end the following:

**“4. Arbitration of disputes involving sexual assault and  
sexual harassment ..... 401”.**

**1 SEC. 3. APPLICABILITY.**

2 This Act, and the amendments made by this Act,  
3 shall apply with respect to any dispute or claim that arises  
4 or accrues on or after the date of enactment of this Act.

Passed the House of Representatives February 7,  
2022.

Attest:

*Clerk.*



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