

Calendar No. 264

117TH CONGRESS
2D SESSION

H. R. 4445

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, FEBRUARY 3), 2022

Received; read twice and placed on the calendar

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Forced Arbi-
5 tration of Sexual Assault and Sexual Harassment Act of
6 2021”.

1 **SEC. 2. PREDISPUTE ARBITRATION OF DISPUTES INVOLV-**
 2 **ING SEXUAL ASSAULT AND SEXUAL HARASS-**
 3 **MENT.**

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

6 **“CHAPTER 4—ARBITRATION OF DISPUTES**
 7 **INVOLVING SEXUAL ASSAULT AND**
 8 **SEXUAL HARASSMENT**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

9 **“§ 401. Definitions**

10 “In this chapter:

11 “(1) PREDISPUTE ARBITRATION AGREEMENT.—

12 The term ‘predispute arbitration agreement’ means
 13 any agreement to arbitrate a dispute that had not
 14 yet arisen at the time of the making of the agree-
 15 ment.

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

17 term ‘predispute joint-action waiver’ means an
 18 agreement, whether or not part of a predispute arbi-
 19 tration agreement, that would prohibit, or waive the
 20 right of, one of the parties to the agreement to par-
 21 ticipate in a joint, class, or collective action in a ju-
 22 dicial, arbitral, administrative, or other forum, con-
 23 cerning a dispute that has not yet arisen at the time
 24 of the making of the agreement.

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

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

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

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

23 “(b) DETERMINATION OF APPLICABILITY.—An issue
24 as to whether this chapter applies with respect to a dispute
25 shall be determined under Federal law. The applicability

1 of this chapter to an agreement to arbitrate and the valid-
2 ity and enforceability of an agreement to which this chap-
3 ter applies shall be determined by a court, rather than
4 an arbitrator, irrespective of whether the party resisting
5 arbitration challenges the arbitration agreement specifi-
6 cally or in conjunction with other terms of the contract
7 containing such agreement, and irrespective of whether
8 the agreement purports to delegate such determinations
9 to an arbitrator.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

16 (B) in section 208—

17 (i) in the section heading, by striking
18 **“Chapter 1; residual application”**
19 and inserting **“Application”**; and

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

24 (C) in section 307—

1 (i) in the section heading, by striking
2 **“Chapter 1; residual application”**

3 and inserting **“Application”**; and

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

8 (2) TABLE OF SECTIONS.—

9 (A) CHAPTER 2.—The table of sections for
10 chapter 2 of title 9, United States Code, is
11 amended by striking the item relating to section
12 208 and inserting the following:

“208. Application.”.

13 (B) CHAPTER 3.—The table of sections for
14 chapter 3 of title 9, United States Code, is
15 amended by striking the item relating to section
16 307 and inserting the following:

“307. Application.”.

17 (3) TABLE OF CHAPTERS.—The table of chap-
18 ters for title 9, United States Code, is amended by
19 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:

CHERYL L. JOHNSON,
Clerk.

By KEVIN McCUMBER,
Deputy Clerk.

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