

Union Calendar No. 169

117TH CONGRESS
2^D SESSION

H. R. 4445

[Report No. 117-234]

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

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2021

Mrs. BUSTOS (for herself, Mr. GRIFFITH, Ms. JAYAPAL, and Mr. CICILLINE)
introduced the following bill; which was referred to the Committee on the
Judiciary

JANUARY 28, 2022

Additional sponsors: Mr. SMITH of New Jersey, Ms. WEXTON, Ms. NEWMAN,
Mr. FITZPATRICK, Mr. BUCK, Mr. VAN DREW, Ms. LEE of California,
Ms. LOIS FRANKEL of Florida, Mrs. BEATTY, Ms. PINGREE, Ms. JACK-
SON LEE, Ms. KUSTER, Mr. COOPER, Ms. GARCIA of Texas, Ms. BASS,
Mrs. MURPHY of Florida, Mr. GARBARINO, Mr. OWENS, Mrs. TORRES of
California, Ms. WILLIAMS of Georgia, Ms. ADAMS, and Ms. SALAZAR

JANUARY 28, 2022

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 16, 2021]

A BILL

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 Arbitra-*
 5 *tion of Sexual Assault and Sexual Harassment Act of*
 6 *2021”.*

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

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

12 **“CHAPTER 4—ARBITRATION OF DISPUTES**
 13 **INVOLVING SEXUAL ASSAULT AND**
 14 **SEXUAL HARASSMENT**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

15 **“§401. Definitions**

16 *“In this chapter:*

17 *“(1) PREDISPUTE ARBITRATION AGREEMENT.—*
 18 *The term ‘predispute arbitration agreement’ means*
 19 *any agreement to arbitrate a dispute that had not yet*
 20 *arisen at the time of the making of the agreement.*

21 *“(2) PREDISPUTE JOINT-ACTION WAIVER.—The*
 22 *term ‘predispute joint-action waiver’ means an agree-*
 23 *ment, whether or not part of a predispute arbitration*
 24 *agreement, that would prohibit, or waive the right of,*

1 *one of the parties to the agreement to participate in*
2 *a joint, class, or collective action in a judicial, arbitral,*
3 *administrative, or other forum, concerning a dispute*
4 *that has not yet arisen at the time of the making*
5 *of the agreement.*

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

12 *“(4) SEXUAL HARASSMENT DISPUTE.—The term ‘sexual harassment dispute’ means a dispute relating to the any of the following conduct directed at an individual or a group of individuals:*

16 *“(A) Unwelcome sexual advances.*

17 *“(B) Unwanted physical contact that is sexual in nature, including assault.*

18 *“(C) Unwanted sexual attention, including unwanted sexual comments and propositions for sexual activity.*

21 *“(D) Conditioning professional, educational, consumer, health care or long-term care benefits on sexual activity.*

1 “(E) *Retaliation for rejecting unwanted sexual*
2 *attention.*”

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

4 “(a) *IN GENERAL.*—Notwithstanding any other provi-
5 *sion of this title, at the election of the person alleging con-*
6 *duct constituting a sexual harassment dispute or sexual as-*
7 *sault dispute, or the named representative of a class or in*
8 *a collective action alleging such conduct, no predispute ar-*
9 *bitration agreement or predispute joint-action waiver shall*
10 *be valid or enforceable with respect to a case which is filed*
11 *under Federal, Tribal, or State law and relates to the sexual*
12 *assault dispute or the sexual harassment dispute.*”

13 “(b) *DETERMINATION OF APPLICABILITY.*—An issue as
14 *to whether this chapter applies with respect to a dispute*
15 *shall be determined under Federal law. The applicability*
16 *of this chapter to an agreement to arbitrate and the validity*
17 *and enforceability of an agreement to which this chapter*
18 *applies shall be determined by a court, rather than an arbi-*
19 *trator, irrespective of whether the party resisting arbitra-*
20 *tion challenges the arbitration agreement specifically or in*
21 *conjunction with other terms of the contract containing*
22 *such agreement, and irrespective of whether the agreement*
23 *purports to delegate such determinations to an arbitrator.”.*”

24 “(b) *TECHNICAL AND CONFORMING AMENDMENTS.*—

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

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

6 (B) *in section 208—*

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

10 (ii) *by adding at the end the following:*
11 *“This chapter applies to the extent that this*
12 *chapter is not in conflict with chapter 4.”;*
13 *and*

14 (C) *in section 307—*

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

18 (ii) *by adding at the end the following:*
19 *“This chapter applies to the extent that this*
20 *chapter is not in conflict with chapter 4.”.*

21 (2) *TABLE OF SECTIONS.*—

22 (A) *CHAPTER 2.*—*The table of sections for*
23 *chapter 2 of title 9, United States Code, is*
24 *amended by striking the item relating to section*
25 *208 and inserting the following:*

“208. Application.”.

1 (B) *CHAPTER 3.*—*The table of sections for*
 2 *chapter 3 of title 9, United States Code, is*
 3 *amended by striking the item relating to section*
 4 *307 and inserting the following:*

“307. Application.”.

5 (3) *TABLE OF CHAPTERS.*—*The table of chapters*
 6 *for title 9, United States Code, is amended by adding*
 7 *at the end the following:*

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

8 ***SEC. 3. APPLICABILITY.***

9 *This Act, and the amendments made by this Act, shall*
 10 *apply with respect to any dispute or claim that arises or*
 11 *accrues on or after the date of enactment of this Act.*

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