

117TH CONGRESS
2D SESSION

S. 4524

To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to disputes involving sexual assault and sexual harassment.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2022

Mrs. GILLIBRAND (for herself, Mrs. BLACKBURN, Ms. HIRONO, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to 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 “Speak Out Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) Sexual harassment and assault remain per-
8 vasive in the workplace and throughout civic society,
9 affecting millions of Americans.

1 (2) Eighty-one percent of women and 43 per-
2 cent of men have experienced some form of sexual
3 harassment or assault throughout their lifetime.

4 (3) One in 3 women has faced sexual harass-
5 ment in the workplace during her career, and an es-
6 timated 87 to 94 percent of those who experience
7 sexual harassment never file a formal complaint.

8 (4) Sexual harassment in the workplace forces
9 many women to leave their occupation or industry,
10 or pass up opportunities for advancement.

11 (5) In order to combat sexual harassment and
12 assault, it is essential that victims and survivors
13 have the freedom to report and publicly disclose
14 their abuse.

15 (6) Nondisclosure and nondisparagement provi-
16 sions in agreements between employers and current,
17 former, and prospective employees, and independent
18 contractors, and between providers of goods and
19 services and consumers, can perpetuate illegal con-
20 duct by silencing those who are survivors of illegal
21 sexual harassment and assault or illegal retaliation,
22 or have knowledge of such conduct, while shielding
23 perpetrators and enabling them to continue their
24 abuse.

1 (7) Prohibiting predispute nondisclosure and
2 nondisparagement clauses will empower survivors to
3 come forward, hold perpetrators accountable for
4 abuse, improve transparency around illegal conduct,
5 enable the pursuit of justice, and make workplaces
6 safer and more productive for everyone.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) **PREDISPUTE NONDISCLOSURE CLAUSE.**—
10 The term “predispute nondisclosure clause” means a
11 provision in a contract or agreement agreed to be-
12 fore a lawsuit is filed under Federal, State, or Tribal
13 law that requires the parties to the contract or
14 agreement not to disclose or discuss conduct, the ex-
15 istence of a settlement involving conduct, or infor-
16 mation covered by the terms and conditions of the
17 contract or agreement.

18 (2) **PREDISPUTE NONDISPARAGEMENT**
19 **CLAUSE.**—The term “predispute nondisparagement
20 clause” means a provision in a contract or agree-
21 ment that requires 1 or more parties to the contract
22 or agreement not to make a negative statement
23 about another party that relates to the contract,
24 agreement, claim, or case.

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

8 (4) SEXUAL HARASSMENT DISPUTE.—The term
 9 “sexual harassment dispute” means a dispute relat-
 10 ing to conduct that is alleged to constitute sexual
 11 harassment under applicable Federal, Tribal, or
 12 State law.

13 **SEC. 4. LIMITATION ON JUDICIAL ENFORCEABILITY OF**
 14 **PREDISPUTE NONDISCLOSURE AND NON-**
 15 **DISPARAGEMENT CONTRACT CLAUSES RE-**
 16 **LATING TO SEXUAL ASSAULT DISPUTES AND**
 17 **SEXUAL HARASSMENT DISPUTES.**

18 (a) IN GENERAL.—With respect to a sexual assault
 19 dispute or sexual harassment dispute, no predispute non-
 20 disclosure clause or predispute nondisparagement clause
 21 shall be judicially enforceable in instances in which con-
 22 duct is alleged to have violated Federal, Tribal, or State
 23 law.

24 (b) CONTINUED APPLICABILITY OF STATE LAW.—
 25 This Act shall not be construed to supersede a provision

1 of State law that establishes, implements, or continues in
2 effect a requirement or prohibition except to the extent
3 that such requirement or prohibition prevents the applica-
4 tion of this Act.

5 (c) CONTINUED APPLICABILITY OF FEDERAL,
6 STATE, AND TRIBAL LAW.—This Act shall not be con-
7 strued to supersede a provision of Federal, State, or Trib-
8 al law that governs the use of pseudonyms in the filing
9 of claims involving sexual assault or sexual harassment
10 disputes.

11 (d) PROTECTION OF TRADE SECRETS AND PROPRI-
12 ETARY INFORMATION.—Nothing in this Act shall prohibit
13 an employer and an employee from protecting trade se-
14 crets or proprietary information.

15 **SEC. 5. APPLICABILITY.**

16 This Act shall apply with respect to a claim that is
17 filed under Federal, State, or Tribal law on or after the
18 date of enactment of this Act.

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