

117TH CONGRESS
1ST SESSION

S. 2342

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

IN THE SENATE OF THE UNITED STATES

JULY 14, 2021

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

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 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 the any of the following conduct directed
 10 at an individual or a group of individuals:

11 “(A) Unwelcome sexual advances.

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

14 “(C) Unwanted sexual attention, including
 15 unwanted sexual comments and propositions for
 16 sexual activity.

17 “(D) Conditioning professional, edu-
 18 cational, consumer, health care or long-term
 19 care benefits on sexual activity.

20 “(E) Retaliation for rejecting unwanted
 21 sexual attention.

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

23 “(a) IN GENERAL.—Except as provided in subsection
 24 (c), and notwithstanding any other provision of this title,
 25 no predispute arbitration agreement or predispute joint-

1 action waiver shall be valid or enforceable with respect to
2 a case which is filed under Federal, Tribal, or State law
3 and relates to a sexual assault dispute or a sexual harass-
4 ment dispute.

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

17 “(c) EXCEPTION FOR COLLECTIVE BARGAINING
18 AGREEMENTS.—Nothing in this chapter shall apply to any
19 arbitration provision in a contract between an employer
20 and a labor organization or between labor organizations,
21 except that no such arbitration provision shall have the
22 effect of waiving the right of an employee to seek judicial
23 enforcement of a right arising under provision of the Con-
24 stitution of the United States, a State constitution, or a

1 Federal or State statute, or public policy arising there-
 2 from.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

9 (B) in section 208—

10 (i) in the section heading, by striking
 11 **“Chapter 1; residual application”**
 12 and inserting **“Application”**; and

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

17 (C) in section 307—

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

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

25 (2) TABLE OF SECTIONS.—

1 (A) CHAPTER 2.—The table of sections for
 2 chapter 2 of title 9, United States Code, is
 3 amended by striking the item relating to section
 4 208 and inserting the following:

“208. Application.”.

5 (B) CHAPTER 3.—The table of sections for
 6 chapter 3 of title 9, United States Code, is
 7 amended by striking the item relating to section
 8 307 and inserting the following:

“307. Application.”.

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

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

12 **SEC. 3. APPLICABILITY.**

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

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