

H. R. 4445

One Hundred Seventeenth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday,
the third day of January, two thousand and twenty-two*

An Act

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

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021”.

SEC. 2. PREDISPUTE ARBITRATION OF DISPUTES INVOLVING SEXUAL ASSAULT AND SEXUAL HARASSMENT.

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

“CHAPTER 4—ARBITRATION OF DISPUTES INVOLVING SEXUAL ASSAULT AND SEXUAL HARASSMENT

“Sec.

“401. Definitions.

“402. No validity or enforceability.

“§ 401. Definitions

“In this chapter:

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

“(2) PREDISPUTE JOINT-ACTION WAIVER.—The term ‘predispute joint-action waiver’ means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

“(3) SEXUAL ASSAULT DISPUTE.—The term ‘sexual assault dispute’ means a dispute involving a nonconsensual 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.

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

“§ 402. No validity or enforceability

“(a) IN GENERAL.—Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

“(b) DETERMINATION OF APPLICABILITY.—An issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(A) in section 2, by inserting “or as otherwise provided in chapter 4” before the period at the end;

(B) in section 208—

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

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

(C) in section 307—

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

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

(2) TABLE OF SECTIONS.—

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

“208. Application.”.

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

“307. Application.”.

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

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

SEC. 3. APPLICABILITY.

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

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*