

115TH CONGRESS  
1ST SESSION

# S. 2203

To amend title 9 of the United States Code with respect to arbitration.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2017

Mrs. GILLIBRAND (for herself, Mr. GRAHAM, Ms. HARRIS, Ms. MURKOWSKI, Mr. DURBIN, Ms. HEITKAMP, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend title 9 of the United States Code with respect to arbitration.

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 Harassment Act of 2017”.

6 **SEC. 2. ARBITRATION OF EMPLOYMENT DISPUTES.**

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

1           **“CHAPTER 4—ARBITRATION OF SEX**  
 2                           **DISCRIMINATION DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

3   **“§ 401. Definitions**

4           “In this chapter—

5                   “(1) the term ‘predispute arbitration agree-  
 6           ment’ means any agreement to arbitrate a dispute  
 7           that had not yet arisen at the time of the making  
 8           of the agreement; and

9                   “(2) the term ‘sex discrimination dispute’  
 10           means a dispute between an employer and employee  
 11           arising out of conduct that would form the basis of  
 12           a claim based on sex under title VII of the Civil  
 13           Rights Act of 1964 (42 U.S.C. 2000e et seq.) if the  
 14           employment were employment by an employer (as  
 15           defined in section 701(b) of that Act (42 U.S.C.  
 16           2000e(b))), regardless of whether a violation of such  
 17           title VII is alleged.

18   **“§ 402. Validity and enforceability**

19           “(a) IN GENERAL.—Except as provided in subsection  
 20           (b)(2), and notwithstanding any other provision of this  
 21           title, no predispute arbitration agreement shall be valid  
 22           or enforceable if it requires arbitration of a sex discrimina-  
 23           tion dispute.

24           “(b) APPLICABILITY.—

1           “(1) IN GENERAL.—An issue as to whether this  
2 chapter applies to an arbitration agreement shall be  
3 determined under Federal law. The applicability of  
4 this chapter to an agreement to arbitrate and the  
5 validity and enforceability of an agreement to which  
6 this chapter applies shall be determined by a court,  
7 rather than an arbitrator, irrespective of whether the  
8 party resisting arbitration challenges the arbitration  
9 agreement specifically or in conjunction with other  
10 terms of the contract containing such agreement.

11           “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
12 Nothing in this chapter shall apply to any arbitra-  
13 tion provision in a contract between an employer and  
14 a labor organization or between labor organizations,  
15 except that no such arbitration provision shall have  
16 the effect of waiving the right of an employee to  
17 seek judicial enforcement of a right arising under a  
18 provision of the Constitution of the United States, a  
19 State constitution, or a Federal or State statute, or  
20 public policy arising therefrom.”.

21 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

4 (B) in section 208—

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

8 (ii) by adding at the end the fol-  
 9 lowing: “This chapter applies to the extent  
 10 that this chapter is not in conflict with  
 11 chapter 4.”; and

12 (C) in section 307—

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

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

20 (2) TABLE OF SECTIONS.—

21 (A) CHAPTER 2.—The table of sections for  
 22 chapter 2 of title 9, United States Code, is  
 23 amended by striking the item relating to section  
 24 208 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 chap-  
6 ters for title 9, United States Code, is amended by  
7 adding at the end the following:

**“4. Arbitration of sex discrimination disputes ..... 401”.**

8 **SEC. 3. EFFECTIVE DATE.**

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

