

JANUARY 24, 2022

RULES COMMITTEE PRINT 117–29
TEXT OF H.R. 4445, ENDING FORCED ARBITRA-
TION OF SEXUAL ASSAULT AND SEXUAL HAR-
ASSMENT ACT OF 2021

[Showing the text of H.R. 4445, as ordered reported by the
Committee on the Judiciary, with modifications.]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Ending Forced Arbi-
3 tration of Sexual Assault and Sexual Harassment Act of
4 2021”.

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

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

10 **“CHAPTER 4—ARBITRATION OF DISPUTES**
11 **INVOLVING SEXUAL ASSAULT AND**
12 **SEXUAL HARASSMENT**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

13 **“§ 401. Definitions**

14 “In this chapter:

1 “(1) PREDISPUTE ARBITRATION AGREEMENT.—

2 The term ‘predispute arbitration agreement’ means
3 any agreement to arbitrate a dispute that had not
4 yet arisen at the time of the making of the agree-
5 ment.

6 “(2) PREDISPUTE JOINT-ACTION WAIVER.—The
7 term ‘predispute joint-action waiver’ means an
8 agreement, whether or not part of a predispute arbi-
9 tration agreement, that would prohibit, or waive the
10 right of, one of the parties to the agreement to par-
11 ticipate in a joint, class, or collective action in a ju-
12 dicial, arbitral, administrative, or other forum, con-
13 cerning a dispute that has not yet arisen at the time
14 of the making of the agreement.

15 “(3) SEXUAL ASSAULT DISPUTE.—The term
16 ‘sexual assault dispute’ means a dispute involving a
17 nonconsensual sexual act or sexual contact, as such
18 terms are defined in section 2246 of title 18 or simi-
19 lar applicable Tribal or State law, including when
20 the victim lacks capacity to consent.

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

25 “(A) Unwelcome sexual advances.

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

3 “(C) Unwanted sexual attention, including
4 unwanted sexual comments and propositions for
5 sexual activity.

6 “(D) Conditioning professional, edu-
7 cational, consumer, health care or long-term
8 care benefits on sexual activity.

9 “(E) Retaliation for rejecting unwanted
10 sexual attention.

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

12 “(a) IN GENERAL.—Notwithstanding any other pro-
13 vision of this title, at the election of the person alleging
14 conduct constituting a sexual harassment dispute or sex-
15 ual assault dispute, or the named representative of a class
16 or in a collective action alleging such conduct, no
17 predispute arbitration agreement or predispute joint-ac-
18 tion waiver shall be valid or enforceable with respect to
19 a case which is filed under Federal, Tribal, or State law
20 and relates to the sexual assault dispute or the sexual har-
21 assment dispute.

22 “(b) DETERMINATION OF APPLICABILITY.—An issue
23 as to whether this chapter applies with respect to a dispute
24 shall be determined under Federal law. The applicability
25 of this chapter to an agreement to arbitrate and the valid-

1 ity and enforceability of an agreement to which this chap-
2 ter applies shall be determined by a court, rather than
3 an arbitrator, irrespective of whether the party resisting
4 arbitration challenges the arbitration agreement specifi-
5 cally or in conjunction with other terms of the contract
6 containing such agreement, and irrespective of whether
7 the agreement purports to delegate such determinations
8 to an arbitrator.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

15 (B) in section 208—

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

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

23 (C) in section 307—

1 (i) in the section heading, by striking

2 **“Chapter 1; residual application”**

3 and inserting **“Application”**; and

4 (ii) by adding at the end the fol-

5 lowing: “This chapter applies to the extent

6 that this chapter is not in conflict with

7 chapter 4.”.

8 (2) TABLE OF SECTIONS.—

9 (A) CHAPTER 2.—The table of sections for
10 chapter 2 of title 9, United States Code, is
11 amended by striking the item relating to section
12 208 and inserting the following:

“208. Application.”.

13 (B) CHAPTER 3.—The table of sections for
14 chapter 3 of title 9, United States Code, is
15 amended by striking the item relating to section
16 307 and inserting the following:

“307. Application.”.

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

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

1 **SEC. 3. APPLICABILITY.**

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

