

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.

