

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4445
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

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:

15 “(1) PREDISPUTE ARBITRATION AGREEMENT.—

16 The term ‘predispute arbitration agreement’ means

1 any agreement to arbitrate a dispute that had not
2 yet arisen at the time of the making of the agree-
3 ment.

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

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

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

23 “(A) Unwelcome sexual advances.

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

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

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

7 “(E) Retaliation for rejecting unwanted
8 sexual attention.

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

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

20 “(b) DETERMINATION OF APPLICABILITY.—An issue
21 as to whether this chapter applies with respect to a dispute
22 shall be determined under Federal law. The applicability
23 of this chapter to an agreement to arbitrate and the valid-
24 ity and enforceability of an agreement to which this chap-
25 ter applies shall be determined by a court, rather than

1 an arbitrator, irrespective of whether the party resisting
2 arbitration challenges the arbitration agreement specifi-
3 cally or in conjunction with other terms of the contract
4 containing such agreement, and irrespective of whether
5 the agreement purports to delegate such determinations
6 to an arbitrator.”.

7 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

13 (B) in section 208—

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

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

21 (C) in section 307—

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

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

5 (2) TABLE OF SECTIONS.—

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

“208. Application.”.

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

“307. Application.”.

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

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

17 **SEC. 3. APPLICABILITY.**

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

