

7 GCA CIVIL PROCEDURE
CH. 42C ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND
SEXUAL HARASSMENT ACT OF 2022

CHAPTER 42C
ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND
SEXUAL HARASSMENT ACT OF 2022

SOURCE: Entire chapter §§ 42C100-104 added by P.L. 36-120:1 (Nov. 9, 2022) and renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

- § 42C101. Title.
- § 42C102. Legislative Statement
- § 42C103. Definitions.
- § 42C104. No Validity or Enforceability.
- § 42C105. Determination of Applicability.

§ 42C101. Title.

This Chapter may be cited as the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022.”

§ 42C102. Legislative Statement.

I Liheslaturan Guåhan finds that on March 3, 2022, President Joseph Robinette Biden Jr. enacted U.S. Public Law No. 117-90, the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021,” into law. Public Law No. 117-90 prohibits the enforcement of mandatory, pre-dispute arbitration provisions in cases involving sexual assault or sexual harassment. According to the Purpose and Summary section of the Committee Report on the bill, the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, would prohibit the enforcement of mandatory, pre-dispute arbitration (‘forced arbitration’) provisions in cases involving sexual assault or sexual harassment. Over the past several decades, forced arbitration clauses have become virtually ubiquitous in everyday contracts. Often buried deep within the fine print of employment and consumer contracts, forced arbitration deprives millions of Americans of their day in court to enforce state and federal rights. Because arbitration lacks the transparency and precedential guidance of the justice system, there is no guarantee that the relevant law will be applied to these disputes or that fundamental notions of fairness and equity will be upheld in the process. Furthermore, due to the secretive nature of this system, these

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disputes are often shielded from public scrutiny.” The report further states that this legislation “would restore access to justice for millions of victims of sexual assault or harassment who are currently locked out of the court system and are forced to settle their disputes against companies in a private system of arbitration that often favors the company over the individual. This critical legislation is supported by a coalition of survivors of sexual harassment or assault and their allies, including the National Center on Domestic and Sexual Violence, the National Coalition Against Domestic Violence, the National Domestic Violence Hotline, the National Network to End Domestic Violence, RAINN, and the Sexual Violence Prevention Association, among others. It is also supported by numerous public interest and advocacy organizations, such as Public Citizen and the American Association of Justice.”

I Liheslaturan Guåhan further finds that there is no operative language which automatically applies U.S. Public Law 117-90 to Guam. Guam implemented its own arbitration procedures in Title 7 of the Guam Code Annotated and did not adopt the Federal Arbitration Act (FAA) which is found in Title 9 USC Chapter 1, et. seq. While courts have found that the FAA applies to U.S. states, the definition of states in the FAA does not include Guam as it does in other federal statutes such as the Uniform Child Custody Jurisdiction Act. Therefore, enactment of the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022” into Guam law is imperative to ensure access to justice for victims of sexual assault and harassment who are currently forced to settle their disputes in a private system of arbitration.

§ 42C103. Definitions.

For the purposes of this Chapter:

(a) 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.

(b) The term *predispute joint-action waiver* means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit, or waive the right of, one of

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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.

(c) The term *sexual assault dispute* means a dispute involving alleged criminal sexual conduct, as such terms are defined in Chapter 25 of Title 9, Guam Code Annotated, or Section 2246 of Title 18 United States Code, including when the victim lacks capacity to consent.

(d) The term *sexual harassment dispute* means a dispute relating to conduct that is alleged to constitute sexual harassment under § 4703 of Article 7, Chapter 4, Title 4, Guam Code Annotated, or federal law.

§ 42C104. No Validity or Enforceability.

Notwithstanding any other provision of law, at the election of the person alleging conduct constituting a sexual assault dispute or sexual harassment 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 or local law and relates to the sexual assault dispute or the sexual harassment dispute.

§ 42C105. Determination of Applicability.

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.
