

I Mina'trentai Sais Na Liheslaturan Guåhan
BILL STATUS



BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
319-36 (COR)	Therese M. Terlaje Telo T. Taitague	AN ACT TO ADD A NEW CHAPTER 42C TO DIVISION 3, TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO IMPLEMENTING THE "ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND SEXUAL HARASSMENT ACT OF 2021" INTO GUAM LAW.	6/16/22 8:14 a.m.						6/28/22 As amended by the Prime Sponsor.

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
2022 (SECOND) Regular Session

Bill No. 319-36 (COR)

As Amended by the Prime Sponsor

Introduced by:

Therese M. Terlaje 
Telo T. Taitague 

**AN ACT TO *ADD* A NEW CHAPTER 42C TO DIVISION
3, TITLE 7, GUAM CODE ANNOTATED, RELATIVE TO
IMPLEMENTING THE “ENDING FORCED
ARBITRATION OF SEXUAL ASSAULT AND
SEXUAL HARASSMENT ACT OF 2021” INTO GUAM
LAW.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. A new Chapter 42C is *added* to Division 3, Title 7, Guam Code
3 Annotated, to read:

4 “CHAPTER 42C

5 ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND SEXUAL
6 HARASSMENT ACT OF 2021.

7 § 42C100. Title.

8 § 42C101. Legislative Statement

9 § 42C102. Definitions.

10 § 42C103. No Validity or Enforceability.

11 § 42C104. Determination of Applicability.

12 § 42C100. Title. This Chapter may be cited as the Ending Forced Arbitration
13 of Sexual Assault and Sexual Harassment Act of 2021.

14 § 42C101. Legislative Statement. *I Liheslaturan Guåhan* finds that on March
15 3, 2022, President Joseph Robinette Biden Jr. signed Public Law No. 117-90, the

1 “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021,”
2 into law. Public Law No. 117-90 prohibits the enforcement of mandatory, pre-
3 dispute arbitration provisions in cases involving sexual assault or sexual harassment.
4 According to the Purpose and Summary section of the Committee Report on the bill,
5 the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of
6 2021, “would prohibit the enforcement of mandatory, pre-dispute arbitration
7 (“forced arbitration”) provisions in cases involving sexual assault or sexual
8 harassment. Over the past several decades, forced arbitration clauses have become
9 virtually ubiquitous in everyday contracts. Often buried deep within the fine print of
10 employment and consumer contracts, forced arbitration deprives millions of
11 Americans of their day in court to enforce state and federal rights. Because
12 arbitration lacks the transparency and precedential guidance of the justice system,
13 there is no guarantee that the relevant law will be applied to these disputes or that
14 fundamental notions of fairness and equity will be upheld in the process.
15 Furthermore, due to the secretive nature of this system, these disputes are often
16 shielded from public scrutiny.” The report further states that this legislation “would
17 restore access to justice for millions of victims of sexual assault or harassment who
18 are currently locked out of the court system and are forced to settle their disputes
19 against companies in a private system of arbitration that often favors the company
20 over the individual. This critical legislation is supported by a coalition of survivors
21 of sexual harassment or assault and their allies, including the National Center on
22 Domestic and Sexual Violence, the National Coalition Against Domestic Violence,
23 the National Domestic Violence Hotline, the National Network to End Domestic
24 Violence, RAINN, and the Sexual Violence Prevention Association, among others. It
25 is also supported by numerous public interest and advocacy organizations, such as
26 Public Citizen and the American Association of Justice.”

I Liheslaturan Guåhan further finds that there is no operative language which automatically applies 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. The enactment of the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021,” into local 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.

§ 42C102. Definitions. For the purposes of this Chapter:

(a) Predispute arbitration agreement. 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) Predispute joint-action waiver. The term ‘predispute joint-action waiver’ means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of 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) Sexual assault dispute. The term ‘sexual assault dispute’ means a dispute involving alleged criminal sexual conduct, as such terms are defined in Chapter 25 or Title 9, Guam Code Annotated or Section 2246 of Title 18 United States Code, including when the victim lacks capacity to consent.

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

1 **§ 42C103. No Validity or Enforceability.**

2 No Validity or Enforceability. Notwithstanding any other provision of law,
3 at the election of the person alleging conduct constituting a sexual assault dispute or
4 sexual harassment dispute, or the named representative of a class or in a collective
5 action alleging such conduct, no predispute arbitration agreement or predispute
6 joint-action waiver shall be valid or enforceable with respect to a case which is filed
7 under Federal or local law and relates to the sexual assault dispute or the sexual
8 harassment dispute.

9 **§ 42C104. Determination of Applicability.**

10 Determination of Applicability. An issue as to whether this section applies
11 with respect to a dispute shall be determined under Federal law. The applicability of
12 this section to an agreement to arbitrate and the validity and enforceability of an
13 agreement to which this section applies shall be determined by a court, rather than
14 an arbitrator; irrespective of whether the party resisting arbitration challenges the
15 arbitration agreement specifically or in conjunction with other terms of the contract
16 containing such agreement, and irrespective of whether the agreement purports to
17 delegate such determinations to an arbitrator.”

18 **Section 2. Severability.** If any provision of this Act or its application to any
19 person or circumstance is found to be invalid or contrary to law, such invalidity shall
20 not affect other provisions or applications of this Act that can be given effect without
21 the invalid provisions or application, and to this end the provisions of the Act are
22 severable.

23 **Section 3. Effective Date.** This Act shall be effective upon enactment.