

# Calendar No. 493

117TH CONGRESS  
2D SESSION

# S. 4524

To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to disputes involving sexual assault and sexual harassment.

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## IN THE SENATE OF THE UNITED STATES

JULY 13, 2022

Mrs. GILLIBRAND (for herself, Mrs. BLACKBURN, Ms. HIRONO, Mr. GRAHAM, Mr. PORTMAN, Mr. BLUMENTHAL, Mr. DURBIN, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Mr. OSSOFF, Mr. BOOKER, Mr. CORNYN, Mr. GRASSLEY, Mr. PADILLA, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 20, 2022

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To limit the judicial enforceability of predispute nondisclosure and nondisparagement contract clauses relating to disputes involving sexual assault and sexual harassment.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “*Speak Out Act*”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Sexual harassment and assault remain per-  
4 vasive in the workplace and throughout civic society,  
5 affecting millions of Americans.

6 (2) Eighty-one percent of women and 43 per-  
7 cent of men have experienced some form of sexual  
8 harassment or assault throughout their lifetime.

9 (3) One in 3 women has faced sexual harass-  
10 ment in the workplace during her career, and an es-  
11 timated 87 to 94 percent of those who experience  
12 sexual harassment never file a formal complaint.

13 (4) Sexual harassment in the workplace forces  
14 many women to leave their occupation or industry,  
15 or pass up opportunities for advancement.

16 (5) In order to combat sexual harassment and  
17 assault, it is essential that victims and survivors  
18 have the freedom to report and publicly disclose  
19 their abuse.

20 (6) Nondisclosure and nondisparagement provi-  
21 sions in agreements between employers and current,  
22 former, and prospective employees, and independent  
23 contractors, and between providers of goods and  
24 services and consumers, can perpetuate illegal con-  
25 duct by silencing those who are survivors of illegal  
26 sexual harassment and assault or illegal retaliation,

1 or have knowledge of such conduct, while shielding  
 2 perpetrators and enabling them to continue their  
 3 abuse.

4 (7) Prohibiting predispute nondisclosure and  
 5 nondisparagement clauses will empower survivors to  
 6 come forward, hold perpetrators accountable for  
 7 abuse, improve transparency around illegal conduct,  
 8 enable the pursuit of justice, and make workplaces  
 9 safer and more productive for everyone.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) **PREDISPUTE NONDISCLOSURE CLAUSE.**—

13 The term “predispute nondisclosure clause” means a  
 14 provision in a contract or agreement agreed to be-  
 15 fore a lawsuit is filed under Federal, State, or Tribal  
 16 law that requires the parties to the contract or  
 17 agreement not to disclose or discuss conduct, the ex-  
 18 istence of a settlement involving conduct, or infor-  
 19 mation covered by the terms and conditions of the  
 20 contract or agreement.

21 (2) **PREDISPUTE NONDISPARAGEMENT**

22 **CLAUSE.**—The term “predispute nondisparagement  
 23 clause” means a provision in a contract or agree-  
 24 ment that requires 1 or more parties to the contract  
 25 or agreement not to make a negative statement

1 about another party that relates to the contract,  
2 agreement, claim, or case.

3 (3) **SEXUAL ASSAULT DISPUTE.**—The term  
4 “sexual assault dispute” means a dispute involving  
5 a nonconsensual sexual act or sexual contact, as  
6 such terms are defined in section 2246 of title 18,  
7 United States Code, or similar applicable Tribal or  
8 State law, including when the victim lacks capacity  
9 to consent.

10 (4) **SEXUAL HARASSMENT DISPUTE.**—The term  
11 “sexual harassment dispute” means a dispute relat-  
12 ing to conduct that is alleged to constitute sexual  
13 harassment under applicable Federal, Tribal, or  
14 State law.

15 **SEC. 4. LIMITATION ON JUDICIAL ENFORCEABILITY OF**  
16 **PREDISPUTE NONDISCLOSURE AND NON-**  
17 **DISPARAGEMENT CONTRACT CLAUSES RE-**  
18 **LATING TO SEXUAL ASSAULT DISPUTES AND**  
19 **SEXUAL HARASSMENT DISPUTES.**

20 (a) **IN GENERAL.**—With respect to a sexual assault  
21 dispute or sexual harassment dispute, no predispute non-  
22 disclosure clause or predispute nondisparagement clause  
23 shall be judicially enforceable in instances in which con-  
24 duct is alleged to have violated Federal, Tribal, or State  
25 law.

1 (b) CONTINUED APPLICABILITY OF STATE LAW.—  
2 This Act shall not be construed to supersede a provision  
3 of State law that establishes, implements, or continues in  
4 effect a requirement or prohibition except to the extent  
5 that such requirement or prohibition prevents the applica-  
6 tion of this Act.

7 (c) CONTINUED APPLICABILITY OF FEDERAL,  
8 STATE, AND TRIBAL LAW.—This Act shall not be con-  
9 strued to supersede a provision of Federal, State, or Trib-  
10 al law that governs the use of pseudonyms in the filing  
11 of claims involving sexual assault or sexual harassment  
12 disputes.

13 (d) PROTECTION OF TRADE SECRETS AND PROPRI-  
14 ETARY INFORMATION.—Nothing in this Act shall prohibit  
15 an employer and an employee from protecting trade se-  
16 crets or proprietary information.

17 **SEC. 5. APPLICABILITY.**

18 This Act shall apply with respect to a claim that is  
19 filed under Federal, State, or Tribal law on or after the  
20 date of enactment of this Act.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Speak Out Act”.*

23 **SEC. 2. FINDINGS.**

24 *Congress finds the following:*

1           (1) *Sexual harassment and assault remain per-*  
2           *vasive in the workplace and throughout civic society,*  
3           *affecting millions of Americans.*

4           (2) *Eighty-one percent of women and 43 percent*  
5           *of men have experienced some form of sexual harass-*  
6           *ment or assault throughout their lifetime.*

7           (3) *One in 3 women has faced sexual harassment*  
8           *in the workplace during her career, and an estimated*  
9           *87 to 94 percent of those who experience sexual har-*  
10          *assment never file a formal complaint.*

11          (4) *Sexual harassment in the workplace forces*  
12          *many women to leave their occupation or industry, or*  
13          *pass up opportunities for advancement.*

14          (5) *In order to combat sexual harassment and*  
15          *assault, it is essential that victims and survivors have*  
16          *the freedom to report and publicly disclose their*  
17          *abuse.*

18          (6) *Nondisclosure and nondisparagement provi-*  
19          *sions in agreements between employers and current,*  
20          *former, and prospective employees, and independent*  
21          *contractors, and between providers of goods and serv-*  
22          *ices and consumers, can perpetuate illegal conduct by*  
23          *silencing those who are survivors of illegal sexual har-*  
24          *assment and assault or illegal retaliation, or have*

1 *knowledge of such conduct, while shielding perpetra-*  
 2 *tors and enabling them to continue their abuse.*

3 *(7) Prohibiting nondisclosure and nondisparage-*  
 4 *ment clauses will empower survivors to come forward,*  
 5 *hold perpetrators accountable for abuse, improve*  
 6 *transparency around illegal conduct, enable the pur-*  
 7 *suit of justice, and make workplaces safer and more*  
 8 *productive for everyone.*

9 **SEC. 3. DEFINITIONS.**

10 *In this Act:*

11 *(1) NONDISCLOSURE CLAUSE.—The term “non-*  
 12 *disclosure clause” means a provision in a contract or*  
 13 *agreement that requires the parties to the contract or*  
 14 *agreement not to disclose or discuss conduct, the exist-*  
 15 *ence of a settlement involving conduct, or information*  
 16 *covered by the terms and conditions of the contract or*  
 17 *agreement.*

18 *(2) NONDISPARAGEMENT CLAUSE.—The term*  
 19 *“nondisparagement clause” means a provision in a*  
 20 *contract or agreement that requires 1 or more parties*  
 21 *to the contract or agreement not to make a negative*  
 22 *statement about another party that relates to the con-*  
 23 *tract, agreement, claim, or case.*

24 *(3) SEXUAL ASSAULT DISPUTE.—The term “sex-*  
 25 *ual assault dispute” means a dispute involving a*

1        *nonconsensual sexual act or sexual contact, as such*  
 2        *terms are defined in section 2246 of title 18, United*  
 3        *States Code, or similar applicable Tribal or State*  
 4        *law, including when the victim lacks capacity to con-*  
 5        *sent.*

6            (4) *SEXUAL HARASSMENT DISPUTE.*—*The term*  
 7        *“sexual harassment dispute” means a dispute relating*  
 8        *to conduct that is alleged to constitute sexual harass-*  
 9        *ment under applicable Federal, Tribal, or State law.*

10 **SEC. 4. LIMITATION ON JUDICIAL ENFORCEABILITY OF**  
 11            **NONDISCLOSURE AND NONDISPARAGEMENT**  
 12            **CONTRACT CLAUSES RELATING TO SEXUAL**  
 13            **ASSAULT DISPUTES AND SEXUAL HARASS-**  
 14            **MENT DISPUTES.**

15        (a) *IN GENERAL.*—*With respect to a sexual assault*  
 16        *dispute or sexual harassment dispute, no nondisclosure*  
 17        *clause or nondisparagement clause agreed to before the dis-*  
 18        *pute arises shall be judicially enforceable in instances in*  
 19        *which conduct is alleged to have violated Federal, Tribal,*  
 20        *or State law.*

21        (b) *CONTINUED APPLICABILITY OF STATE LAW.*—  
 22        *Nothing in this Act shall prohibit a State or locality from*  
 23        *enforcing a provision of State law governing nondisclosure*  
 24        *or nondisparagement clauses that is at least as protective*



1 *of the right of an individual to speak freely, as provided*  
2 *by this Act.*

3 (c) *CONTINUED APPLICABILITY OF FEDERAL, STATE,*  
4 *AND TRIBAL LAW.—This Act shall not be construed to su-*  
5 *perede a provision of Federal, State, or Tribal Law that*  
6 *governs the use of pseudonyms in the filing of claims involv-*  
7 *ing sexual assault or sexual harassment disputes.*

8 (d) *PROTECTION OF TRADE SECRETS AND PROPRI-*  
9 *ETARY INFORMATION.—Nothing in this Act shall prohibit*  
10 *an employer and an employee from protecting trade secrets*  
11 *or proprietary information.*

12 **SEC. 5. APPLICABILITY.**

13 *This Act shall apply with respect to a claim that is*  
14 *filed under Federal, State, or Tribal law on or after the*  
15 *date of enactment of this Act.*

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