

117TH CONGRESS
2^D SESSION

S. 4524

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

3 **SEC. 2. FINDINGS.**

4 Congress finds the following:

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

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

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

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

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

22 (6) Nondisclosure and nondisparagement provi-
23 sions in agreements between employers and current,
24 former, and prospective employees, and independent
25 contractors, and between providers of goods and
26 services and consumers, can perpetuate illegal con-

1 duct by silencing those who are survivors of illegal
2 sexual harassment and assault or illegal retaliation,
3 or have knowledge of such conduct, while shielding
4 perpetrators and enabling them to continue their
5 abuse.

6 (7) Prohibiting nondisclosure and nondisparage-
7 ment clauses will empower survivors to come for-
8 ward, hold perpetrators accountable for abuse, im-
9 prove transparency around illegal conduct, enable
10 the pursuit of justice, and make workplaces safer
11 and more productive for everyone.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) **NONDISCLOSURE CLAUSE.**—The term “non-
15 disclosure clause” means a provision in a contract or
16 agreement that requires the parties to the contract
17 or agreement not to disclose or discuss conduct, the
18 existence of a settlement involving conduct, or infor-
19 mation covered by the terms and conditions of the
20 contract or agreement.

21 (2) **NONDISPARAGEMENT CLAUSE.**—The term
22 “nondisparagement clause” means a provision in a
23 contract or agreement that requires 1 or more par-
24 ties to the contract or agreement not to make a neg-

1 ative statement about another party that relates to
2 the contract, 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 **NONDISCLOSURE AND NONDISPARAGEMENT**
17 **CONTRACT CLAUSES RELATING TO SEXUAL**
18 **ASSAULT DISPUTES AND SEXUAL HARASS-**
19 **MENT DISPUTES.**

20 (a) IN GENERAL.—With respect to a sexual assault
21 dispute or sexual harassment dispute, no nondisclosure
22 clause or nondisparagement clause agreed to before the
23 dispute arises shall be judicially enforceable in instances
24 in which conduct is alleged to have violated Federal, Trib-
25 al, or State law.

1 (b) CONTINUED APPLICABILITY OF STATE LAW.—
2 Nothing in this Act shall prohibit a State or locality from
3 enforcing a provision of State law governing nondisclosure
4 or nondisparagement clauses that is at least as protective
5 of the right of an individual to speak freely, as provided
6 by 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.

Passed the Senate September 29, 2022.

Attest:

Secretary.

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