

117TH CONGRESS  
2D SESSION

# H. R. 8227

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 HOUSE OF REPRESENTATIVES

JUNE 24, 2022

Ms. LOIS FRANKEL of Florida (for herself, Mr. BUCK, Mr. CICILLINE, Mr. GRIFFITH, Mr. NADLER, Mrs. BUSTOS, and Ms. JAYAPAL) introduced the following bill; which was referred to the Committee on the Judiciary

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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”.

### 5 **SEC. 2. FINDINGS.**

6 The Congress finds the following:

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

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

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

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

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

15          (6) Nondisclosure and nondisparagement provi-  
16          sions in agreements between employers and current,  
17          former, and prospective employees, and independent  
18          contractors, and between providers of goods and  
19          services and consumers, can perpetuate illegal con-  
20          duct by silencing those who are survivors of illegal  
21          sexual harassment and assault or illegal retaliation,  
22          or have knowledge of such conduct, while shielding  
23          perpetrators and enabling them to continue their  
24          abuse.

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

7 **SEC. 3. LIMITATION ON JUDICIAL ENFORCEABILITY OF**  
8                   **PREDISPUTE NONDISCLOSURE AND NON-**  
9                   **DISPARAGEMENT CONTRACT CLAUSES RE-**  
10                  **LATING TO SEXUAL ASSAULT DISPUTES AND**  
11                  **SEXUAL HARASSMENT DISPUTES.**

12       (a) IN GENERAL.—With respect to a sexual assault  
13       dispute or sexual harassment dispute, no predispute non-  
14       disclosure clause or predispute nondisparagement clause  
15       shall be judicially enforceable in instances in which con-  
16       duct is alleged to have violated Federal, Tribal, or State  
17       law.

18       (b) CONTINUED APPLICABILITY OF STATE LAW.—  
19       This Act shall not be construed to supersede a provision  
20       of State law that establishes, implements, or continues in  
21       effect a requirement or prohibition except to the extent  
22       that such requirement or prohibition prevents the applica-  
23       tion of this Act.

24       (c) CONTINUED APPLICABILITY OF FEDERAL,  
25       STATE, AND TRIBAL LAW.—This Act shall not be con-

1 strued to supersede a provision of Federal, State, or Trib-  
2 al Law that governs the use of pseudonyms in the filing  
3 of claims involving sexual assault or sexual harassment  
4 disputes.

5 **SEC. 4. DEFINITIONS.**

6 For purposes of this Act:

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

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

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

23 (3) **SEXUAL ASSAULT DISPUTE.**—The term  
24 “sexual assault dispute” means a dispute involving  
25 a nonconsensual sexual act or sexual contact, as

1       such terms are defined in section 2246 of title 18 of  
2       the United States Code, or similar applicable Tribal  
3       or State law, including when the victim lacks capac-  
4       ity to consent.

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

10 **SEC. 5. APPLICABILITY.**

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

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