

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

NAME	Aye	Nay	Not Voting/ Abstained	Out During Roll Call	Absent	Excused
Bill No. 319-36 (COR) As amended by the Prime Sponsor; and further amended by the Committee on Health, Land, Justice, and Culture.	Speaker Antonio R. Unpingco Legislative Session Hall Guam Congress Building October 28, 2022					
Senator V. Anthony Ada	✓					
Senator Frank Blas Jr.	✓					
Senator Joanne Brown	✓					
Senator Christopher M. Dueñas	✓					
Senator James C. Moylan	✓					
Vice Speaker Tina Rose Muña Barnes	✓					
Senator Telen Cruz Nelson					✓	✓
Senator Sabina Flores Perez	✓					
Senator Clynton E. Ridgell	✓					
Senator Joe S. San Agustin					✓	✓
Senator Amanda L. Shelton	✓					
Senator Telo T. Taitague	✓					
Senator Jose "Pedo" Terlaje	✓					
Speaker Therese M. Terlaje	✓					
Senator Mary Camacho Torres	✓					

TOTAL

13

0

2

2

Aye

Nay


Not
Voting/
Abstained

Out
During
Roll Call

Absent

Excused

CERTIFIED TRUE AND CORRECT:



 RENNAE V. C. MENO
 Clerk of the Legislature

I = Pass

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2022 (SECOND) Regular Session

Bill No. 319-36 (COR)

As amended by the Prime Sponsor;
and further amended by the Committee on Health,
Land, Justice, and Culture.

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Introduced by:

Therese M. Terlaje
Telo T. Taitague

**AN ACT TO ADD A NEW CHAPTER 42C TO DIVISION 3
OF TITLE 7, GUAM CODE ANNOTATED, RELATIVE
TO ENACTING THE “ENDING FORCED ARBITRATION
OF SEXUAL ASSAULT AND SEXUAL HARASSMENT ACT
OF 2022” INTO GUAM LAW.**

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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

4 “CHAPTER 42C

5 ENDING FORCED ARBITRATION OF SEXUAL ASSAULT
6 AND SEXUAL HARASSMENT ACT OF 2022

7 § 42C100. Title.

8 § 42C101. Legislative Statement

9 § 42C102. Definitions.

10 § 42C103. No Validity or Enforceability.

11 § 42C104. Determination of Applicability.

12 § 42C100. Title.

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

15 § 42C101. Legislative Statement.

1 *I Liheslaturan Guåhan* finds that on March 3, 2022, President Joseph
2 Robinette Biden Jr. enacted U.S. Public Law No. 117-90, the “Ending Forced
3 Arbitration of Sexual Assault and Sexual Harassment Act of 2021,” into law. Public
4 Law No. 117-90 prohibits the enforcement of mandatory, pre-dispute arbitration
5 provisions in cases involving sexual assault or sexual harassment. According to the
6 Purpose and Summary section of the Committee Report on the bill, the “*Ending*
7 *Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, would*
8 *prohibit the enforcement of mandatory, pre-dispute arbitration (‘forced*
9 *arbitration’)* provisions in cases involving sexual assault or sexual harassment.
10 *Over the past several decades, forced arbitration clauses have become virtually*
11 *ubiquitous in everyday contracts. Often buried deep within the fine print of*
12 *employment and consumer contracts, forced arbitration deprives millions of*
13 *Americans of their day in court to enforce state and federal rights. Because*
14 *arbitration lacks the transparency and precedential guidance of the justice system,*
15 *there is no guarantee that the relevant law will be applied to these disputes or that*
16 *fundamental notions of fairness and equity will be upheld in the process.*
17 *Furthermore, due to the secretive nature of this system, these disputes are often*
18 *shielded from public scrutiny.”* The report further states that this legislation “*would*
19 *restore access to justice for millions of victims of sexual assault or harassment who*
20 *are currently locked out of the court system and are forced to settle their disputes*
21 *against companies in a private system of arbitration that often favors the company*
22 *over the individual. This critical legislation is supported by a coalition of survivors*
23 *of sexual harassment or assault and their allies, including the National Center on*
24 *Domestic and Sexual Violence, the National Coalition Against Domestic Violence,*
25 *the National Domestic Violence Hotline, the National Network to End Domestic*
26 *Violence, RAINN, and the Sexual Violence Prevention Association, among others. It*
27 *is also supported by numerous public interest and advocacy organizations, such as*
28 *Public Citizen and the American Association of Justice.”*

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

12 **§ 42C102. Definitions.**

13 For the purposes of this Chapter:

14 (a) The term *predispute arbitration agreement* means any agreement
15 to arbitrate a dispute that had not yet arisen at the time of the making of the
16 agreement.

17 (b) The term *predispute joint-action waiver* means an agreement,
18 whether or not part of a pre-dispute arbitration agreement, that would prohibit,
19 or waive the right of, one of the parties to the agreement to participate in a
20 joint, class, or collective action in a judicial, arbitral, administrative, or other
21 forum, concerning a dispute that has not yet arisen at the time of the making
22 of the agreement.

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

1 (d) The term *sexual harassment dispute* means a dispute relating to
2 conduct that is alleged to constitute sexual harassment under § 4703 of Article
3 7, Chapter 4, Title 4, Guam Code Annotated, or federal law.

4 **§ 42C103. No Validity or Enforceability.**

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

12 **§ 42C104. Determination of Applicability.**

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

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

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