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) As amended by the Prime Sponsor; and further amended by the Committee on Health, Land, Justice, and Culture.	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 2021*" INTO GUAM LAW.	6/16/22 8:14 a.m.	7/1/22	Committee on Health, Land, Justice, and Culture	7/18/22 1:00 p.m.	10/10/22 12:54 p.m. As Amended by the Prime Sponsor, and further Amended by the Committee on Health, Land, Justice, and Culture	Waiver: 6/29/22	6/28/22 As amended by the Prime Sponsor.

SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES
10/21/22	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.	10/28/22	10/28/22	11/9/22	36-120	11/9/22	Received: 11/10/22 Mess and Comm. Doc. No. 36GL-22-2797

LOURDES A. LEON GUERRERO
GOVERNOR

JOSHUA F. TENORIO
LT. GOVERNOR

UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

Transmitted via email to: speaker@guamlegislature.org

November 9, 2022

Doc Type: 36GL-22-2797
OFFICE OF THE SPEAKER
THERESE M. TERLAJE
-11- 09 2022
Time: 4:19pm
Received:

HONORABLE THERESE M. TERLAJE
Speaker
I Mina'trentai Sais Na Liheslaturan Guåhan
36th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: BILL NO. 319-36 (COR) - 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

Hafa Adai Madame Speaker,

Alternative dispute resolution mechanisms such as arbitration are widely-utilized tools that in many instances promote principles of conservation of judicial resources, reduced litigation costs, privacy, and efficient resolution of claims. But in other instances, these tools lead to unjust results, at times undermining the ability of plaintiffs to achieve complete and cost-effective resolution of their claims in court. In an effort to restore fuller access to justice for victims of sexual assault or sexual harassment, on March 3, 2022, President Joe Biden signed Public Law No. 117-90, the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021" ("EFASASHA"). The law amends the Federal Arbitration Act ("FAA") to prohibit the enforcement of pre-dispute arbitration provisions in the event the alleged victim elects to pursue their claim in court. While P.L. 117-90 substantially shifted the choice of dispute resolution mechanisms to complainants, it does not automatically apply in corresponding agreement established under Guam law, which did not adopt the FAA.

Bill No. 319-36 will enable alleged victims of sexual assault and harassment in Guam to avail themselves of the dispute resolution mechanism that makes sense for them in light of their circumstances, including arbitration, if that is the mechanism they choose. I join with the Guam Legislature in its hope that ensuring alleged victims of sexual assault and sexual harassment the right to pursue their claims in court notwithstanding the existence of pre-dispute arbitration agreements, promotes greater access to justice for affected members of our community, and

compels a greater degree of compliance with applicable laws by would-be offenders in the first instance. For these reasons, I sign Bill No. 319-36 into law as ***Public Law No. 36-120***.

Senseremente,

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

RECEIVED
NOV 10 2022
8:00A.M.
COMMITTEE ON RULES

Enclosure: Bill No. 319-36 (COR) - nka *P.L. No. 36-120*

cc via email: *Honorable* Lourdes A. Leon Guerrero, *Governor of Guam*
Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 319-36 (COR), "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,"** was on the 28th day of October 2022, duly and regularly passed.

Therese M. Terlaje
Therese M. Terlaje
Speaker

Attested:

Amanda L. Shelton
Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 28th day of Oct., 2022, at 6:19 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 11/09/2022

Public Law No. 36-120

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
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.

Introduced by: Therese M. Terlaje
Telo T. Taitague
V. Anthony Ada
Frank Blas Jr.
Joanne Brown
Christopher M. Dueñas
James C. Moylan
Tina Rose Muña Barnes
Telena Cruz Nelson
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Jose "Pedo" Terlaje
Mary Camacho Torres

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.

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

"CHAPTER 42C

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

§ 42C100. Title.

§ 42C101. Legislative Statement

§ 42C102. Definitions.

§ 42C103. No Validity or Enforceability.

§ 42C104. Determination of Applicability.

§ 42C100. Title.

This Chapter may be cited as the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022."

§ 42C101. Legislative Statement.

I Liheslaturan Guåhan finds that on March 3, 2022, President Joseph Robinette Biden Jr. enacted U.S. Public Law No. 117-90, the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021," into law. Public Law No. 117-90 prohibits the enforcement of mandatory, pre-dispute arbitration provisions in cases involving sexual assault or sexual harassment. According to the Purpose and Summary section of the Committee Report on the bill, the "*Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, would prohibit the enforcement of mandatory, pre-dispute arbitration ('forced arbitration') provisions in cases involving sexual assault or sexual harassment. Over the past several decades, forced arbitration clauses have become virtually ubiquitous in everyday contracts. Often buried deep within the fine print of employment and consumer contracts, forced arbitration deprives millions of Americans of their day in court to enforce state and federal rights. Because arbitration lacks the transparency and precedential guidance of the justice system, there is no guarantee that the relevant law will be applied to these disputes or that fundamental notions of fairness and equity will be upheld in the process. Furthermore, due to the secretive nature of this system, these disputes are often shielded from public scrutiny.*" The report further states that this legislation "*would restore access to justice for millions of victims of sexual assault or harassment who are currently locked out of the court system and are forced to settle their disputes against companies in a private system of arbitration that often favors the company*

over the individual. This critical legislation is supported by a coalition of survivors of sexual harassment or assault and their allies, including the National Center on Domestic and Sexual Violence, the National Coalition Against Domestic Violence, the National Domestic Violence Hotline, the National Network to End Domestic Violence, RAINN, and the Sexual Violence Prevention Association, among others. It is also supported by numerous public interest and advocacy organizations, such as Public Citizen and the American Association of Justice."

I Liheslaturan Guåhan further finds that there is no operative language which automatically applies U.S. 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. Therefore, enactment of the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022" into Guam 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) 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) The term *predispute joint-action waiver* means an agreement, whether or not part of a pre-dispute 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) The term *sexual assault dispute* means a dispute involving alleged criminal sexual conduct, as such terms are defined in Chapter 25 of Title 9, Guam Code Annotated, or Section 2246 of Title 18 United States Code, including when the victim lacks capacity to consent.

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

§ 42C103. No Validity or Enforceability.

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

§ 42C104. Determination of Applicability.

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

Section 2. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall

not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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