**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “ENDING FORCED ARBITRATION OF SEXUAL HARASSMENT ACT OF 2018” BY ADDING SECTION 15‑48‑15 SO AS TO PROVIDE NO PREDISPUTE ARBITRATION AGREEMENT IS VALID OR ENFORCEABLE IF IT REQUIRES ARBITRATION OF A SEX DISCRIMINATION DISPUTE, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE EXCEPTIONS, TO PROVIDE THAT QUESTIONS OF APPLICABILITY MUST BE DETERMINED BY FEDERAL LAW, AND TO PROVIDE QUESTIONS OF APPLICABILITY AND VALIDITY MUST BE DETERMINED BY A COURT INSTEAD OF AN ARBITRATOR.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Ending Forced Arbitration of Sexual Harassment Act of 2018”.

SECTION 2. Chapter 48, Title 15 of the 1976 Code is amended by adding:

“Section 15‑48‑15. (A) As used in this section:

(1) ‘Predispute arbitration agreement’ means an agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

(2) ‘Sex discrimination suit’ means a dispute between an employer and employee arising out of conduct that would form the basis of a claim based on sex under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., regardless of whether a violation of Title VII is alleged.

(B)(1) Except as provided in item (2)(a) and notwithstanding another provision of law, no predispute arbitration agreement is valid or enforceable if it requires arbitration of a sex discrimination dispute.

(2)(a) An issue as to whether this section applies to an arbitration agreement must be determined under federal law. The applicability of this section to an agreement to arbitrate and the validity and enforceability of an agreement to which this section applies must 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 the agreement.

(b) Nothing in this section applies to an arbitration provision in a contract between an employer and a labor organization or between labor organizations, except that no such arbitration provision may have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, the South Carolina Constitution, 1895, a federal statute, a statute of this State, or a public policy arising from any of them.”

SECTION 3. This act takes effect upon approval by the Governor.

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