

AMENDMENT TO H.R. 5136, AS REPORTED
OFFERED BY MRS. DAHLKEMPER OF
PENNSYLVANIA

At the end of title VIII, add the following new section:

1 **SEC. 839. PROHIBITION ON MANDATORY ARBITRATION FOR**
2 **CERTAIN CLAIMS RELATING TO DEFENSE**
3 **CONTRACTS.**

4 (a) **ISSUANCE OF GUIDANCE.**—Not later than 30
5 days after the date of the enactment of this Act, the Sec-
6 retary of Defense shall issue guidance implementing the
7 prohibition in subsection (b) for covered contracts.

8 (b) **PROHIBITION ON MANDATORY ARBITRATION FOR**
9 **CERTAIN CLAIMS.**—The prohibition in this subsection is
10 a prohibition on a contractor—

11 (1) entering into any agreement with any of its
12 employees or subcontractors engaged in performing
13 work on a covered contract that requires, as a condi-
14 tion of employment, that the employee of the con-
15 tractor or of the subcontractor agree to resolve
16 through arbitration any tort related to or arising out
17 of sexual assault or harassment, including assault
18 and battery, intentional infliction of emotional dis-

1 tress, false imprisonment, or negligent hiring, super-
2 vision, or retention; or

3 (2) taking any action to enforce any provision
4 of an existing agreement with an employee of the
5 contractor or of the subcontractor engaged in per-
6 forming work on a covered contract that mandates
7 that the employee resolve through arbitration any
8 tort related to or arising out of sexual assault or
9 harassment, including assault and battery, inten-
10 tional infliction of emotional distress, false imprison-
11 ment, or negligent hiring, supervision, or retention.

12 (c) COVERED CONTRACTS.—For purposes of this sec-
13 tion, a covered contract is any contract awarded before,
14 on, or after the date of the enactment of this Act by the
15 Department of Defense, with a value in excess of
16 \$1,000,000, including—

17 (1) any subcontract under such a contract if
18 the subcontract has a value in excess of \$1,000,000;
19 and

20 (2) any task or delivery order under such a con-
21 tract if such task or delivery order has a value in ex-
22 cess of \$1,000,000.

23 (d) EXCEPTIONS.—The prohibition in subsection (b)
24 shall not apply—

1 (1) with respect to a contractor's or subcontrac-
2 tor's agreements with employees that may not be en-
3 forced in a court of the United States; and

4 (2) to any contract, subcontract, or task or de-
5 livery order that is entirely for the procurement of
6 commercial off-the-shelf items.

7 (e) WAIVER.—The Secretary of Defense may waive
8 the application of this section to a contract, subcontract,
9 or task or delivery order if the Secretary determines that
10 the waiver is necessary to avoid harm to national security
11 interests of the United States, and that the term of the
12 contract, subcontract, or task or delivery order is not
13 longer than necessary to avoid such harm. The determina-
14 tion shall set forth with specificity the grounds for the
15 waiver, and shall state any alternatives considered in lieu
16 of a waiver. The Secretary of Defense shall transmit to
17 Congress any determination under this subsection not less
18 than 15 business days before the contract, subcontract,
19 or task or delivery order addressed in the determination
20 is awarded.

