

# Union Calendar No.

117<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 963

[Report No. 117-]

To amend title 9 of the United States Code with respect to arbitration.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2021

Mr. JOHNSON of Georgia (for himself, Mr. NADLER, Mr. CICILLINE, Mr. CARTWRIGHT, Mr. AGUILAR, Mr. AUCHINCLOSS, Ms. BARRAGÁN, Ms. BASS, Mr. BEYER, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BOWMAN, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN, Ms. BROWNLEY, Mr. BUTTERFIELD, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CASTEN, Mr. CASTRO of Texas, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. COHEN, Mr. CONNOLLY, Mr. COURTNEY, Mr. CRIST, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFazio, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. DOGGETT, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. EVANS, Mrs. FLETCHER, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEGRO, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOMEZ, Mr. VICENTE GONZALEZ of Texas, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HASTINGS, Mrs. HAYES, Mr. HIGGINS of New York, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JEFFRIES, Ms. JOHNSON of Texas, Mr. JONES, Ms. KAPTUR, Mr. KEATING, Mr. KHANNA, Mr. KILDEE, Mr. KIM of New Jersey, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHY, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Mr. LOWENTHAL, Mrs. LURIA, Mr. LYNCH, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE of Wisconsin, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NEWMAN, Ms. NORTON, Mr. O'HALLERAN, Ms. OCASIO-CORTEZ, Mr. PALLONE, Mr. PANETTA, Mr. PAPPAS, Mr. PASCRELL, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETERS, Mr. PHILLIPS, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. PRICE of North Carolina,

Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Ms. ROSS, Mr. RUSH, Mr. RYAN, Ms. SÁNCHEZ, Mr. SARBANES, Ms. SCANLON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHRADER, Mr. SCOTT of Virginia, Mr. SHERMAN, Mr. SIRES, Mr. SMITH of Washington, Mr. SOTO, Ms. SPANBERGER, Ms. SPEIER, Mr. STANTON, Ms. STEVENS, Ms. STRICKLAND, Mr. SUOZZI, Mr. SWALWELL, Mr. TAKANO, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Mr. TORRES of New York, Mrs. TORRES of California, Mrs. TRAHAN, Mr. TRONE, Mr. VEASEY, Mr. VELA, Ms. VELÁZQUEZ, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILD, Ms. WILLIAMS of Georgia, Mr. YARMUTH, and Ms. BUSH) introduced the following bill; which was referred to the Committee on the Judiciary

MARCH --, 2022

Additional Sponsors:

3

MARCH --, 2022

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 11, 2021]

# **A BILL**

To amend title 9 of the United States Code with respect  
to arbitration.

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 “Forced Arbitration In-*  
5 *justice Repeal Act of 2022” or the “FAIR Act of 2022”.*

6 **SEC. 2. PURPOSES.**

7 *The purposes of this Act are to—*

8 *(1) prohibit predispute arbitration agreements*  
9 *that force arbitration of future employment, con-*  
10 *sumer, antitrust, or civil rights disputes; and*

11 *(2) prohibit agreements and practices that inter-*  
12 *fere with the right of individuals, workers, and small*  
13 *businesses to participate in a joint, class, or collective*  
14 *action related to an employment, consumer, antitrust,*  
15 *or civil rights dispute.*

16 **SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTI-**  
17 **TRUST, AND CIVIL RIGHTS DISPUTES.**

18 *(a) IN GENERAL.—Title 9 of the United States Code*  
19 *is amended by adding at the end the following:*

20 **“CHAPTER 5—ARBITRATION OF EMPLOY-**  
21 **MENT, CONSUMER, ANTITRUST, AND**  
22 **CIVIL RIGHTS DISPUTES**

*“Sec.*

*“501. Definitions.*

*“502. No validity or enforceability.*

23 **“§ 501. Definitions**

24 *“In this chapter—*

1           “(1) the term ‘antitrust dispute’ means a dis-  
2       pute—

3           “(A) arising from an alleged violation of  
4       the antitrust laws (as defined in subsection (a)  
5       of the first section of the Clayton Act) or State  
6       antitrust laws; and

7           “(B) in which the plaintiffs seek certifi-  
8       cation as a class under rule 23 of the Federal  
9       Rules of Civil Procedure or a comparable rule or  
10      provision of State law;

11          “(2) the term ‘civil rights dispute’ means a dis-  
12      pute—

13          “(A) arising from an alleged violation of—

14              “(i) the Constitution of the United  
15              States or the constitution of a State;

16              “(ii) any Federal, State, or local law  
17              that prohibits discrimination on the basis of  
18              race, sex, age, gender identity, sexual ori-  
19              entation, disability, religion, national ori-  
20              gin, or any legally protected status in edu-  
21              cation, employment, credit, housing, public  
22              accommodations and facilities, voting, vet-  
23              erans or servicemembers, health care, or a  
24              program funded or conducted by the Federal  
25              Government or State government, including

1           any law referred to or described in section  
2           62(e) of the Internal Revenue Code of 1986,  
3           including parts of such law not explicitly  
4           referenced in such section but that relate to  
5           protecting individuals on any such basis;  
6           and

7           “(B) in which at least one party alleging a  
8           violation described in subparagraph (A) is one  
9           or more individuals (or their authorized rep-  
10          resentative), including one or more individuals  
11          seeking certification as a class under rule 23 of  
12          the Federal Rules of Civil Procedure or a com-  
13          parable rule or provision of State law;

14          “(3) the term ‘consumer dispute’ means a dis-  
15          pute between—

16                 “(A) one or more individuals who seek or  
17                 acquire real or personal property, services (in-  
18                 cluding services related to digital technology), se-  
19                 curities or other investments, money, or credit  
20                 for personal, family, or household purposes in-  
21                 cluding an individual or individuals who seek  
22                 certification as a class under rule 23 of the Fed-  
23                 eral Rules of Civil Procedure or a comparable  
24                 rule or provision of State law; and

1           “(B)(i) the seller or provider of such prop-  
2           erty, services, securities or other investments,  
3           money, or credit; or

4           “(ii) a third party involved in the selling,  
5           providing of, payment for, receipt or use of in-  
6           formation about, or other relationship to any  
7           such property, services, securities or other invest-  
8           ments, money, or credit;

9           “(4) the term ‘employment dispute’ means a dis-  
10          pute between one or more individuals (or their au-  
11          thorized representative) and a person arising out of  
12          or related to the work relationship or prospective  
13          work relationship between them, including a dispute  
14          regarding the terms of or payment for, advertising of,  
15          recruiting for, referring of, arranging for, or dis-  
16          cipline or discharge in connection with, such work,  
17          regardless of whether the individual is or would be  
18          classified as an employee or an independent con-  
19          tractor with respect to such work, and including a  
20          dispute arising under any law referred to or described  
21          in section 62(e) of the Internal Revenue Code of 1986,  
22          including parts of such law not explicitly referenced  
23          in such section but that relate to protecting individ-  
24          uals on any such basis, and including a dispute in  
25          which an individual or individuals seek certification



1       *as a class under rule 23 of the Federal Rules of Civil*  
2       *Procedure or as a collective action under section 16(b)*  
3       *of the Fair Labor Standards Act, or a comparable*  
4       *rule or provision of State law;*

5             “(5) the term ‘*predispute arbitration agreement*’  
6       *means an agreement to arbitrate a dispute that has*  
7       *not yet arisen at the time of the making of the agree-*  
8       *ment; and*

9             “(6) the term ‘*predispute joint-action waiver*’  
10       *means an agreement, whether or not part of a*  
11       *predispute arbitration agreement, that would pro-*  
12       *hibit, or waive the right of, one of the parties to the*  
13       *agreement to participate in a joint, class, or collective*  
14       *action in a judicial, arbitral, administrative, or other*  
15       *forum, concerning a dispute that has not yet arisen*  
16       *at the time of the making of the agreement.*

17       **“§ 502. No validity or enforceability**

18             “(a) *IN GENERAL.*—*Notwithstanding any other provi-*  
19       *sion of this title, no predispute arbitration agreement or*  
20       *predispute joint-action waiver shall be valid or enforceable*  
21       *with respect to an employment dispute, consumer dispute,*  
22       *antitrust dispute, or civil rights dispute.*

23             “(b) *APPLICABILITY.*—

24             “(1) *IN GENERAL.*—*An issue as to whether this*  
25       *chapter applies with respect to a dispute shall be de-*

1        *terminated under Federal law. The applicability of this*  
2        *chapter to an agreement to arbitrate and the validity*  
3        *and enforceability of an agreement to which this*  
4        *chapter applies shall be determined by a court, rather*  
5        *than an arbitrator, irrespective of whether the party*  
6        *resisting arbitration challenges the arbitration agree-*  
7        *ment specifically or in conjunction with other terms*  
8        *of the contract containing such agreement, and irre-*  
9        *spective of whether the agreement purports to delegate*  
10       *such determinations to an arbitrator.*

11            *“(2) COLLECTIVE BARGAINING AGREEMENTS.—*  
12        *Nothing in this chapter shall apply to any arbitra-*  
13        *tion provision in a contract between an employer and*  
14        *a labor organization or between labor organizations,*  
15        *except that no such arbitration provision shall have*  
16        *the effect of waiving the right of a worker to seek judi-*  
17        *cial enforcement of a right arising under a provision*  
18        *of the Constitution of the United States, a State con-*  
19        *stitution, or a Federal or State statute, or public pol-*  
20        *icy arising therefrom.”.*

21        *(b) TECHNICAL AND CONFORMING AMENDMENTS.—*

22            *(1) IN GENERAL.—Title 9 of the United States*  
23        *Code is amended—*

24            *(A) in section 1 by striking “of seamen,”*  
25        *and all that follows through “interstate com-*

1           *merce” and inserting in its place “of individ-*  
 2           *uals, regardless of whether such individuals are*  
 3           *designated as employees or independent contrac-*  
 4           *tors for other purposes”;*

5           *(B) in section 2 by striking “chapter 4”*  
 6           *and inserting “chapter 4 or 5”;*

7           *(C) in section 208 by striking “chapter 4”*  
 8           *and inserting “chapter 4 or 5”; and*

9           *(D) in section 307 by striking “chapter 4”*  
 10          *and inserting “chapter 4 or 5”.*

11          (2) *TABLE OF CHAPTERS.—The table of chapters*  
 12          *of title 9 of the United States Code is amended by*  
 13          *adding at the end the following:*

*“5. Arbitration of Employment, Consumer, Antitrust, and Civil Rights*  
*Disputes ..... 501”.*

14          **SEC. 4. EFFECTIVE DATE.**

15          *This Act, and the amendments made by this Act, shall*  
 16          *take effect on the date of enactment of this Act and shall*  
 17          *apply with respect to any dispute or claim that arises or*  
 18          *accrues on or after such date.*

19          **SEC. 5. RULE OF CONSTRUCTION.**

20          *Nothing in this Act, or the amendments made by this*  
 21          *Act, shall be construed to prohibit the use of arbitration*  
 22          *on a voluntary basis after the dispute arises.*