

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 963  
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Forced Arbitration In-  
3 justice Repeal Act of 2021” or the “FAIR Act of 2021”.

**4 SEC. 2. PURPOSES.**

5 The purposes of this Act are to—

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

9 (2) prohibit agreements and practices that  
10 interfere with the right of individuals, workers, and  
11 small businesses to participate in a joint, class, or  
12 collective action related to an employment, con-  
13 sumer, antitrust, or civil rights dispute.

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

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

1 **“CHAPTER 4—ARBITRATION OF EMPLOY-**  
2 **MENT, CONSUMER, ANTITRUST, AND**  
3 **CIVIL RIGHTS DISPUTES**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

4 **“§ 401. Definitions**

5 “In this chapter—

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

8 “(A) arising from an alleged violation of  
9 the antitrust laws (as defined in subsection (a)  
10 of the first section of the Clayton Act) or State  
11 antitrust laws; and

12 “(B) in which the plaintiffs seek certifi-  
13 cation as a class under rule 23 of the Federal  
14 Rules of Civil Procedure or a comparable rule  
15 or provision of State law;

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

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

19 “(i) the Constitution of the United  
20 States or the constitution of a State;

21 “(ii) any Federal, State, or local law  
22 that prohibits discrimination on the basis  
23 of race, sex, age, gender identity, sexual  
24 orientation, disability, religion, national or-

1           igin, or any legally protected status in edu-  
2           cation, employment, credit, housing, public  
3           accommodations and facilities, voting, vet-  
4           erans or servicemembers, health care, or a  
5           program funded or conducted by the Fed-  
6           eral Government or State government, in-  
7           cluding any law referred to or described in  
8           section 62(e) of the Internal Revenue Code  
9           of 1986, including parts of such law not  
10          explicitly referenced in such section but  
11          that relate to protecting individuals on any  
12          such basis; and

13           “(B) in which at least one party alleging a  
14          violation described in subparagraph (A) is one  
15          or more individuals (or their authorized rep-  
16          resentative), including one or more individuals  
17          seeking certification as a class under rule 23 of  
18          the Federal Rules of Civil Procedure or a com-  
19          parable rule or provision of State law;

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

22           “(A) one or more individuals who seek or  
23          acquire real or personal property, services (in-  
24          cluding services related to digital technology),  
25          securities or other investments, money, or credit

1 for personal, family, or household purposes in-  
2 cluding an individual or individuals who seek  
3 certification as a class under rule 23 of the  
4 Federal Rules of Civil Procedure or a com-  
5 parable rule or provision of State law; and

6 “(B)(i) the seller or provider of such prop-  
7 erty, services, securities or other investments,  
8 money, or credit; or

9 “(ii) a third party involved in the selling,  
10 providing of, payment for, receipt or use of in-  
11 formation about, or other relationship to any  
12 such property, services, securities or other in-  
13 vestments, money, or credit;

14 “(4) the term ‘employment dispute’ means a  
15 dispute between one or more individuals (or their  
16 authorized representative) and a person arising out  
17 of or related to the work relationship or prospective  
18 work relationship between them, including a dispute  
19 regarding the terms of or payment for, advertising  
20 of, recruiting for, referring of, arranging for, or dis-  
21 cipline or discharge in connection with, such work,  
22 regardless of whether the individual is or would be  
23 classified as an employee or an independent con-  
24 tractor with respect to such work, and including a  
25 dispute arising under any law referred to or de-

1 scribed in section 62(e) of the Internal Revenue  
2 Code of 1986, including parts of such law not explic-  
3 itly referenced in such section but that relate to pro-  
4 tecting individuals on any such basis, and including  
5 a dispute in which an individual or individuals seek  
6 certification as a class under rule 23 of the Federal  
7 Rules of Civil Procedure or as a collective action  
8 under section 16(b) of the Fair Labor Standards  
9 Act, or a comparable rule or provision of State law;

10 “(5) the term ‘predispute arbitration agree-  
11 ment’ means an agreement to arbitrate a dispute  
12 that has not yet arisen at the time of the making  
13 of the agreement; and

14 “(6) the term ‘predispute joint-action waiver’  
15 means an agreement, whether or not part of a  
16 predispute arbitration agreement, that would pro-  
17 hibit, or waive the right of, one of the parties to the  
18 agreement to participate in a joint, class, or collec-  
19 tive action in a judicial, arbitral, administrative, or  
20 other forum, concerning a dispute that has not yet  
21 arisen at the time of the making of the agreement.

22 **“§ 402. No validity or enforceability**

23 “(a) IN GENERAL.—Notwithstanding any other pro-  
24 vision of this title, no predispute arbitration agreement or  
25 predispute joint-action waiver shall be valid or enforceable

1 with respect to an employment dispute, consumer dispute,  
2 antitrust dispute, or civil rights dispute.

3 “(b) APPLICABILITY.—

4 “(1) IN GENERAL.—An issue as to whether this  
5 chapter applies with respect to a dispute shall be de-  
6 termined under Federal law. The applicability of this  
7 chapter to an agreement to arbitrate and the validity  
8 and enforceability of an agreement to which this  
9 chapter applies shall be determined by a court, rath-  
10 er than an arbitrator, irrespective of whether the  
11 party resisting arbitration challenges the arbitration  
12 agreement specifically or in conjunction with other  
13 terms of the contract containing such agreement,  
14 and irrespective of whether the agreement purports  
15 to delegate such determinations to an arbitrator.

16 “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
17 Nothing in this chapter shall apply to any arbitra-  
18 tion provision in a contract between an employer and  
19 a labor organization or between labor organizations,  
20 except that no such arbitration provision shall have  
21 the effect of waiving the right of a worker to seek  
22 judicial enforcement of a right arising under a provi-  
23 sion of the Constitution of the United States, a  
24 State constitution, or a Federal or State statute, or  
25 public policy arising therefrom.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) IN GENERAL.—Title 9 of the United States  
3 Code is amended—

4 (A) in section 1 by striking “of seamen,”  
5 and all that follows through “interstate com-  
6 merce” and inserting in its place “of individ-  
7 uals, regardless of whether such individuals are  
8 designated as employees or independent con-  
9 tractors for other purposes”;

10 (B) in section 2 by inserting “or as other-  
11 wise provided in chapter 4” before the period at  
12 the end;

13 (C) in section 208—

14 (i) in the section heading by striking  
15 **“CHAPTER 1; RESIDUAL APPLICA-  
16 TION”** and inserting **“APPLICATION”**;  
17 and

18 (ii) by adding at the end the fol-  
19 lowing: “This chapter applies to the extent  
20 that this chapter is not in conflict with  
21 chapter 4.”; and

22 (D) in section 307—

23 (i) in the section heading by striking  
24 **“CHAPTER 1; RESIDUAL APPLICA-**

1                   **TION**” and inserting “**APPLICATION**”;

2                   and

3                   (ii) by adding at the end the fol-  
4                   lowing: “This chapter applies to the extent  
5                   that this chapter is not in conflict with  
6                   chapter 4.”.

7                   (2) **TABLE OF SECTIONS.**—

8                   (A) **CHAPTER 2.**—The table of sections of  
9                   chapter 2 of title 9, United States Code, is  
10                  amended by striking the item relating to section  
11                  208 and inserting the following:

“208. Application.”.

12                  (B) **CHAPTER 3.**—The table of sections of  
13                  chapter 3 of title 9, United States Code, is  
14                  amended by striking the item relating to section  
15                  307 and inserting the following:

“307. Application.”.

16                  (3) **TABLE OF CHAPTERS.**—The table of chap-  
17                  ters of title 9, United States Code, is amended by  
18                  adding at the end the following:

“4. Arbitration of Employment, Consumer, Antitrust, and Civil Rights  
Disputes ..... 401”.

19 **SEC. 4. EFFECTIVE DATE.**

20                  This Act, and the amendments made by this Act,  
21                  shall take effect on the date of enactment of this Act and



1 shall apply with respect to any dispute or claim that arises  
2 or accrues on or after such date.

3 **SEC. 5. RULE OF CONSTRUCTION.**

4 Nothing in this Act, or the amendments made by this  
5 Act, shall be construed to prohibit the use of arbitration  
6 on a voluntary basis after the dispute arises.

