

117TH CONGRESS
1ST SESSION

H. R. 963

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

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. GALLEGO, 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. STRICK-

LAND, 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

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” or the “FAIR Act”.

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

12 interfere with the right of individuals, workers, and

13 small businesses to participate in a joint, class, or

14 collective action related to an employment, con-

15 sumer, antitrust, or civil rights dispute.

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

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

5 **“CHAPTER 4—ARBITRATION OF EMPLOY-**
 6 **MENT, CONSUMER, ANTITRUST, AND**
 7 **CIVIL RIGHTS DISPUTES**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

8 **“§ 401. Definitions**

9 “In this chapter—

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

12 “(A) arising from an alleged violation of
 13 the antitrust laws (as defined in subsection (a)
 14 of the first section of the Clayton Act) or State
 15 antitrust laws; and

16 “(B) in which the plaintiffs seek certifi-
 17 cation as a class under rule 23 of the Federal
 18 Rules of Civil Procedure or a comparable rule
 19 or provision of State law;

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

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

23 “(i) the Constitution of the United
 24 States or the constitution of a State;

1 “(ii) any Federal, State, or local law
2 that prohibits discrimination on the basis
3 of race, sex, age, gender identity, sexual
4 orientation, disability, religion, national or-
5 igin, or any legally protected status in edu-
6 cation, employment, credit, housing, public
7 accommodations and facilities, voting, vet-
8 erans or servicemembers, health care, or a
9 program funded or conducted by the Fed-
10 eral Government or State government, in-
11 cluding any law referred to or described in
12 section 62(e) of the Internal Revenue Code
13 of 1986, including parts of such law not
14 explicitly referenced in such section but
15 that relate to protecting individuals on any
16 such basis; and

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

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

1 “(A) one or more individuals who seek or
2 acquire real or personal property, services (in-
3 cluding services related to digital technology),
4 securities or other investments, money, or credit
5 for personal, family, or household purposes in-
6 cluding an individual or individuals who seek
7 certification as a class under rule 23 of the
8 Federal Rules of Civil Procedure or a com-
9 parable rule or provision of State law; and

10 “(B)(i) the seller or provider of such prop-
11 erty, services, securities or other investments,
12 money, or credit; or

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

18 “(4) the term ‘employment dispute’ means a
19 dispute between one or more individuals (or their
20 authorized representative) and a person arising out
21 of or related to the work relationship or prospective
22 work relationship between them, including a dispute
23 regarding the terms of or payment for, advertising
24 of, recruiting for, referring of, arranging for, or dis-
25 cipline or discharge in connection with, such work,

1 regardless of whether the individual is or would be
2 classified as an employee or an independent con-
3 tractor with respect to such work, and including a
4 dispute arising under any law referred to or de-
5 scribed in section 62(e) of the Internal Revenue
6 Code of 1986, including parts of such law not explic-
7 itly referenced in such section but that relate to pro-
8 tecting individuals on any such basis, and including
9 a dispute in which an individual or individuals seek
10 certification as a class under rule 23 of the Federal
11 Rules of Civil Procedure or as a collective action
12 under section 16(b) of the Fair Labor Standards
13 Act, or a comparable rule or provision of State law;

14 “(5) the term ‘predispute arbitration agree-
15 ment’ means an agreement to arbitrate a dispute
16 that has not yet arisen at the time of the making
17 of the agreement; and

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

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

2 “(a) IN GENERAL.—Notwithstanding any other pro-
3 vision of this title, no predispute arbitration agreement or
4 predispute joint-action waiver shall be valid or enforceable
5 with respect to an employment dispute, consumer dispute,
6 antitrust dispute, or civil rights dispute.

7 “(b) APPLICABILITY.—

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

20 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

21 Nothing in this chapter shall apply to any arbitra-
22 tion provision in a contract between an employer and
23 a labor organization or between labor organizations,
24 except that no such arbitration provision shall have
25 the effect of waiving the right of a worker to seek
26 judicial enforcement of a right arising under a provi-

1 sion of the Constitution of the United States, a
2 State constitution, or a Federal or State statute, or
3 public policy arising therefrom.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

16 (C) in section 208—

17 (i) in the section heading by striking
18 “**CHAPTER 1; RESIDUAL APPLICA-**
19 **TION**” and inserting “**APPLICATION**”;
20 and

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

25 (D) in section 307—

1 (i) in the section heading by striking
2 “CHAPTER 1; RESIDUAL APPLICA-
3 TION” and inserting “APPLICATION”;
4 and

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

9 (2) TABLE OF SECTIONS.—

10 (A) CHAPTER 2.—The table of sections of
11 chapter 2 of title 9, United States Code, is
12 amended by striking the item relating to section
13 208 and inserting the following:

“208. Application.”.

14 (B) CHAPTER 3.—The table of sections of
15 chapter 3 of title 9, United States Code, is
16 amended by striking the item relating to section
17 307 and inserting the following:

“307. Application.”.

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

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

1 **SEC. 4. EFFECTIVE DATE.**

2 This Act, and the amendments made by this Act,
3 shall take effect on the date of enactment of this Act and
4 shall apply with respect to any dispute or claim that arises
5 or accrues on or after such date.

6 **SEC. 5. RULE OF CONSTRUCTION.**

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

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