

111TH CONGRESS
1ST SESSION

H. R. 1020

To amend chapter 1 of title 9 of United States Code with respect to arbitration.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2009

Mr. JOHNSON of Georgia (for himself, Mr. MILLER of North Carolina, Ms. SCHAKOWSKY, Mr. BISHOP of Georgia, Ms. LEE of California, Mr. LOEBSACK, Mr. NADLER of New York, Mr. CHANDLER, Mr. PATRICK J. MURPHY of Pennsylvania, Mr. SCOTT of Virginia, Mr. PASTOR of Arizona, Mr. LATOURETTE, Mr. DOGGETT, Mr. CONYERS, Mr. DELAHUNT, Mr. STUPAK, Ms. WASSERMAN SCHULTZ, Ms. MCCOLLUM, Mr. COURTNEY, Ms. BALDWIN, Mr. DEFAZIO, Mrs. LOWEY, Mr. HIGGINS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. GUTIERREZ, Mr. BRALEY of Iowa, Mr. MARKEY of Massachusetts, Mrs. MALONEY, Mr. WATT, Mr. CARSON of Indiana, Mr. GEORGE MILLER of California, Ms. JACKSON-LEE of Texas, Mr. BOSWELL, Mr. SKELTON, Mr. BARROW, Mr. STARK, and Ms. LINDA T. SÁNCHEZ of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 1 of title 9 of 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 “Arbitration Fairness
5 Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The Federal Arbitration Act (now enacted
4 as chapter 1 of title 9 of the United States Code)
5 was intended to apply to disputes between commer-
6 cial entities of generally similar sophistication and
7 bargaining power.

8 (2) A series of United States Supreme Court
9 decisions have changed the meaning of the Act so
10 that it now extends to disputes between parties of
11 greatly disparate economic power, such as consumer
12 disputes and employment disputes. As a result, a
13 large and rapidly growing number of corporations
14 are requiring millions of consumers and employees
15 to give up their right to have disputes resolved by
16 a judge or jury, and instead submit their claims to
17 binding arbitration.

18 (3) Most consumers and employees have little
19 or no meaningful option whether to submit their
20 claims to arbitration. Few people realize, or under-
21 stand the importance of the deliberately fine print
22 that strips them of rights; and because entire indus-
23 tries are adopting these clauses, people increasingly
24 have no choice but to accept them. They must often
25 give up their rights as a condition of having a job,
26 getting necessary medical care, buying a car, open-

1 ing a bank account, getting a credit card, and the
2 like. Often times, they are not even aware that they
3 have given up their rights.

4 (4) Private arbitration companies are some-
5 times under great pressure to devise systems that
6 favor the corporate repeat players who decide wheth-
7 er those companies will receive their lucrative busi-
8 ness.

9 (5) Mandatory arbitration undermines the de-
10 velopment of public law for civil rights and consumer
11 rights, because there is no meaningful judicial review
12 of arbitrators' decisions. With the knowledge that
13 their rulings will not be seriously examined by a
14 court applying current law, arbitrators enjoy near
15 complete freedom to ignore the law and even their
16 own rules.

17 (6) Mandatory arbitration is a poor system for
18 protecting civil rights and consumer rights because
19 it is not transparent. While the American civil jus-
20 tice system features publicly accountable decision
21 makers who generally issue written decisions that
22 are widely available to the public, arbitration offers
23 none of these features.

24 (7) Many corporations add to their arbitration
25 clauses unfair provisions that deliberately tilt the

1 systems against individuals, including provisions
2 that strip individuals of substantive statutory rights,
3 ban class actions, and force people to arbitrate their
4 claims hundreds of miles from their homes. While
5 some courts have been protective of individuals, too
6 many courts have upheld even egregiously unfair
7 mandatory arbitration clauses in deference to a sup-
8 posed Federal policy favoring arbitration over the
9 constitutional rights of individuals.

10 **SEC. 3. DEFINITIONS.**

11 Section 1 of title 9, United States Code, is amend-
12 ed—

13 (1) by amending the heading to read as follows:

14 **“§ 1. Definitions”;**

15 (2) by inserting before “‘Maritime’” the fol-
16 lowing:

17 “As used in this chapter—”;

18 (3) by striking “‘Maritime transactions’” and
19 inserting the following:

20 “(1) ‘maritime transactions’”;

21 (4) by striking “commerce” and inserting the
22 following:

23 “(2) ‘commerce’”;

1 (5) by striking “, but nothing” and all that fol-
2 lows through the period at the end, and inserting a
3 semicolon; and

4 (6) by adding at the end the following:

5 “(3) ‘employment dispute’, as herein defined,
6 means a dispute between an employer and employee
7 arising out of the relationship of employer and em-
8 ployee as defined by the Fair Labor Standards Act;

9 “(4) ‘consumer dispute’, as herein defined,
10 means a dispute between a person other than an or-
11 ganization who seeks or acquires real or personal
12 property, services, money, or credit for personal,
13 family, or household purposes and the seller or pro-
14 vider of such property, services, money, or credit;

15 “(5) ‘franchise dispute’, as herein defined,
16 means a dispute between a franchisor and franchisee
17 arising out of or relating to contract or agreement
18 by which—

19 “(A) a franchisee is granted the right to
20 engage in the business of offering, selling, or
21 distributing goods or services under a mar-
22 keting plan or system prescribed in substantial
23 part by a franchisor;

24 “(B) the operation of the franchisee’s busi-
25 ness pursuant to such plan or system is sub-

1 stantially associated with the franchisor’s trade-
2 mark, service mark, trade name, logotype, ad-
3 vertising, or other commercial symbol desig-
4 nating the franchisor or its affiliate; and

5 “(C) the franchisee is required to pay, di-
6 rectly or indirectly, a franchise fee; and

7 “(6) ‘pre-dispute arbitration agreement’, as
8 herein defined, means any agreement to arbitrate
9 disputes that had not yet arisen at the time of the
10 making of the agreement.”.

11 **SEC. 4. VALIDITY AND ENFORCEABILITY.**

12 Section 2 of title 9, United States Code, is amend-
13 ed—

14 (1) by amending the heading to read as follows:

15 **“§ 2. Validity and enforceability”**,

16 (2) by inserting “(a)” before “A written”;

17 (3) by striking “, save” and all that follows
18 through “contract”, and inserting “to the same ex-
19 tent as contracts generally, except as otherwise pro-
20 vided in the title”; and

21 (4) by adding at the end the following:

22 “(b) No predispute arbitration agreement shall be
23 valid or enforceable if it requires arbitration of—

24 “(1) an employment, consumer, or franchise
25 dispute; or

1 “(2) a dispute arising under any statute in-
2 tended to protect civil rights.

3 “(c) An issue as to whether this chapter applies to
4 an arbitration agreement shall be determined by Federal
5 law. Except as otherwise provided in this chapter, the va-
6 lidity or enforceability of an agreement to arbitrate shall
7 be determined by the court, rather than the arbitrator,
8 irrespective of whether the party resisting arbitration chal-
9 lenges the arbitration agreement specifically or in conjunc-
10 tion with other terms of the contract containing such
11 agreement.

12 “(d) Nothing in this chapter shall apply to any arbi-
13 tration provision in a collective bargaining agreement.”.

14 **SEC. 5. EFFECTIVE DATE.**

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

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