

111TH CONGRESS  
1ST SESSION

# H. R. 1020

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

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## 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

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## 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 whether  
7       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

systems against individuals, including provisions that strip individuals of substantive statutory rights, ban class actions, and force people to arbitrate their claims hundreds of miles from their homes. While some courts have been protective of individuals, too many courts have upheld even egregiously unfair mandatory arbitration clauses in deference to a supposed Federal policy favoring arbitration over the 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.

