

116TH CONGRESS  
1ST SESSION

# H. R. 1423

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24, 2019

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

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:

18 **“CHAPTER 4—ARBITRATION OF EMPLOY-  
19 MENT, CONSUMER, ANTITRUST, AND  
20 CIVIL RIGHTS DISPUTES**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

21 **“§ 401. Definitions**

22 “In this chapter—

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

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

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

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

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

12           “(i) the Constitution of the United  
13           States or the constitution of a State;

14           “(ii) any Federal, State, or local law  
15           that prohibits discrimination on the basis  
16           of race, sex, age, gender identity, sexual  
17           orientation, disability, religion, national or-  
18           igin, or any legally protected status in edu-  
19           cation, employment, credit, housing, public  
20           accommodations and facilities, voting, vet-  
21           erans or servicemembers, health care, or a  
22           program funded or conducted by the Fed-  
23           eral Government or State government, in-  
24           cluding any law referred to or described in  
25           section 62(e) of the Internal Revenue Code

1 of 1986, including parts of such law not  
2 explicitly referenced in such section but  
3 that relate to protecting individuals on any  
4 such basis; and

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

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

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

23 “(B)(i) the seller or provider of such prop-  
24 erty, services, securities or other investments,  
25 money, or credit; or

1           “(ii) a third party involved in the selling,  
2           providing of, payment for, receipt or use of in-  
3           formation about, or other relationship to any  
4           such property, services, securities or other in-  
5           vestments, money, or credit;

6           “(4) the term ‘employment dispute’ means a  
7           dispute between one or more individuals (or their  
8           authorized representative) and a person arising out  
9           of or related to the work relationship or prospective  
10          work relationship between them, including a dispute  
11          regarding the terms of or payment for, advertising  
12          of, recruiting for, referring of, arranging for, or dis-  
13          cipline or discharge in connection with, such work,  
14          regardless of whether the individual is or would be  
15          classified as an employee or an independent con-  
16          tractor with respect to such work, and including a  
17          dispute arising under any law referred to or de-  
18          scribed in section 62(e) of the Internal Revenue  
19          Code of 1986, including parts of such law not explic-  
20          itly referenced in such section but that relate to pro-  
21          tecting individuals on any such basis, and including  
22          a dispute in which an individual or individuals seek  
23          certification as a class under rule 23 of the Federal  
24          Rules of Civil Procedure or as a collective action

1 under section 16(b) of the Fair Labor Standards  
2 Act, or a comparable rule or provision of State law;

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

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

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

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

21 “(b) APPLICABILITY.—

22 “(1) IN GENERAL.—An issue as to whether this  
23 chapter applies with respect to a dispute shall be de-  
24 termined under Federal law. The applicability of this  
25 chapter to an agreement to arbitrate and the validity

1 and enforceability of an agreement to which this  
2 chapter applies shall be determined by a court, rather  
3 than an arbitrator, irrespective of whether the  
4 party resisting arbitration challenges the arbitration  
5 agreement specifically or in conjunction with other  
6 terms of the contract containing such agreement,  
7 and irrespective of whether the agreement purports  
8 to delegate such determinations to an arbitrator.

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

19 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

22 (A) in section 1 by striking “of seamen,”  
23 and all that follows through “interstate com-  
24 merce” and inserting in its place “of individ-  
25 uals, regardless of whether such individuals are

designated as employees or independent contractors for other purposes”;

(B) in section 2 by inserting “or as otherwise provided in chapter 4” before the period at the end;

(C) in section 208—

(i) in the section heading by striking “**CHAPTER 1; RESIDUAL APPLICATION**” and inserting “**APPLICATION**”;

and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”; and

(D) in section 307—

(i) in the section heading by striking “**CHAPTER 1; RESIDUAL APPLICATION**” and inserting “**APPLICATION**”;

and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”.

(2) TABLE OF SECTIONS.—



1 (A) CHAPTER 2.—The table of sections of  
 2 chapter 2 of title 9, United States Code, is  
 3 amended by striking the item relating to section  
 4 208 and inserting the following:

“208. Application.”.

5 (B) CHAPTER 3.—The table of sections of  
 6 chapter 3 of title 9, United States Code, is  
 7 amended by striking the item relating to section  
 8 307 and inserting the following:

“307. Application.”.

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

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

12 **SEC. 4. EFFECTIVE DATE.**

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

1 **SEC. 5. RULE OF CONSTRUCTION.**

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

      Passed the House of Representatives September 20,  
2019.

Attest:

CHERYL L. JOHNSON,

*Clerk.*