

Union Calendar No. 161

116TH CONGRESS
1ST SESSION

H. R. 1423

[Report No. 116–204]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2019

Mr. JOHNSON of Georgia (for himself, Ms. BARRAGÁN, Ms. BASS, Mr. BEYER, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BRINDISI, Mr. BROWN of Maryland, Ms. BROWNLEY of California, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON of Indiana, Mr. CARTWRIGHT, Mr. CASTEN of Illinois, Mr. CICILLINE, Mr. CISNEROS, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. COHEN, Mr. CONNOLLY, Mr. COURTNEY, Mr. CUMMINGS, Mr. CUNNINGHAM, Mr. DANNY K. DAVIS of Illinois, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. ENGEL, Ms. ESCOBAR, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Ms. FRANKEL, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOLDEN, Mr. GOMEZ, Mr. GONZALEZ of Texas, Mr. GREEN of Texas, Mr. GRIJALVA, Ms. HAALAND, Mr. HARDER of California, Mr. HASTINGS, Mr. HIGGINS of New York, Ms. HILL of California, Ms. KENDRA S. HORN of Oklahoma, Mr. HORSFORD, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JEFFRIES, Ms. JOHNSON of Texas, Ms. KAPTUR, Mr. KENNEDY, Mr. KILDEE, Mr. KIM, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHY, Ms. KUSTER of New Hampshire, Mr. LANGEVIN, Mrs. LAWRENCE, Ms. LEE of California, Mrs. LEE of Nevada, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. TED LIEU of California, Mr. LIPINSKI, Mr. LOEBSACK, Ms. LOFGREN, Mr. LOWENTHAL, Mr. LUJÁN, Mrs. LURIA, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Ms. MENG, Ms. MOORE, Ms. MUCARSEL-POWELL, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PANETTA, Mr. PAPPAS, Mr. PASCRELL, Mr. PERLMUTTER, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. RASKIN, Miss RICE of New York, Mr. RICHMOND, Mr. ROSE of New York, Mr.

ROUDA, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN, Ms. SÁNCHEZ, Mr. SARBANES, Mr. SCOTT of Virginia, Mr. SERRANO, Ms. SCHAKOWSKY, Mr. SHERMAN, Mr. SIRES, Mr. SMITH of Washington, Mr. SOTO, Ms. SPEIER, Mr. SWALWELL of California, Mr. TAKANO, Ms. TLAIB, Mr. TONKO, Mrs. TRAHAN, Mr. VAN DREW, Mr. VELA, Ms. VELÁZQUEZ, Mr. VISCLOSKY, Ms. WATERS, Ms. WASSERMAN SCHULTZ, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WILD, Mr. PALLONE, Ms. FINKENAUER, Ms. FUDGE, Mr. LAWSON of Florida, Mrs. DEMINGS, Mr. PAYNE, Mr. SABLAN, Mr. LEWIS, Mr. KHANNA, Ms. DEAN, Mrs. HAYES, Ms. WILSON of Florida, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 13, 2019

Additional sponsors: Mrs. TORRES of California, Mrs. DAVIS of California, Ms. CRAIG, Mr. AGUILAR, Ms. JUDY CHU of California, Ms. SLOTKIN, Mr. BISHOP of Georgia, Mr. DEFazio, Mr. CROW, Mr. MEEKS, Mr. GALLEG0, Mrs. AXNE, Mr. HECK, Mr. RUPPERSBERGER, Mr. ALLRED, Ms. ADAMS, Mr. YARMUTH, Mr. SEAN PATRICK MALONEY of New York, Ms. SCANLON, Mr. DESAULNIER, Mr. MALINOWSKI, Mr. CLAY, Ms. BLUNT ROCHESTER, Mr. QUIGLEY, Mr. CLEAVER, Mr. FOSTER, Ms. KELLY of Illinois, Mr. KILMER, Mr. NORCROSS, Mr. RUIZ, Mr. SCHIFF, Ms. SHALALA, Ms. SPANBERGER, Mr. SUOZZI, Ms. TITUS, Ms. WEXTON, Mrs. LOWEY, Ms. SHERRILL, Mr. HIMES, Mr. SCHNEIDER, Ms. SCHRIER, Ms. CASTOR of Florida, Mr. VEASEY, Mr. PETERS, Mr. BUTTERFIELD, Mr. CLYBURN, Mrs. FLETCHER, Mr. THOMPSON of Mississippi, Mr. LARSON of Connecticut, Mr. CASTRO of Texas, Ms. MATSUI, Mr. O'HALLERAN, Mr. CRIST, Mr. PHILLIPS, Mr. TRONE, Mr. MORELLE, Mr. MOULTON, Mr. STANTON, Ms. DAVIDS of Kansas, Mr. KIND, Mr. LAMB, Ms. HOULAHAN, Mr. NEAL, Mr. KEATING, Mr. SCHRADER, Ms. UNDERWOOD, Mr. LARSEN of Washington, Ms. STEVENS, Mr. GAETZ, Ms. TORRES SMALL of New Mexico, Mr. COSTA, Mrs. BUSTOS, Mr. GOTTHEIMER, Ms. GABBARD, and Mr. VARGAS

SEPTEMBER 13, 2019

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 28, 2019]

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 inter-*
 12 *fere with the right of individuals, workers, and small*
 13 *businesses to participate in a joint, class, or collective*
 14 *action related to an employment, consumer, antitrust,*
 15 *or civil rights dispute.*

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

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

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

“401. Definitions.

“402. No validity or enforceability.

23 **“§ 401. Definitions**

24 *“In this chapter—*

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

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

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

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

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

14 “(i) the Constitution of the United
15 States or the constitution of a State;

16 “(ii) any Federal, State, or local law
17 that prohibits discrimination on the basis of
18 race, sex, age, gender identity, sexual ori-
19 entation, disability, religion, national ori-
20 gin, or any legally protected status in edu-
21 cation, employment, credit, housing, public
22 accommodations and facilities, voting, vet-
23 erans or servicemembers, health care, or a
24 program funded or conducted by the Federal
25 Government or State government, including

1 any law referred to or described in section
2 62(e) of the Internal Revenue Code of 1986,
3 including parts of such law not explicitly
4 referenced in such section but that relate to
5 protecting individuals on any such basis;
6 and

7 “(B) in which at least 1 party alleging a
8 violation described in subparagraph (A) is one
9 or more individuals (or their authorized rep-
10 resentative), including one or more individuals
11 seeking certification as a class under rule 23 of
12 the Federal Rules of Civil Procedure or a com-
13 parable rule or provision of State law;

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

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

1 “(B)(i) the seller or provider of such prop-
2 erty, services, securities or other investments,
3 money, or credit; or

4 “(ii) a third party involved in the selling,
5 providing of, payment for, receipt or use of in-
6 formation about, or other relationship to any
7 such property, services, securities or other invest-
8 ments, money, or credit;

9 “(4) the term ‘employment dispute’ means a dis-
10 pute between one or more individuals (or their au-
11 thorized representative) and a person arising out of
12 or related to the work relationship or prospective
13 work relationship between them, including a dispute
14 regarding the terms of or payment for, advertising of,
15 recruiting for, referring of, arranging for, or dis-
16 cipline or discharge in connection with, such work,
17 regardless of whether the individual is or would be
18 classified as an employee or an independent con-
19 tractor with respect to such work, and including a
20 dispute arising under any law referred to or described
21 in section 62(e) of the Internal Revenue Code of 1986,
22 including parts of such law not explicitly referenced
23 in such section but that relate to protecting individ-
24 uals on any such basis, and including a dispute in
25 which an individual or individuals seek certification

1 *as a class under rule 23 of the Federal Rules of Civil*
2 *Procedure or as a collective action under section 16(b)*
3 *of the Fair Labor Standards Act, or a comparable*
4 *rule or provision of State law;*

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

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

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

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

23 “(b) *APPLICABILITY.*—

24 “(1) *IN GENERAL.*—*An issue as to whether this*
25 *chapter applies with respect to a dispute shall be de-*

1 *terminated under Federal law. The applicability of this*
2 *chapter to an agreement to arbitrate and the validity*
3 *and enforceability of an agreement to which this*
4 *chapter applies shall be determined by a court, rather*
5 *than an arbitrator, irrespective of whether the party*
6 *resisting arbitration challenges the arbitration agree-*
7 *ment specifically or in conjunction with other terms*
8 *of the contract containing such agreement, and irre-*
9 *spective of whether the agreement purports to delegate*
10 *such determinations to an arbitrator.*

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

21 *(b) TECHNICAL AND CONFORMING AMENDMENTS.—*

22 *(1) IN GENERAL.—Title 9 of the United States*
23 *Code is amended—*

24 *(A) in section 1 by striking “of seamen,”*
25 *and all that follows through “interstate com-*

1 merce,” and inserting in its place “of individ-
 2 uals, regardless of whether such individuals are
 3 designated as employees or independent contrac-
 4 tors for other purposes”,

5 (B) in section 2 by inserting “or as other-
 6 wise provided in chapter 4” before the period at
 7 the end,

8 (C) in section 208—

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

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

16 (D) in section 307—

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

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

23 (2) *TABLE OF SECTIONS.*—

24 (A) *CHAPTER 2.*—The table of sections of
 25 chapter 2 of title 9, United States Code, is

1 *amended by striking the item relating to section*
2 *208 and inserting the following:*

“208. Application.”.

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

“307. Application.”.

7 *(3) TABLE OF CHAPTERS.—The table of chapters*
8 *of title 9, United States Code, is amended by adding*
9 *at the end the following:*

“4. Arbitration of employment, consumer, antitrust, and civil rights disputes”.

10 **SEC. 4. EFFECTIVE DATE.**

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

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