

117TH CONGRESS  
1ST SESSION

# H. R. 963

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

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## 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

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## 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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