

112TH CONGRESS
1ST SESSION

H. R. 1873

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

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 2011

Mr. JOHNSON of Georgia (for himself, Mr. JACKSON of Illinois, Mr. GRIJALVA, Ms. LEE of California, Mr. FILNER, Mr. MCNERNEY, Mr. SERRANO, Mr. NADLER, Ms. WATERS, Mr. PRICE of North Carolina, Ms. TSONGAS, Mr. BRADY of Pennsylvania, Mr. SCOTT of Virginia, Ms. SCHAKOWSKY, Mr. GONZALEZ, Mr. LYNCH, Ms. WASSERMAN SCHULTZ, Mr. BRALEY of Iowa, Mr. VAN HOLLEN, Ms. NORTON, Mr. AL GREEN of Texas, Mr. DOYLE, Ms. HIRONO, Mr. LOEBSACK, Ms. WILSON of Florida, Mr. BOSWELL, Ms. ZOE LOFGREN of California, Mr. MCDERMOTT, Mr. CONYERS, Ms. JACKSON LEE of Texas, Mr. HASTINGS of Florida, Ms. CHU, Ms. BALDWIN, Mrs. NAPOLITANO, Mrs. MALONEY, Mr. ELLISON, Mr. HONDA, Mr. STARK, Mr. HEINRICH, Mr. KUCINICH, Ms. SUTTON, Mr. CARNAHAN, Mr. VISCLOSKY, Mr. PIERLUISI, Ms. RICHARDSON, Mr. GUTIERREZ, Mr. TOWNS, Mr. KILDEE, Mr. CUMMINGS, Mr. DAVIS of Illinois, Mr. THOMPSON of Mississippi, Ms. WOOLSEY, Ms. CLARKE of New York, Ms. BASS of California, Ms. PINGREE of Maine, Mr. DEUTCH, Mr. BLUMENAUER, Mr. DOGGETT, Mr. LANGEVIN, Mr. WATT, Mr. FRANK of Massachusetts, Mr. SARBANES, and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Arbitration Fairness
3 Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

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

11 (2) A series of decisions by the Supreme Court
12 of the United States have changed the meaning of
13 the Act so that it now extends to consumer disputes
14 and employment disputes.

15 (3) Most consumers and employees have little
16 or no meaningful choice whether to submit their
17 claims to arbitration. Often, consumers and employ-
18 ees are not even aware that they have given up their
19 rights.

20 (4) Mandatory arbitration undermines the de-
21 velopment of public law because there is inadequate
22 transparency and inadequate judicial review of arbi-
23 trators’ decisions.

24 (5) Arbitration can be an acceptable alternative
25 when consent to the arbitration is truly voluntary,
26 and occurs after the dispute arises.

1 **SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, AND**
2 **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, AND CIVIL RIGHTS**
7 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

8 **“§ 401. Definitions**

9 “In this chapter—

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

12 “(A) arising under—

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

15 “(ii) a Federal or State statute that
16 prohibits discrimination on the basis of
17 race, sex, disability, religion, national ori-
18 gin, or any invidious basis in education,
19 employment, credit, housing, public accom-
20 modations and facilities, voting, or pro-
21 gram funded or conducted by the Federal
22 Government or State government, includ-
23 ing any statute enforced by the Civil
24 Rights Division of the Department of Jus-

1 tice and any statute enumerated in section
2 62(e) of the Internal Revenue Code of
3 1986 (relating to unlawful discrimination);
4 and

5 “(B) in which at least 1 party alleging a
6 violation of the Constitution of the United
7 States, a State constitution, or a statute pro-
8 hibiting discrimination is an individual;

9 “(2) the term ‘consumer dispute’ means a dis-
10 pute between an individual who seeks or acquires
11 real or personal property, services (including services
12 relating to securities and other investments), money,
13 or credit for personal, family, or household purposes
14 and the seller or provider of such property, services,
15 money, or credit;

16 “(3) the term ‘employment dispute’ means a
17 dispute between an employer and employee arising
18 out of the relationship of employer and employee as
19 defined in section 3 of the Fair Labor Standards
20 Act of 1938 (29 U.S.C. 203); and

21 “(4) the term ‘predispute arbitration agree-
22 ment’ means any agreement to arbitrate a dispute
23 that had not yet arisen at the time of the making
24 of the agreement.

1 **“§ 402. Validity and enforceability**

2 “(a) IN GENERAL.—Notwithstanding any other pro-
3 vision of this title, no predispute arbitration agreement
4 shall be valid or enforceable if it requires arbitration of
5 an employment dispute, consumer dispute, or civil rights
6 dispute.

7 “(b) APPLICABILITY.—

8 “(1) IN GENERAL.—An issue as to whether this
9 chapter applies to an arbitration agreement shall be
10 determined under Federal law. The applicability of
11 this chapter to an agreement to arbitrate and the
12 validity and enforceability of an agreement to which
13 this chapter applies shall be determined by a court,
14 rather 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 “(2) COLLECTIVE BARGAINING AGREEMENTS.—
19 Nothing in this chapter shall apply to any arbitra-
20 tion provision in a contract between an employer and
21 a labor organization or between labor organizations,
22 except that no such arbitration provision shall have
23 the effect of waiving the right of an employee to
24 seek judicial enforcement of a right arising under a
25 provision of the Constitution of the United States, a

1 State constitution, or a Federal or State statute, or
2 public policy arising therefrom.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

6 (A) in section 1, by striking “of seamen,”
7 and all that follows through “interstate com-
8 merce”;

9 (B) in section 2, by inserting “or as other-
10 wise provided in chapter 4” before the period at
11 the end;

12 (C) in section 208—

13 (i) in the section heading, by striking
14 “**Chapter 1; residual application**”
15 and inserting “**Application**”; and

16 (ii) by adding at the end the fol-
17 lowing: “This chapter applies to the extent
18 that this chapter is not in conflict with
19 chapter 4.”; and

20 (D) in section 307—

21 (i) in the section heading, by striking
22 “**Chapter 1; residual application**”
23 and inserting “**Application**”; and

24 (ii) by adding at the end the fol-
25 lowing: “This chapter applies to the extent

1 that this chapter is not in conflict with
2 chapter 4.”.

3 (2) TABLE OF SECTIONS.—

4 (A) CHAPTER 2.—The table of sections for
5 chapter 2 of title 9, United States Code, is
6 amended by striking the item relating to section
7 208 and inserting the following:

“208. Application.”.

8 (B) CHAPTER 3.—The table of sections for
9 chapter 3 of title 9, United States Code, is
10 amended by striking the item relating to section
11 307 and inserting the following:

“307. Application.”.

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

“4. Arbitration of employment, consumer, and civil rights disputes 401”.

15 **SEC. 4. EFFECTIVE DATE.**

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

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