

118TH CONGRESS
1ST SESSION

H. R. 2953

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2023

Mr. JOHNSON of Georgia (for himself, Ms. TLAIB, Ms. SCHAKOWSKY, Ms. VELÁZQUEZ, Mr. DOGGETT, Ms. MOORE of Wisconsin, Mr. THANEDAR, Mr. MFUME, Ms. PINGREE, Mr. NADLER, Mr. SCHIFF, Ms. ROSS, Ms. LOIS FRANKEL of Florida, Mr. BEYER, Ms. NORTON, Ms. BROWNLEY, Ms. BONAMICI, Mr. BOYLE of Pennsylvania, Ms. SCANLON, Mr. SWALWELL, Mr. CARSON, Mr. EVANS, Ms. BUSH, Ms. CROCKETT, Mr. GARCÍA of Illinois, Mr. FOSTER, Mr. SARBANES, Mr. QUIGLEY, Mr. DESAULNIER, Mr. ROBERT GARCIA of California, Mrs. TRAHAN, Mr. CÁRDENAS, Mr. GOMEZ, Mr. HIGGINS of New York, Ms. DEGETTE, Ms. PORTER, Mr. CASAR, Mr. TRONE, Mr. STANTON, Mr. PHILLIPS, Ms. MCCOLLUM, Mr. ESPAILLAT, Mr. ALLRED, Mr. GOLDEN of Maine, Mr. COHEN, Mr. CASTEN, Ms. GARCIA of Texas, Ms. STEVENS, Mrs. MCBATH, Mr. PAYNE, Ms. KAMLAGER-DOVE, Ms. DEAN of Pennsylvania, Ms. PRESSLEY, Ms. WEXTON, Ms. LEE of California, Mr. SHERMAN, Mr. SCOTT of Virginia, Mr. GOLDMAN of New York, Ms. OMAR, Mr. GOTTHEIMER, Mrs. McCLELLAN, Ms. JAYAPAL, Mr. CARTWRIGHT, Mr. KRISHNAMOORTHY, Mr. CARTER of Louisiana, Mr. KILDEE, Ms. SÁNCHEZ, Ms. LEGER FERNANDEZ, Mr. POCAN, Mr. TONKO, Ms. WILSON of Florida, Ms. WILLIAMS of Georgia, Ms. KUSTER, Mr. CLEAVER, Ms. BARRAGÁN, Mr. NORCROSS, Ms. BLUNT ROCHESTER, Mr. KEATING, Mr. SMITH of Washington, Ms. SCHOLTEN, Mr. SOTO, Mr. KILMER, Mr. NEGUSE, and Mr. MORELLE) 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Forced Arbitration In-
 5 justice Repeal Act of 2023” or the “FAIR Act of 2023”.

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.

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 5—ARBITRATION OF EMPLOY-**
 21 **MENT, CONSUMER, ANTITRUST, AND**
 22 **CIVIL RIGHTS DISPUTES**

“Sec.

“501. Definitions.

“502. No validity or enforceability.

23 **“§ 501. 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
10 or 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
18 of race, sex, age, gender identity, sexual
19 orientation, disability, religion, national or-
20 igin, 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 Fed-
25 eral Government or State government, in-

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

7 “(B) in which at least one 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),
19 securities 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
23 Federal Rules of Civil Procedure or a com-
24 parable 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 in-
8 vestments, money, or credit;

9 “(4) the term ‘employment dispute’ means a
10 dispute between one or more individuals (or their
11 authorized representative) and a person arising out
12 of 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
15 of, 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 de-
21 scribed in section 62(e) of the Internal Revenue
22 Code of 1986, including parts of such law not explic-
23 itly referenced in such section but that relate to pro-
24 tecting individuals on any such basis, and including
25 a dispute in which an individual or individuals seek

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

5 “(5) the term ‘predispute arbitration agree-
6 ment’ means an agreement to arbitrate a dispute
7 that has not yet arisen at the time of the making
8 of the agreement; 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 collec-
14 tive action in a judicial, arbitral, administrative, or
15 other forum, concerning a dispute that has not yet
16 arisen at the time of the making of the agreement.

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

18 “(a) IN GENERAL.—Notwithstanding any other pro-
19 vision 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
6 party resisting arbitration challenges the arbitration
7 agreement specifically or in conjunction with other
8 terms of the contract containing such agreement,
9 and irrespective of whether the agreement purports
10 to delegate 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
17 judicial enforcement of a right arising under a provi-
18 sion of the Constitution of the United States, a
19 State constitution, or a Federal or State statute, or
20 public policy 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 con-
4 tractors for other purposes”;

5 (B) in section 2 by striking “chapter 4”
6 and inserting “chapter 4 or 5”;

7 (C) in section 208 by striking “chapter 4”
8 and inserting “chapter 4 or 5”; and

9 (D) in section 307 by striking “chapter 4”
10 and inserting “chapter 4 or 5”.

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

“5. Arbitration of Employment, Consumer, Antitrust, and Civil Rights
Disputes 501”.

14 **SEC. 4. EFFECTIVE DATE.**

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

19 **SEC. 5. RULE OF CONSTRUCTION.**

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

