

117TH CONGRESS  
1ST SESSION

# S. 505

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 1, 2021

Mr. BLUMENTHAL (for himself, Mr. MARKEY, Mr. SCHATZ, Mr. WHITEHOUSE, Mr. BROWN, Mr. WYDEN, Mr. MERKLEY, Ms. HIRONO, Mr. CASEY, Ms. WARREN, Mr. BOOKER, Mr. LEAHY, Mr. MENENDEZ, Ms. CANTWELL, Ms. CORTEZ MASTO, Mr. MURPHY, Ms. ROSEN, Mr. REED, Mr. DURBIN, Mr. VAN HOLLEN, Mrs. GILLIBRAND, Mr. COONS, Ms. BALDWIN, Ms. KLOBUCHAR, Mr. HEINRICH, Ms. SMITH, Mrs. FEINSTEIN, Ms. DUCKWORTH, Mrs. SHAHEEN, Mr. CARPER, Ms. HASSAN, Mr. PETERS, Mr. BENNET, Mr. KAINE, Mr. SANDERS, Mr. PADILLA, Mrs. MURRAY, Mr. LUJÁN, Mr. WARNOCK, and Mr. OSSOFF) introduced the following bill; which was read twice and 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”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to—

3 (1) prohibit predispute arbitration agreements  
4 that force arbitration of future employment, con-  
5 sumer, antitrust, or civil rights disputes; and

6 (2) prohibit agreements and practices that  
7 interfere with the right of individuals, workers, and  
8 small businesses to participate in a joint, class, or  
9 collective action related to an employment, con-  
10 sumer, antitrust, or civil rights dispute.

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

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

15 **“CHAPTER 4—ARBITRATION OF EMPLOY-  
16 MENT, CONSUMER, ANTITRUST, AND  
17 CIVIL RIGHTS DISPUTES**

“Sec.

“401. Definitions.

“402. No validity or enforceability.

18 **“§ 401. Definitions**

19 “In this chapter—

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

22 “(A) arising from an alleged violation of  
23 the antitrust laws (as defined in subsection (a)

1 of the first section of the Clayton Act (15  
2 U.S.C. 12(a)) or State antitrust laws; and

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

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

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

10 “(i) the Constitution of the United  
11 States or the constitution of a State; or

12 “(ii) any Federal, State, or local law  
13 that prohibits discrimination on the basis  
14 of race, sex, age, gender identity, sexual  
15 orientation, disability, religion, national or-  
16 igin, or any legally protected status in edu-  
17 cation, employment, credit, housing, public  
18 accommodations and facilities, voting, vet-  
19 erans or servicemembers, health care, or a  
20 program funded or conducted by the Fed-  
21 eral Government or a State government,  
22 including any law referred to or described  
23 in section 62(e) of the Internal Revenue  
24 Code of 1986, including parts of such law  
25 not explicitly referenced in such section but

1           that relate to protecting individuals on any  
2           such basis; and

3           “(B) in which at least 1 party alleging a  
4           violation described in subparagraph (A) is an  
5           individual (or an authorized representative of  
6           an individual), including an individual seeking  
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;

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

12                 “(A) 1 or more individuals, including an  
13                 individual who seeks certification as a class  
14                 under rule 23 of the Federal Rules of Civil Pro-  
15                 cedure or a comparable rule or provision of  
16                 State law, who seek or acquire real or personal  
17                 property, services (including services related to  
18                 digital technology), securities or other invest-  
19                 ments, money, or credit for personal, family, or  
20                 household purposes; and

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

24                 “(ii) a third party involved in the selling,  
25                 providing of, payment for, receipt or use of in-

1 formation about, or other relationship to any  
2 such property, services, securities or other in-  
3 vestments, money, or credit;

4 “(4) the term ‘employment dispute’—

5 “(A) means a dispute between 1 or more  
6 individuals (or their authorized representative)  
7 and a person arising out of or related to the  
8 work relationship or prospective work relation-  
9 ship between them, including a dispute regard-  
10 ing the terms of or payment for, advertising of,  
11 recruiting for, referring of, arranging for, or  
12 discipline or discharge in connection with, such  
13 work, regardless of whether the individual is or  
14 would be classified as an employee or an inde-  
15 pendent contractor with respect to such work;  
16 and

17 “(B) includes—

18 “(i) a dispute arising under any law  
19 referred to or described in section 62(e) of  
20 the Internal Revenue Code of 1986, includ-  
21 ing parts of such law not explicitly ref-  
22 erenced in such section but that relate to  
23 protecting individuals on any such basis;  
24 and

1           “(ii) a dispute in which an individual  
2           seeks certification as a class under rule 23  
3           of the Federal Rules of Civil Procedure or  
4           as a collective action under section 16(b)  
5           of the Fair Labor Standards Act (29  
6           U.S.C. 216(b)), or a comparable rule or  
7           provision of State law;

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

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

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

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

1 “(b) APPLICABILITY.—

2 “(1) IN GENERAL.—An issue as to whether this  
3 chapter applies with respect to a dispute shall be de-  
4 termined under Federal law. The applicability of this  
5 chapter to an agreement to arbitrate and the validity  
6 and enforceability of an agreement to which this  
7 chapter applies shall be determined by a court, rath-  
8 er than an arbitrator, irrespective of whether the  
9 party resisting arbitration challenges the arbitration  
10 agreement specifically or in conjunction with other  
11 terms of the contract containing such agreement,  
12 and irrespective of whether the agreement purports  
13 to delegate such determinations to an arbitrator.

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

24 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

3           (A) in section 1, by striking “of seamen,”  
4 and all that follows through “interstate com-  
5 merce” and inserting “of individuals, regardless  
6 of whether the individuals are designated as  
7 employees or independent contractors for other  
8 purposes”;

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 APPLICA-**  
15 **TION**” and inserting “**APPLICATION**”;  
16 and

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

21           (D) in section 307—

22           (i) in the section heading, by striking  
23 “**CHAPTER 1; RESIDUAL APPLICA-**  
24 **TION**” and inserting “**APPLICATION**”;  
25 and



1 (ii) by adding at the end the fol-  
2 lowing: “This chapter applies to the extent  
3 that this chapter is not in conflict with  
4 chapter 4.”.

5 (2) TABLE OF SECTIONS.—

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

“208. Application.”.

10 (B) CHAPTER 3.—The table of sections for  
11 chapter 3 of title 9, United States Code, is  
12 amended by striking the item relating to section  
13 307 and inserting the following:

“307. Application.”.

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

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

17 **SEC. 4. EFFECTIVE DATE.**

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

