

116TH CONGRESS  
2D SESSION

# S. 3400

To amend title 49, United States Code, to prohibit Amtrak from including mandatory arbitration clauses in contracts of carriage, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

Mr. BLUMENTHAL (for himself, Mr. MARKEY, Mr. WHITEHOUSE, Ms. HARRIS, Ms. HIRONO, Mr. VAN HOLLEN, Mr. MERKLEY, Mr. PETERS, Mr. SANDERS, Mr. BROWN, Mr. DURBIN, Mr. BOOKER, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend title 49, United States Code, to prohibit Amtrak from including mandatory arbitration clauses in contracts of carriage, and for other purposes.

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 “Ending Passenger Rail  
5 Forced Arbitration Act”.

1 **SEC. 2. NO VALIDITY OR ENFORCEABILITY OF ARBITRA-**  
 2 **TION AGREEMENTS FOR CONSUMER AND**  
 3 **CIVIL RIGHTS DISPUTES.**

4 (a) IN GENERAL.—Chapter 243 of title 49, United  
 5 States Code, is amended by adding at the end the fol-  
 6 lowing:

7 **“§ 24323. Prohibition on mandatory arbitration**

8 “(a) PURPOSES.—The purposes of this section are—

9 “(1) to prohibit predispute arbitration agree-  
 10 ments that force arbitration of consumer and civil  
 11 rights disputes between Amtrak and customers of  
 12 Amtrak; and

13 “(2) to prohibit agreements and practices that  
 14 interfere with the right of customers to participate  
 15 in a joint, class, or collective action related to con-  
 16 sumer and civil rights disputes between Amtrak and  
 17 customers of Amtrak.

18 “(b) DEFINITIONS.—In this section:

19 “(1) AMTRAK.—The term ‘Amtrak’ refers to  
 20 the National Railroad Passenger Corporation.

21 “(2) CIVIL RIGHTS DISPUTE.—The term ‘civil  
 22 rights dispute’ means a dispute—

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

24 “(i) the Constitution of the United  
 25 States or the constitution of a State; or

1           “(ii) any Federal, State, or local law  
2           that prohibits discrimination on the basis  
3           of—

4                   “(I) race, sex, age, gender iden-  
5                   tity, sexual orientation, disability, reli-  
6                   gion, or national origin; or

7                   “(II) any legally protected status  
8                   in education, employment, credit,  
9                   housing, public accommodations and  
10                  facilities, voting, veterans and  
11                  servicemembers, health care, or a pro-  
12                  gram funded or conducted by the  
13                  Federal Government or a State gov-  
14                  ernment, including any law referred to  
15                  or described in section 62(e) of the  
16                  Internal Revenue Code of 1986, in-  
17                  cluding parts of such law not explic-  
18                  itly referenced in such section that re-  
19                  late to protecting individuals on any  
20                  such basis; and

21                  “(B) in which at least 1 party alleging a  
22                  violation described in subparagraph (A) consists  
23                  of 1 or more customers (or their authorized  
24                  representative), including 1 or more individuals  
25                  seeking certification as a class under rule 23 of

1 the Federal Rules of Civil Procedure or a com-  
2 parable rule or provision of State law.

3 “(3) CONSUMER DISPUTE.—The term ‘con-  
4 sumer dispute’ means any dispute, including all  
5 claims related to personal injuries, between Amtrak  
6 and 1 or more customers who seek or acquire—

7 “(A) services and accommodations pro-  
8 vided by Amtrak; or

9 “(B) carriage on Amtrak trains and equip-  
10 ment.

11 “(4) CUSTOMER.—The term ‘customer’ means  
12 any individual, except for an employee of Amtrak  
13 and without regard to whether the individual is a  
14 minor or paid for the transportation, who seeks or  
15 acquires—

16 “(A) services and accommodations pro-  
17 vided by Amtrak; or

18 “(B) carriage on Amtrak trains and equip-  
19 ment.

20 “(5) PREDISPUTE ARBITRATION AGREEMENT.—  
21 The term ‘predispute arbitration agreement’ means  
22 an agreement to arbitrate a dispute that has not yet  
23 arisen at the time of the making of the agreement.

24 “(6) PREDISPUTE JOINT-ACTION WAIVER.—The  
25 term ‘predispute joint-action waiver’ means an

1 agreement, whether or not part of a predispute arbi-  
2 tration agreement, that would prohibit, or waive the  
3 right of, one of the parties to the agreement to par-  
4 ticipate in a joint, class, or collective action in a ju-  
5 dicial, arbitral, administrative, or other forum, con-  
6 cerning a dispute that has not yet arisen at the time  
7 of the making of the agreement.

8 “(7) RAIL PASSENGER CARRIER.—The term  
9 ‘rail passenger carrier’ means a rail carrier pro-  
10 viding—

11 “(A) interstate intercity rail passenger  
12 transportation (as such term is defined in sec-  
13 tion 24102); or

14 “(B) interstate or intrastate high-speed  
15 rail (as such term is defined in section 26105)  
16 transportation, except that such term does not  
17 include a tourist, historic, scenic, or excursion  
18 rail carrier.

19 “(c) IN GENERAL.—

20 “(1) IN GENERAL.—All predispute arbitration  
21 agreements and predispute joint-action waivers shall  
22 be invalid and unenforceable with respect to a con-  
23 sumer or civil rights dispute between Amtrak (in its  
24 capacity as a rail passenger carrier) and a customer  
25 of Amtrak.

1 “(2) APPLICABILITY.—

2 “(A) IN GENERAL.—A determination of  
3 whether this section applies to a particular dis-  
4 pute shall be made in accordance with Federal  
5 law.

6 “(B) AUTHORITY OF COURT.—The appli-  
7 cability of this section to an agreement to arbi-  
8 trate and the validity and enforceability of an  
9 agreement to which this section applies shall be  
10 determined by a court, rather than by an arbi-  
11 trator, regardless of whether—

12 “(i) the party resisting arbitration  
13 challenges the arbitration agreement spe-  
14 cifically or in conjunction with other terms  
15 of the contract containing such agreement;  
16 and

17 “(ii) the agreement purports to dele-  
18 gate such determinations to an arbitrator.

19 “(C) EXCLUSION.—Nothing in this section  
20 shall apply to a predispute arbitration agree-  
21 ment or joint action waiver invoked in connec-  
22 tion with any dispute subject to the Railway  
23 Labor Act (45 U.S.C. 151 et seq.).”

24 (b) EFFECTIVE DATE.—The amendments made by  
25 subsection (a)—

1           (1) shall take effect on the date of the enact-  
2           ment of this Act; and

3           (2) shall apply with respect to any dispute or  
4           claim that arises or accrues on or after such date.

5           (c) CLERICAL AMENDMENT.—The analysis for chap-  
6           ter 243 of title 49, United States Code, is amended by  
7           adding at the end the following:

“24323. Prohibition on mandatory arbitration.”.

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