

117TH CONGRESS
1ST SESSION

S. 505

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

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

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

(A) in section 1, by striking “of seamen,” and all that follows through “interstate commerce” and inserting “of individuals, regardless of whether the individuals are designated as employees or independent contractors for other purposes”;

(B) in section 2, by inserting “or as otherwise provided in chapter 4” before the period at the end;

(C) in section 208—

(i) in the section heading, by striking “**CHAPTER 1; RESIDUAL APPLICATION**” and inserting “**APPLICATION**”; and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”; and

(D) in section 307—

(i) in the section heading, by striking “**CHAPTER 1; RESIDUAL APPLICATION**” and inserting “**APPLICATION**”; 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.

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