

116TH CONGRESS
1ST SESSION

S. 610

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2019

Mr. BLUMENTHAL (for himself, Mr. MARKEY, Mr. SCHATZ, Mr. WHITEHOUSE, Mr. DURBIN, Mr. BROWN, Ms. SMITH, Ms. HARRIS, Mr. UDALL, Mr. VAN HOLLEN, Ms. KLOBUCHAR, Mr. HEINRICH, Ms. HASSAN, Mr. WYDEN, Mr. MERKLEY, Ms. HIRONO, Mr. CASEY, Mr. KAINE, Ms. WARREN, Mr. BOOKER, Mr. REED, Ms. CORTEZ MASTO, Mrs. SHAHEEN, Mr. MENENDEZ, Mrs. GILLIBRAND, Mrs. MURRAY, Ms. DUCKWORTH, Ms. BALDWIN, Mr. LEAHY, Mr. MURPHY, Mr. SANDERS, Ms. ROSEN, and Mr. PETERS) 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”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

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

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

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

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

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

“Sec.

“401. Definitions.

“402. No validity or enforceability.

16 **“§ 401. Definitions**

17 “In this chapter—

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

20 “(A) arising from an alleged violation of
21 the antitrust laws (as defined in subsection (a)
22 of the first section of the Clayton Act (15
23 U.S.C. 12(a)) or State antitrust laws; and

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

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

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

8 “(i) the Constitution of the United
9 States or the constitution of a State; or

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

1 “(B) in which at least 1 party alleging a
2 violation described in subparagraph (A) is an
3 individual (or an authorized representative of
4 an individual), including an individual seeking
5 certification as a class under rule 23 of the
6 Federal Rules of Civil Procedure or a com-
7 parable rule or provision of State law;

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

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

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

22 “(ii) a third party involved in the selling,
23 providing of, payment for, receipt or use of in-
24 formation about, or other relationship to any

1 such property, services, securities or other in-
2 vestments, money, or credit;

3 “(4) the term ‘employment dispute’—

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

16 “(B) includes—

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

24 “(ii) a dispute in which an individual
25 seeks certification as a class under rule 23

1 of the Federal Rules of Civil Procedure or
 2 as a collective action under section 16(b)
 3 of the Fair Labor Standards Act (29
 4 U.S.C. 216(b)), or a comparable rule or
 5 provision of State law;

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

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

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

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

24 “(b) APPLICABILITY.—

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

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

23 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

24 (1) IN GENERAL.—Title 9 of the United States
 25 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

(ii) by adding at the end the following: “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 for chap-
13 ters of title 9, United States Code, is amended by
14 adding at the end the following:

**“4. Arbitration of employment, consumer, antitrust, 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 or accrues on or after such date.

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