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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Georgia (for himself and _____) introduced the following bill;
which was referred to the Committee on _____

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” or “FAIR 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**

“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) or State
23 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;

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 State government, in-
20 cluding any law referred to or described in
21 section 62(e) of the Internal Revenue Code
22 of 1986, including parts of such law not
23 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 one
3 or more individuals (or their authorized rep-
4 resentative), including one or more individuals
5 seeking certification as a class under rule 23 of
6 the 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) one or more individuals who seek or
11 acquire real or personal property, services (in-
12 cluding services related to digital technology),
13 securities or other investments, money, or credit
14 for personal, family, or household purposes in-
15 cluding an individual or individuals who seek
16 certification as a class under rule 23 of the
17 Federal Rules of Civil Procedure or a com-
18 parable rule or provision of State law; 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’ means a
4 dispute between one or more individuals (or their
5 authorized representative) and a person arising out
6 of or related to the work relationship or prospective
7 work relationship between them, including a dispute
8 regarding the terms of or payment for, advertising
9 of, recruiting for, referring of, arranging for, or dis-
10 cipline or discharge in connection with, such work,
11 regardless of whether the individual is or would be
12 classified as an employee or an independent con-
13 tractor with respect to such work, and including a
14 dispute arising under any law referred to or de-
15 scribed in section 62(e) of the Internal Revenue
16 Code of 1986, including parts of such law not explic-
17 itly referenced in such section but that relate to pro-
18 tecting individuals on any such basis, and including
19 a dispute in which an individual or individuals seek
20 certification as a class under rule 23 of the Federal
21 Rules of Civil Procedure or as a collective action
22 under section 16(b) of the Fair Labor Standards
23 Act, or a comparable rule or provision of State law;

24 “(5) the term ‘predispute arbitration agree-
25 ment’ means an agreement to arbitrate a dispute

1 that has not yet arisen at the time of the making
2 of the agreement; and

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

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

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

17 “(b) APPLICABILITY.—

18 “(1) IN GENERAL.—An issue as to whether this
19 chapter applies with respect to a dispute shall be de-
20 termined under Federal law. The applicability of this
21 chapter to an agreement to arbitrate and the validity
22 and enforceability of an agreement to which this
23 chapter applies shall be determined by a court, rath-
24 er than an arbitrator, irrespective of whether the
25 party resisting arbitration challenges the arbitration

1 agreement specifically or in conjunction with other
2 terms of the contract containing such agreement,
3 and irrespective of whether the agreement purports
4 to delegate such determinations to an arbitrator.

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

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

18 (A) in section 1 by striking “of seamen,”
19 and all that follows through “interstate com-
20 merce,” and inserting in its place “of individ-
21 uals, regardless of whether such individuals are
22 designated as employees or independent con-
23 tractors for other purposes”,

1 (B) in section 2 by inserting “or as other-
2 wise provided in chapter 4” before the period at
3 the end,

4 (C) in section 208—

5 (i) in the section heading by striking
6 **“CHAPTER 1; RESIDUAL APPLICA-**
7 **TION”** and inserting **“APPLICATION”**,
8 and

9 (ii) by adding at the end the fol-
10 lowing: “This chapter applies to the extent
11 that this chapter is not in conflict with
12 chapter 4.”, and

13 (D) in section 307—

14 (i) in the section heading by striking
15 **“CHAPTER 1; RESIDUAL APPLICA-**
16 **TION”** and inserting **“APPLICATION”**,
17 and

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

22 (2) TABLE OF SECTIONS.—

23 (A) CHAPTER 2.—The table of sections of
24 chapter 2 of title 9, United States Code, is

1 amended by striking the item relating to section
2 208 and inserting the following:

“208. Application.”.

3 (B) CHAPTER 3.—The table of sections of
4 chapter 3 of title 9, United States Code, is
5 amended by striking the item relating to section
6 307 and inserting the following:

“307. Application.”.

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

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

10 **SEC. 4. EFFECTIVE DATE.**

11 This Act, and the amendments made by this Act,
12 shall take effect on the date of enactment of this Act and
13 shall apply with respect to any dispute or claim that arises
14 or accrues on or after such date.