



H.R. 963, the FAIR Act

H.R. 963, the “Forced Arbitration Injustice Repeal Act” or the “FAIR Act,” would prohibit the enforcement of mandatory, pre-dispute arbitration (“forced arbitration”) provisions in contracts involving consumer, employment, antitrust, and civil rights disputes. This critically important measure would restore access to justice for millions of Americans who are currently stripped of their rights to seek justice and accountability and are forced to attempt to bring their cases against corporations in a private system of arbitration that systematically favors the company over the individual. In the 116th Congress, an identical piece of legislation was passed out of the House with bipartisan support.

- **Forced Arbitration Clauses Are Ubiquitous, Depriving Americans of Their Rights to Hold Corporations Publicly Accountable.** Over the past several decades, forced arbitration clauses have become ubiquitous in everyday contracts. Often buried deep within the fine print of employment and consumer contracts, forced arbitration deprives millions of Americans of their day in court to enforce state and federal rights. According to a 2017 report by the Economic Policy Institute, 60.1 million workers—the majority of non-union employees in the private sector—have signed away their rights through forced arbitration clauses. A study by the American Association of Justice found that only 382 consumers won a monetary award each year on average, making it more likely that an American consumer will be struck by lightning than win in forced arbitration.
- **Forced Arbitration Circumvents Fundamental Statutory Rights and Protections.** Many victims of corporate wrongdoing are unable to enforce their rights due to forced arbitration clauses imposed on them as a condition of employment or for using everyday goods and services. As the Economic Policy Institute has reported, this trend has critically weakened statutory protections by “barring access to the courts for all types of legal claims, including those based on Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Family and Medical Leave Act, and the Fair Labor Standards Act.”
- **Forced Arbitration Is a Secretive Process Without Legal Safeguards or Oversight.** Unlike the justice system, the results of arbitration cases are often secret. In forced arbitration, a company may increase the expense of bringing a claim, limit discovery, or eliminate protections afforded litigants, such as the rules related to the geographic proximity of the resolution forum, civil procedure, access to counsel, and the right to bring similar claims jointly. The company imposing arbitration often selects the presiding arbitrator or arbitration provider, creating a conflict of interest in which the purportedly neutral arbitrator may be motivated by the prospect of obtaining repeat business from the company rather than fair assessment of the claim.

The FAIR Act is supported by a broad coalition of numerous public-interest organizations, including Public Citizen, Consumer Federation of America, the American Association of Justice, and the Leadership Conference on Civil and Human Rights. 84% of Americans across the political spectrum support ending forced arbitration in employment and consumer disputes.

Prepared by House Judiciary Committee Democratic Staff

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