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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Forced Arbitration Injustice Repeal Act” or “FAIR Act”.

4 SEC. 2. PURPOSES.

5 The purposes of this Act are to—
(1) prohibit predispute arbitration agreements that force arbitration of future employment, consumer, antitrust, or civil rights disputes, and

(2) prohibit agreements and practices that interfere with the right of individuals, workers, and small businesses to participate in a joint, class, or collective action related to an employment, consumer, antitrust, or civil rights dispute.

SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES.

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

"CHAPTER 4—ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES"

"§ 401. Definitions

"In this chapter—

(1) the term ‘antitrust dispute’ means a dispute—

(A) arising from an alleged violation of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act) or State antitrust laws; and
“(B) in which the plaintiffs seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

“(2) the term ‘civil rights dispute’ means a dispute—

“(A) arising from an alleged violation of—

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

“(ii) any Federal, State, or local law that prohibits discrimination on the basis of race, sex, age, gender identity, sexual orientation, disability, religion, national origin, or any legally protected status in education, employment, credit, housing, public accommodations and facilities, voting, veterans or servicemembers, health care, or a program funded or conducted by the Federal Government or State government, including any law referred to or described in section 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis; and
“(B) in which at least 1 party alleging a violation described in subparagraph (A) is one or more individuals (or their authorized representative), including one or more individuals seeking certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

“(3) the term ‘consumer dispute’ means a dispute between—

“(A) one or more individuals who seek or acquire real or personal property, services (including services related to digital technology), securities or other investments, money, or credit for personal, family, or household purposes including an individual or individuals who seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law; and

“(B)(i) the seller or provider of such property, services, securities or other investments, money, or credit; or

“(ii) a third party involved in the selling, providing of, payment for, receipt or use of information about, or other relationship to any
such property, services, securities or other investments, money, or credit;

“(4) the term ‘employment dispute’ means a dispute between one or more individuals (or their authorized representative) and a person arising out of or related to the work relationship or prospective work relationship between them, including a dispute regarding the terms of or payment for, advertising of, recruiting for, referring of, arranging for, or discipline or discharge in connection with, such work, regardless of whether the individual is or would be classified as an employee or an independent contractor with respect to such work, and including a dispute arising under any law referred to or described in section 62(e) of the Internal Revenue Code of 1986, including parts of such law not explicitly referenced in such section but that relate to protecting individuals on any such basis, and including a dispute in which an individual or individuals seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or as a collective action under section 16(b) of the Fair Labor Standards Act, or a comparable rule or provision of State law;

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

“(6) the term ‘predispute joint-action waiver’ means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of the making of the agreement.

“§ 402. No validity or enforceability

“(a) In General.—Notwithstanding any other provision of this title, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute.

“(b) Applicability.—

“(1) In General.—An issue as to whether this chapter applies with respect to a dispute shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration
agreement specifically or in conjunction with other terms of the contract containing such agreement, and irrespective of whether the agreement purports to delegate such determinations to an arbitrator.

“(2) Collective Bargaining Agreements.— Nothing in this chapter shall apply to any arbitration provision in a contract between an employer and a labor organization or between labor organizations, except that no such arbitration provision shall have the effect of waiving the right of a worker to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, a State constitution, or a Federal or State statute, or public policy arising therefrom.”.

(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 in its place “of individuals, regardless of whether such 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 that this chapter is not in conflict with chapter 4.”.

(2) TABLE OF SECTIONS.—

    (A) Chapter 2.—The table of sections of chapter 2 of title 9, United States Code, is
amended by striking the item relating to section 208 and inserting the following:

"208. Application."

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

"307. Application."

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

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

SEC. 4. EFFECTIVE DATE.

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