



## **The Arbitration Fairness Act of 2013 Protect Consumers & Employees from Forced Arbitration**

Buried in the fine print of everything from consumer contracts, including credit cards, cell phones, car purchase, student loans, and new homes, to employee handbooks and nursing home admissions contracts, forced arbitration clauses eliminate Americans' access to the courts, forcing them instead into a private system set up by corporations to favor corporations.

Companies use forced arbitration because the system allows them to greatly reduce or sometimes completely escape accountability for cheating consumers, discrimination, fraud, and other corporate wrongdoing. Forced arbitration clauses allow wrongdoers to escape accountability and the transparency and openness of the American justice system, allowing that wrongdoing to continue.

Most forced arbitration clauses are take-it-or-leave-it, giving no choices for the individual, or are buried in mouse print so people never see them. Americans should never have to give up their rights just to do the everyday things in their lives.

### **How Consumers are Hurt by Forced Arbitration**

Arbitration can be a viable method of dispute resolution when parties voluntarily agree to arbitrate **after** a dispute has arisen. Pre-dispute arbitration clauses in the fine print of contracts are not voluntary.

**Biased, one-sided System.** Companies write the clauses, which typically state who the arbitrator will be, under what rules the arbitration will take place, the state the arbitration will occur in, and the payment terms for the arbitration. Arbitrators have an incentive to favor the company that gives them repeat business, not the consumer who they will never see again. In many cases, for example, a consumer suing a car dealer will be given a list of five names of potential arbitrators and every name on the list will be a lawyer who works at a law firm that does substantial work representing car dealers. Individuals are left with no real say in the process.

**Secret, Lawless Process.** Arbitration is a private system that is generally closed to the public and press. There is no impartial judge, jury, or meaningful review. Over centuries our justice system has developed the appellate process because we recognize that people can and will make mistakes. But federal appellate courts have held that even when arbitrators make "glaring" errors of law or "whacky" legal decisions, courts still may not overturn arbitrators' decisions. In the absence of any meaningful review, arbitrators can do what they want for the party who will give them repeat business, operating in an essentially lawless environment. Forcing people into a process where errors will not be corrected is wrong.

**Wrongdoers escape accountability.** Arbitration clauses often do not change where a dispute will be resolved; they prevent individuals from pursuing law violators altogether. Many attorneys will not take a case if there is an arbitration clause, and widespread wrongdoing goes unaddressed because class relief is often prohibited.

**Strips Individuals of their Constitutional Right to a Jury Trial.** The Seventh Amendment to the U.S. Constitution guarantees a right to a jury trial in civil cases. American history has a long respect for juries as a fundamentally democratic institution, to make sure that citizens are involved in making important decisions. There are a number of references to the importance of the right to a jury

trial in the Declaration of Independence, and many other of our founding father's writings. Imagine if the Supreme Court allowed corporations to strip Americans of their rights under the Second Amendment the way it has interpreted a 1925 statute to take away the important right to a jury trial.

**Unequal Justice.** Forced arbitration means giving up the most fundamental legal protection: the right to equal justice under the law. American heroes fought hard for these important laws that protect them against discrimination based on age, sex, religion, race, disability, and unequal pay for equal work, such as the Civil Rights Act and the Equal Pay Act. But these laws are gutted if unenforceable in court. It's time to close the arbitration loophole that gives employers the right to ignore civil rights.

### **H.R. 1844/S. 878 - The Arbitration Fairness Act of 2013**

When Congress enacted the Federal Arbitration Act (FAA) in 1925, its goal was to allow an alternative forum for businesses on equal footing to resolve their disputes. Many years later, after the Supreme Court expanded the scope of the Act, corporations started using forced arbitration in consumer contracts beginning in the mid to late 1990's.

The Arbitration Fairness Act of 2013, introduced by Rep. Hank Johnson (D-GA) and Senator Franken (D-MN), reflects the FAA's original intent by requiring that agreements to arbitrate employment, consumer, civil rights or anti-trust disputes be made after the dispute has arisen.

The bill would amend the FAA to prevent the use of pre-dispute mandatory arbitration ("forced") clauses in consumer, employment and anti-trust agreements. This legislation would not prohibit arbitration, but insist that individuals have a meaningful choice at a time when they can understand that choice: after a dispute has arisen.

This legislation would allow pre-dispute mandatory arbitration to continue in business-to-business agreements.

This legislation would not apply to collective bargaining agreements.

The Arbitration Fairness Act would restore traditional market principles to the arbitration industry: giving consumers a choice to arbitrate creates a market in which arbitration companies have to compete for their business, instead of simply catering to corporations. When the choice of arbitration is post-dispute—and therefore *understandable and voluntary*—arbitration companies must offer a fair process that both parties would choose willingly.

The Arbitration Fairness Act of 2013 is supported by a broad coalition of groups, including: the Reserve Officers Association, AFL-CIO, Consumer Federation of America, Alliance for Justice, Center for Responsible Lending, American Association for Justice, Leadership Conference on Civil Rights, NAACP, National Association of Consumer Advocates, National Partnership for Women & Families, National Consumer Law Center on behalf of their low-income clients, National Consumers League, National Employment Lawyers Association, National Senior Citizens Law Center, North American Securities Administrators Association, Public Citizen, U.S. PIRG, NCCNHR: The National Consumer Voice for Quality Long-Term Care, and Consumers for Auto Reliability and Safety.

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