

May 16, 2019

TO THE MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES:

The undersigned organizations strongly oppose the onslaught of anti-arbitration bills and provisions that have been introduced or proposed in the 116th Congress. Arbitration has been used to amicably resolve disputes since the enactment of the Federal Arbitration Act in 1925. Unfortunately, there is an organized effort underway to dismantle the arbitration system in favor of bringing claims in the broken class action litigation system.

Arbitration is an efficient, effective, and less expensive means of resolving disputes for parties to a dispute including consumers, employees, servicemembers, and businesses. Multiple empirical studies have concluded that those bringing claims in arbitration do just as well, or in many circumstances, better in arbitration as in court.

Opponents of arbitration exaggerate the alleged unfairness of these agreements. The reality is that arbitration providers and the courts ensure that arbitration provisions will be enforced only if they meet basic guarantees of fairness and due process. The American Arbitration Association (AAA), the country's largest arbitration provider, developed fairness rules for employment and consumer arbitrations. It will not accept a case unless the arbitration agreement complies with those standards. These rules require that arbitrators must be neutral and disclose any conflict of interest and give both parties an equal say in selecting the arbitrator; limit the fees paid by employees and consumers to \$300 – less than the filing fee in federal court; empower the arbitrator to order any necessary discovery; and require that damages, punitive damages, and attorneys' fees be awardable to the claimant to the same extent as in court. And the AAA rules require that consumers be given the option of resolving their dispute in small claims court. JAMS, another leading arbitration provider, requires similar protections—as do other arbitration providers.

The courts provide another layer of oversight. If an arbitration provision is unfair, courts can and do step in and declare those arbitration agreements unconscionable and unenforceable. Also, arbitration agreements cannot prevent consumers or employees from publicly discussing claims or with government agencies nor can arbitrators' decisions be kept secret. Courts have invalidated arbitration agreements that purported to impose a “gag order.” Furthermore, state laws require disclosure of arbitration outcomes by arbitral forums such as the AAA, and courts consistently hold that either party may disclose the results of arbitration proceedings.

Despite a lack of evidence showing a systemic problem with arbitration, multiple bills have been introduced and proposed in the 116th Congress that attack the availability of arbitration in numerous contexts such as employment-related, consumer contracts, student loans, discrimination claims, and antitrust disputes, among others. These bills include H.R. 1423, H.R. 327, H.R. 1443, H.R. 2148, and H.R. 1430 as well as various other proposed bills.

If successful, these legislative efforts would declare unenforceable potentially millions of arbitration provisions that allow for the orderly and economical resolution of disputes.

Opponents of pre-dispute arbitration fail to acknowledge that, if enacted, these provisions and bills will limit the realistic opportunity for consumers and employees to obtain a remedy if a dispute arises. The only real beneficiaries of these anti-arbitration provisions will be class action lawyers who would benefit from the possibility of bringing more class action lawsuits that provide little benefit to class members.

These attacks on arbitration are unnecessary and would undermine a system that has benefited consumers, employees, and businesses for decades, and on which many of them now rely. Accordingly, we strongly urge you to oppose attempts to enact anti-arbitration legislation or provisions.

Sincerely,

ACA International
American Financial Services Association
CTIA
Innovative Payments Association
National Association of Mutual Insurance Companies
Professional Association for Customer Engagement
U.S. Chamber of Commerce
U.S. Chamber Institute for Legal Reform
USTelecom