

118TH CONGRESS
1ST SESSION

S. 1408

To amend title 9, United States Code, with respect to arbitration of disputes involving race discrimination.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2023

Mr. BOOKER (for himself, Mrs. GILLIBRAND, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 9, United States Code, with respect to arbitration of disputes involving race discrimination.

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 “Ending Forced Arbi-
5 tration of Race Discrimination Act of 2023”.

6 **SEC. 2. PREDISPUTE ARBITRATION OF DISPUTES INVOLV-**
7 **ING RACE DISCRIMINATION.**

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

1 **“CHAPTER 5—ARBITRATION OF DISPUTES**
 2 **INVOLVING RACE DISCRIMINATION**

“Sec.

“501. Definitions.

“502. No validity or enforceability.

3 **“§ 501. Definitions**

4 “In this chapter:

5 “(1) PREDISPUTE ARBITRATION AGREEMENT;
 6 PREDISPUTE JOINT-ACTION WAIVER.—The terms
 7 ‘predispute arbitration agreement’ and ‘predispute
 8 joint-action waiver’ have the meanings given the
 9 terms in section 401.

10 “(2) RACE DISCRIMINATION DISPUTE.—The
 11 term ‘race discrimination dispute’ means a dispute
 12 relating to conduct that is alleged to constitute dis-
 13 crimination (including harassment), or retaliation,
 14 on the basis of race, color, or national origin under
 15 applicable Federal, Tribal, State, or local law.

16 **“§ 502. No validity or enforceability**

17 “(a) IN GENERAL.—Notwithstanding any other pro-
 18 vision of this title, at the election of the person alleging
 19 conduct constituting a race discrimination dispute, or the
 20 named representative of a class or in a collective action
 21 alleging such conduct, no predispute arbitration agree-
 22 ment or predispute joint-action waiver shall be valid or
 23 enforceable with respect to a case which is filed under

1 Federal, Tribal, State, or local law and relates to the race
2 discrimination dispute.

3 “(b) DETERMINATION OF APPLICABILITY.—An issue
4 as to whether this chapter applies with respect to a dispute
5 shall be determined under Federal law. The applicability
6 of this chapter to an agreement to arbitrate and the valid-
7 ity and enforceability of an agreement to which this chap-
8 ter applies shall be determined by a court, rather than
9 an arbitrator, irrespective of whether the party resisting
10 arbitration challenges the arbitration agreement specifi-
11 cally or in conjunction with other terms of the contract
12 containing such agreement, and irrespective of whether
13 the agreement purports to delegate such determinations
14 to an arbitrator.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

18 (A) in section 2, by inserting “or 5” before
19 the period at the end;

20 (B) in section 208, in the second sentence,
21 by inserting “or 5” before the period at the
22 end; and

23 (C) in section 307, in the second sentence,
24 by inserting “or 5” before the period at the
25 end.

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

**“5. Arbitration of disputes involving race discrimina-
 tion 501.”.**

4 **SEC. 3. APPLICABILITY.**

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

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