



### ***Mandatory Binding Arbitration: The Real Cost for Private Justice***

*Would you play in a game where your larger and more formidable opponent gets to pick all the rules and then pay the referee?*

#### **What is Mandatory Binding Arbitration?**

Arbitration is an alternative means to litigation for resolving disputes. The Federal Arbitration Act (FAA) was passed in 1925 to encourage businesses to participate in arbitration *on equal footing*. However, the FAA has been interpreted broadly, beyond congressional intent, and now mandatory binding arbitration has become a tool used by big businesses to strip away consumers' and employees' constitutional rights. Individuals must sign mandatory binding arbitration clauses to obtain many products and services, agreeing to give up their rights to go to court when they are injured and, instead, to allow an industry insider to make a binding ruling regarding any dispute.

#### **Who does Mandatory Binding Arbitration affect?**

Everyone. These clauses are found in many common contracts, including employment contracts, contracts for medical services such as nursing home care, and many consumer contracts such as cell phone, credit card, and insurance contracts.

#### **Why is Mandatory Binding Arbitration unfair?**

- ❖ ***Rigged System:*** Companies pick the arbitration company, pick the panel of arbitrators from which consumers choose, and provide repeat business to arbitrators who find in their favor. Usually the arbitration awards are not public, leaving other consumers unaware of any previous cases.
- ❖ ***High Costs:*** Government funding helps to lower the cost of filing a lawsuit in a public court system but with arbitration, private companies are free to charge as much as they like for filing fees. Arbitration is a pay as you go system which quickly becomes prohibitively expensive for most consumers.
- ❖ ***Limited Discovery:*** Liberal discovery rules govern lawsuits within the federal court system and allow the plaintiff to receive broad access to information important to their case. This is not the case with arbitration – the arbitrator has discretion to decide what information will be made available, and many mandatory binding arbitration clauses specifically limit discovery.
- ❖ ***Bans on Class Actions:*** Normally used as a litigation tool to combine claims against one large company where individual plaintiffs would be unable to afford such a lawsuit, many arbitration agreements expressly forbid this practice, immunizing companies for their potentially wide-spread misconduct. Also, in many cases mandatory arbitration clauses limit available remedies.
- ❖ ***Limited Appeal Rights:*** One of the most fundamental functions of the legal system is its ability to fix errors through the appeals process. But most arbitration awards cannot be appealed. A judge will never look at the award to ensure that the law was followed and that the decision was just.

#### **What Can You Do?**

- ❖ Encourage your members of Congress to support bills that amend the FAA and prohibit mandatory binding arbitration clauses where they are most harmful.<sup>1</sup>
- ❖ Encourage your state representative to support legislation that would make mandatory binding arbitration fairer for consumers.
- ❖ Share your mandatory binding arbitration horror stories at [www.givemebackmyrights.com/bma-tellus.php](http://www.givemebackmyrights.com/bma-tellus.php).

For more information, please visit [www.afj.org](http://www.afj.org) or [www.givemebackmyrights.com](http://www.givemebackmyrights.com)

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<sup>1</sup> The following bills are currently pending in Congress: [HR 1443 \(Consumer Fairness Act of 2007\)](#) to make mandatory arbitration clauses in consumer contracts an unfair and deceptive practice; [HR 1519 \(American Homebuyers Protection Act\)](#) to prohibit mandatory arbitration in homebuilding contracts; [S 221 \(Fair Contracts for Growers Act 2007\)](#), to provide for fairness in livestock and poultry contracts; and [S 1133 \(Taxpayer Abuse Prevention Act\)](#) to prohibit mandatory arbitration in predatory tax refund anticipation loans.