

CLIFFORD'S NOTES

Amid the din of the coronavirus pandemic, a bill was introduced in Congress that would impact thousands of people across the country in a very significant way.

On March 5, members of Congress introduced legislation that would end Amtrak's forced arbitration policy that quietly became law in 2019.

Calling it anti-consumer and unfair, several members of Congress filed the Ending Passenger Rail Forced Arbitration Act.

Sens. Dick Durbin (D-Ill.) and Richard Blumenthal (D-Conn.), are cosponsors of S. 3400.

"Amtrak's current forced arbitration and class-action ban policy is simply unfair," Blumenthal said in a press release when the bill was filed.

The new Amtrak policy follows two high-profile crashes — a 2015 derailment in Philadelphia and a 2017 derailment in DuPont, Wash., that left many people injured or killed. (EDITOR'S NOTE: The author represented passengers injured in DuPont in a suit against Amtrak.)

Amtrak's new policy provides that anyone who buys a ticket, including individuals who buy tickets for minors, would be left with arbitration as their sole remedy for a claim involving injury or death rather than having the right to take their cases to court. It also has been interpreted to mean that even discrimination cases or any other disputes would be subject to closed-door arbitration, instead of being left for a jury to decide.

"Amtrak riders unknowingly sign away their rights to go to court when they purchase a ticket for a trip on the train," Durbin said in a statement in March. "If something were to happen on that train ride, they'd be limited in their ability to seek justice. That's plain wrong, and our bill restores fairness to this process for Amtrak customers."

The nonprofit consumer advocate group Public Citizen filed a lawsuit in January calling the arbitration clause "unconstitutional" and demanding the clause be removed from the company's ticketing terms and conditions. Several other consumer and industry groups, including the American Association for Justice and Rail Passengers Association also have supported the legislation.

Charles Gildersleeve, brother of Philadelphia derailment victim Bob Gildersleeve, said in an AAJ release that "My brother would not have died had Amtrak cared about the safety of their passengers instead of their bottom line. Amtrak should not be able to use forced arbitration to escape public responsibility for any and all wrongdoing. I implore members of Congress to support this bill and pre-



BILL WOULD PROTECT RIDERS

Senate Dems want to end Amtrak's forced arbitration policy

By **BOB CLIFFORD**

serve the rights of Americans to seek justice."

In the same AAJ announcement, a joint statement by The Disability Rights Education & Defense Fund, the United Spinal Association, the National Disability Rights Network and Access Living said this: "Amtrak, the National Railroad Passenger Corporation, provides critical, and sometimes the only method of transportation accessible to people with disabilities. Due to Amtrak's forced arbitration agreement, these riders are forced to waive their right to hold Amtrak publicly accountable for any issue related to its services and accommodations. More specifically, arbitration has not proven useful in defending the civil rights of consumers. Forcing civil rights, like claims under the Americans with Disabilities Act, to arbitration is likely to erode those rights by greatly reducing or eliminating the consequences of Amtrak's failure to comply."

Reps. Conor Lamb, D-Pa., and Denny Heck, D-Wash., introduced the House bill, H.R. 6101, in March. In a press release, Lamb said "Amtrak should not preclude their customers from exercising their full rights through a forced arbitration policy."

In November, Durbin joined a group of 14 senators writing Amtrak to "demand that Amtrak immediately eliminate [its] anti-consumer arbitration and class action policy." Durbin also is a cosponsor

of the Forced Arbitration Injustice Repeal (FAIR) Act that would increase Americans' rights to seek justice and accountability through the court system by eliminating forced arbitration clauses in employment, consumer and civil rights cases and would allow consumers and workers to agree to arbitration after a court dispute. The FAIR Act has passed in the U.S. House of Representatives.

The Senate version of the bill has attracted 12 cosponsors — 11 Democrats along with Bernie Sanders, I-VT. The Senate Commerce, Science and Transportation Committee is considering the bill. The House version has attracted two Democratic cosponsors where the bill awaits a potential vote in the House Transportation and Infrastructure Committee.

Although the nation's attention must remain focused on the coronavirus and getting the country back together following this terrible pandemic, it must not lose sight of consumers' access to justice as the nation slowly makes its way back to normalcy. Entrusting a huge company from getting passengers safely from Point A to Point B must not give way to public accountability. CL

Bob Clifford is the founder of Clifford Law Offices. He practices personal injury and regularly handles complex damage cases.

rclifford@cliffordlaw.com



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Since the publication of Robert Clifford's column, a recent case in federal district court dismissed a plaintiff's case brought by the consumer advocacy group Public Citizen that challenged the constitutionality of Amtrak's mandatory arbitration provision.

The case is Weissman v. et al. v. National Railroad Passenger Corp., 1:20-cv-00028 in the U.S. District Court for the District of Columbia.