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114TH CONGRESS
1ST SESSION

S. 1133

To amend title 9 of the United States Code with respect to arbitration.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2015

Mr. FRANKEN (for himself, Ms. BALDWIN, Mr. BLUMENTHAL, Mrs. BOXER, Mr. BROWN, Mr. DURBIN, Ms. HIRONO, Mr. LEAHY, Mr. MARKEY, Mr. MENENDEZ, Mr. SANDERS, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 9 of the United States Code with respect to arbitration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arbitration Fairness Act of 2015".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Federal Arbitration Act (now enacted as chapter 1 of title 9 of the United States Code)

was intended to apply to disputes between commercial entities of generally similar sophistication and bargaining power.

(2) A series of decisions by the Supreme Court of the United States have interpreted the Act so that it now extends to consumer disputes and employment disputes, contrary to the intent of Congress.

(3) Most consumers and employees have little or no meaningful choice whether to submit their claims to arbitration. Often, consumers and employees are not even aware that they have given up their rights.

(4) Mandatory arbitration undermines the development of public law because there is inadequate transparency and inadequate judicial review of arbitrators' decisions.

(5) Arbitration can be an acceptable alternative when consent to the arbitration is truly voluntary, and occurs after the dispute arises.

SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES.

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

"CHAPTER 4—ARBITRATION OF EMPLOYMENT, CONSUMER, ANTITRUST, AND CIVIL RIGHTS DISPUTES

''Sec.
''401. Definitions.
''402. Validity and enforceability.

"§ 401. Definitions

''In this chapter—

''(1) the term 'antitrust dispute' means a dispute—

''(A) involving a claim for damages allegedly caused by a violation of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12)) or State antitrust laws; and

''(B) in which the plaintiffs seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

''(2) the term 'civil rights dispute' means a dispute—

''(A) arising under—

''(i) the Constitution of the United States or the constitution of a State; or

''(ii) a Federal or State statute that prohibits discrimination on the basis of race, sex, disability, religion, national ori-

gin, or any invidious basis in education, employment, credit, housing, public accommodations and facilities, voting, or program funded or conducted by the Federal Government or State government, including any statute enforced by the Civil Rights Division of the Department of Justice and any statute enumerated in section 62(e) of the Internal Revenue Code of 1986 (relating to unlawful discrimination); and

''(B) in which at least 1 party alleging a violation of the Constitution of the United States, a State constitution, or a statute prohibiting discrimination is an individual;

''(3) the term 'consumer dispute' means a dispute between an individual who seeks or acquires real or personal property, services, securities or other investments, money, or credit for personal, family, or household purposes and the seller or provider of such property, services, securities or other investments, money, or credit;

''(4) the term 'employment dispute' means a dispute between an employer and employee arising out of the relationship of employer and employee as

defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203); and

"(5) the term 'predispute arbitration agreement' means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

"§ 402. Validity and enforceability

"(a) IN GENERAL.—Notwithstanding any other provision of this title, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute.

"(b) APPLICABILITY.—

"(1) IN GENERAL.—An issue as to whether this chapter applies to an arbitration agreement shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

"(2) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this chapter shall apply to any arbitra-

tion provision in a contract between an employer and a labor organization or between labor organizations, except that no such arbitration provision shall have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, a State constitution, or a Federal or State statute, or public policy arising therefrom.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Title 9 of the United States Code is amended—

(A) in section 1, by striking ''of seamen,'' and all that follows through ''interstate commerce'';

(B) in section 2, by inserting ''or as otherwise provided in chapter 4'' before the period at the end;

(C) in section 208—

(i) in the section heading, by striking ''**Chapter 1; residual application**'' and inserting ''**Application**''; and

(ii) by adding at the end the following: ''This chapter applies to the extent that this chapter is not in conflict with chapter 4.''; and

(D) in section 307—

(i) in the section heading, by striking "**Chapter 1; residual application**" and inserting "**Application**"; and

(ii) by adding at the end the following: "This chapter applies to the extent that this chapter is not in conflict with chapter 4.".

(2) TABLE OF SECTIONS.—

(A) CHAPTER 2.—The table of sections for chapter 2 of title 9, United States Code, is amended by striking the item relating to section 208 and inserting the following:

"208. Application.".

(B) CHAPTER 3.—The table of sections for chapter 3 of title 9, United States Code, is amended by striking the item relating to section 307 and inserting the following:

"307. Application.".

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

"4. Arbitration of employment, consumer, antitrust, and civil rights disputes ..... 401".

SEC. 4. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act and shall apply with respect to any dispute or claim that arises on or after such date.

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