

115TH CONGRESS  
2D SESSION

# S. 2591

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 22, 2018

Mr. BLUMENTHAL (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. CASEY, Mr. COONS, Mr. DURBIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HEITKAMP, Ms. HIRONO, Mr. KAINE, Mr. LEAHY, Mr. MARKEY, Mr. MERKLEY, Mr. MENENDEZ, Mrs. MURRAY, Mr. REED, Mr. SANDERS, Mrs. SHAHEEN, Mr. UDALL, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mr. BROWN, Ms. CORTEZ MASTO, Mr. HEINRICH, and Mr. SCHATZ) 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.

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 “Arbitration Fairness  
5       Act of 2018”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) The Federal Arbitration Act (now enacted  
2           as chapter 1 of title 9 of the United States Code)  
3           was intended to apply to disputes between commer-  
4           cial entities of generally similar sophistication and  
5           bargaining power.

6           (2) A series of decisions by the Supreme Court  
7           of the United States have interpreted the Act so  
8           that it now extends to consumer disputes and em-  
9           ployment disputes, contrary to the intent of Con-  
10          gress.

11          (3) Most consumers and employees have little  
12          or no meaningful choice whether to submit their  
13          claims to arbitration. Often, consumers and employ-  
14          ees are not even aware that they have given up their  
15          rights.

16          (4) Mandatory arbitration undermines the de-  
17          velopment of public law because there is inadequate  
18          transparency and inadequate judicial review of arbi-  
19          trators' decisions.

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

1 **SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTI-**  
 2 **TRUST, AND CIVIL RIGHTS DISPUTES.**

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

5 **“CHAPTER 4—ARBITRATION OF EMPLOY-**  
 6 **MENT, CONSUMER, ANTITRUST, AND**  
 7 **CIVIL RIGHTS DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

8 **“§ 401. Definitions**

9 “In this chapter—

10 “(1) the term ‘antitrust dispute’ means a dis-  
 11 pute—

12 “(A) involving a claim for damages alleg-  
 13 edly caused by a violation of the antitrust laws  
 14 (as defined in subsection (a) of the first section  
 15 of the Clayton Act (15 U.S.C. 12)) or State  
 16 antitrust laws; and

17 “(B) in which the plaintiffs seek certifi-  
 18 cation as a class under rule 23 of the Federal  
 19 Rules of Civil Procedure or a comparable rule  
 20 or provision of State law;

21 “(2) the term ‘civil rights dispute’ means a dis-  
 22 pute—

23 “(A) arising under—

1           “(i) the Constitution of the United  
2           States or the constitution of a State; or

3           “(ii) a Federal or State statute that  
4           prohibits discrimination on the basis of  
5           race, sex, disability, religion, national ori-  
6           gin, or any invidious basis in education,  
7           employment, credit, housing, public accom-  
8           modations and facilities, voting, or pro-  
9           gram funded or conducted by the Federal  
10          Government or State government, includ-  
11          ing any statute enforced by the Civil  
12          Rights Division of the Department of Jus-  
13          tice and any statute enumerated in section  
14          62(e) of the Internal Revenue Code of  
15          1986 (relating to unlawful discrimination);  
16          and

17          “(B) in which at least 1 party alleging a  
18          violation of the Constitution of the United  
19          States, a State constitution, or a statute pro-  
20          hibiting discrimination is an individual;

21          “(3) the term ‘consumer dispute’ means a dis-  
22          pute between an individual who seeks or acquires  
23          real or personal property, services, securities or  
24          other investments, money, or credit for personal,  
25          family, or household purposes and the seller or pro-

1 vider of such property, services, securities or other  
2 investments, money, or credit;

3 “(4) the term ‘employment dispute’ means a  
4 dispute between an employer and employee arising  
5 out of the relationship of employer and employee as  
6 defined in section 3 of the Fair Labor Standards  
7 Act of 1938 (29 U.S.C. 203); and

8 “(5) the term ‘predispute arbitration agree-  
9 ment’ means any agreement to arbitrate a dispute  
10 that had not yet arisen at the time of the making  
11 of the agreement.

12 **“§ 402. Validity and enforceability**

13 “(a) IN GENERAL.—Notwithstanding any other pro-  
14 vision of this title, no predispute arbitration agreement  
15 shall be valid or enforceable if it requires arbitration of  
16 an employment dispute, consumer dispute, antitrust dis-  
17 pute, or civil rights dispute.

18 “(b) APPLICABILITY.—

19 “(1) IN GENERAL.—An issue as to whether this  
20 chapter applies to an arbitration agreement shall be  
21 determined under Federal law. The applicability of  
22 this chapter to an agreement to arbitrate and the  
23 validity and enforceability of an agreement to which  
24 this chapter applies shall be determined by a court,  
25 rather than an arbitrator, irrespective of whether the

1 party resisting arbitration challenges the arbitration  
2 agreement specifically or in conjunction with other  
3 terms of the contract containing such agreement.

4 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

5 Nothing in this chapter shall apply to any arbitra-  
6 tion provision in a contract between an employer and  
7 a labor organization or between labor organizations,  
8 except that no such arbitration provision shall have  
9 the effect of waiving the right of an employee to  
10 seek judicial enforcement of a right arising under a  
11 provision of the Constitution of the United States, a  
12 State constitution, or a Federal or State statute, or  
13 public policy arising therefrom.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

17 (A) in section 1, by striking “of seamen,”  
18 and all that follows through “interstate com-  
19 merce”;

20 (B) in section 2, by inserting “or as other-  
21 wise provided in chapter 4” before the period at  
22 the end;

23 (C) in section 208—

1 (i) in the section heading, by striking  
2 **“Chapter 1; residual application”**  
3 and inserting **“Application”**; and

4 (ii) by adding at the end the fol-  
5 lowing: “This chapter applies to the extent  
6 that this chapter is not in conflict with  
7 chapter 4.”; and

8 (D) in section 307—

9 (i) in the section heading, by striking  
10 **“Chapter 1; residual application”**  
11 and inserting **“Application”**; and

12 (ii) by adding at the end the fol-  
13 lowing: “This chapter applies to the extent  
14 that this chapter is not in conflict with  
15 chapter 4.”.

16 (2) TABLE OF SECTIONS.—

17 (A) CHAPTER 2.—The table of sections for  
18 chapter 2 of title 9, United States Code, is  
19 amended by striking the item relating to section  
20 208 and inserting the following:

“208. Application.”.

21 (B) CHAPTER 3.—The table of sections for  
22 chapter 3 of title 9, United States Code, is  
23 amended by striking the item relating to section  
24 307 and inserting the following:

“307. Application.”.

1           (3) 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:

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

4 **SEC. 4. EFFECTIVE DATE.**

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

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