

other distinguishing features, practically helpless in the face of sharp and damaging import surges.

In addition, even if large industry subdivisions could qualify for assistance, the time frames under the Trade Act for expedited, or provisional, relief for agricultural products are too long to respond in time to prevent or adequately remedy injury caused by increasing imports. At a minimum, three months must elapse before any relief can be provided, irrespective of the damage that American businesses may suffer during that time. And three months is an absolute minimum. In reality, it could take substantially longer to provide expedited relief.

Mr. President, when it comes to agricultural products, the problems in U.S. trade law that I have described remain acute. Due to their perishable nature, many agricultural products cannot be inventoried until imports subside or the ITC grants relief—if the industry is so fortunate—many months or even years later. And most agricultural producers, who are heavily dependent on credit each year to produce and sell a crop, cannot wait that long. They need assistance in the short-term, while the injury is occurring, if they are going to survive an import surge.

Also, because crops are grown during particular seasons and serve specific markets related to production in those growing seasons, the agricultural industry is more prone to segmentation. Finally, many of the agricultural industry entities that would have to file a petition for relief under the Trade Act are really grower groups that do not necessarily have the financial wherewithal to spend millions of dollars researching, filing, and pursuing a petition before the ITC.

The bill that I have introduced today is designed to empower America's agricultural producers to seek and obtain effective remedies for damaging import surges. It will make the Trade Act more user friendly for American businesses. Unlike the current law, which sets criteria for ITC consideration that are impossible to meet and that do not reflect the realities of today's industry, my bill establishes more useful criteria. It permits the ITC to consider the impacts of import surges on an important segment of an agricultural industry when determining whether a domestic industry has been injured by imports. This segment is defined as a portion of the domestic industry located in a specific geographic area whose collective production constitutes a significant portion of the entire domestic industry. The ITC would also be required to consider whether this segment primarily serves the domestic market in the specific geographic area, and whether substantial imports are entering the area.

Rather than rely solely on an industry petition to initiate an ITC review of whether provisional, or expedited, relief deserves to be granted, my bill would permit the United States Trade

Representative or the Congress, via a resolution, to request such review.

Because the time frames in the present law for considering and providing provisional relief are so long that the damage from imports can already be done well before a decision by the ITC is ever issued, this bill would shorten the time frame for provisional relief determinations by the ITC by allowing the commission to waive, in certain circumstances, the act's requirement that imports be monitored by the USTR for at least 90 days.

And, finally, the bill expands the list of agricultural products eligible for provisional relief to include any potato product, including processed potato products. Under current law, only perishable agricultural products and citrus products are eligible to apply for expedited relief determinations. But this narrow eligibility list unreasonably excludes important U.S. agribusinesses, such as our frozen french fry producers, from the expedited remedies available in the Trade Act.

For too long, American agriculture has been trying to combat sophisticated foreign competition with the equivalent of sticks and stones. My bill strengthens the position of American agricultural producers in the competitive arena, and will help provide effective remedies for agricultural producers, and provide effective deterrents to the depredations of their competitors from other countries. I hope other senators with an interest in fair play for our domestic agricultural producers will join me in cosponsoring this important legislation.

By Mr. FEINGOLD:

S. 121. A bill to amend certain Federal civil rights statutes to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, age, or disability, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

CIVIL RIGHTS PROCEDURES PROTECTION ACT

Mr. FEINGOLD. Mr. President, I rise today to introduce the Civil Rights Procedures Protection Act of 1999. The 106th Congress will mark the fourth successive Congress in which I have introduced this legislation. Very simply Mr. President, this legislation addresses the rapidly growing and very troubling practice of employers conditioning employment or professional advancement upon their employees' willingness to submit claims of discrimination or harassment to arbitration, rather than pursuing them in the courts. In other words, employees raising claims of harassment or discrimination by their employers must submit the adjudication of those claims to arbitration, denying themselves any other remedies may exist under the laws of this Nation.

The right to seek redress in a court of law—the right to a jury trial—is one of the most basic rights accorded to employees in this nation. In the Civil Rights Act of 1991, Congress expressly created this right to a jury trial for employees when it voted overwhelmingly to amend Title VII of the Civil Rights Act of 1964.

The intent of the Civil Rights Act of 1991 and other civil rights and labor laws, such as the Age Discrimination in Employment Act of 1967, is being circumvented by companies that require all employees to submit to mandatory, binding arbitration. In other words, the company is compelling an agreement to arbitration without regard to basic civil rights of American workers or their right to secure final resolution of such disputes in a court of law under the rules of fairness and due process.

How then does the practice of mandatory, binding arbitration comport with the purpose and spirit of our nation's civil rights and sexual harassment laws? The answer is simply that it does not.

To address the growing incidents of compulsory arbitration, the Civil Rights Procedures Protection Act of 1999 amends seven civil rights statutes to guarantee that a federal civil rights or sexual harassment plaintiff can still seek the protection of the U.S. courts rather than be forced into mandatory, binding arbitration. Specifically, this legislation affects claims raised under Title VII of the Civil Rights Act of 1965, Section 505 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Section 1977 of the Revised Statutes, the Equal Pay Act, the Family and Medical Leave Act and the Federal Arbitration Act (FAA). In the context of the Federal Arbitration Act, the protections of this legislation are extended to claims of unlawful discrimination arising under State or local law and other Federal laws that prohibit job discrimination.

Mr. President, this bill is not anti-arbitration, anti-mediation, or anti-alternative dispute resolution. I have long been and will remain a strong supporter of "voluntary forms" of alternative methods of dispute resolution that allow the parties to choose not to proceed to litigation. Rather, this bill targets only mandatory binding arbitration clauses in employment contracts. Increasingly, working men and women are faced with the choice of accepting a mandatory arbitration clause in their employment agreement or no employment at all. Despite the appearance of a freely negotiated contract, the reality often amounts to a non-negotiable requirement that prospective employees relinquish their rights to redress in a court of law. Mandatory arbitration allows employers to tell all current and prospective employees in effect, "If you want to work for us, you will have to check your rights at the door." These requirements have been referred to as "front door" contracts;

that is, they require an employee to surrender certain rights in order to "get in the front door." As a nation which values work and deplores discrimination, we should not allow this practice to continue.

As I noted Mr. President, the 106th Congress marks the fourth successive Congress in which I have introduced this important legislation. In the past year, we have made some advances addressing the unfair use of mandatory binding arbitration clauses. Due to the attention focused on this issue through this legislation, a hearing in the Banking Committee last session, and a series of articles and editorials in prominent periodicals, the National Association of Securities Dealers (NASD) agreed to remove the mandatory binding arbitration clause from its Form U-4, which all prospective securities dealers sign as a condition of employment. The NASD's decision to remove the binding arbitration clause, however, does not prohibit its constituent organizations from including a mandatory, binding arbitration clause in their own employment agreements, even if it is not mandated by the industry as a whole.

These changes in the securities industry are a positive development, but the trend toward the use of mandatory, binding arbitration clauses in many industries continues. This bill restores the ability of working men and women to pursue their rights in a venue that they choose and therefore restores and reinvigorates the spirit of our nation's civil rights and sexual harassment laws in the context of these employment contracts. I ask my colleagues to join me in supporting this important legislation.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 121

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 "Civil Rights Procedures Protection Act of 1999".

SEC. 2. AMENDMENT TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) is amended by adding at the end the following new section:

"SEC. 719. EXCLUSIVITY OF POWERS AND PROCEDURES.

"Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this title, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 3. AMENDMENT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.

The Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) is amended—

(1) by redesignating sections 16 and 17 as sections 17 and 18, respectively; and

(2) by inserting after section 15 the following new section 16:

"SEC. 16. EXCLUSIVITY OF POWERS AND PROCEDURES.

"Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this Act, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 4. AMENDMENT TO THE REHABILITATION ACT OF 1973.

Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) is amended by adding at the end the following new subsection:

"(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this title) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under section 501, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 5. AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT OF 1990.

Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117) is amended by adding at the end the following new subsection:

"(c) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim based on a violation described in subsection (a), such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 6. AMENDMENT TO SECTION 1977 OF THE REVISED STATUTES.

Section 1977 of the Revised Statutes (42 U.S.C. 1981) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any Federal law (other than a Federal law that expressly refers to this section) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim concerning making and enforcing a contract of employment under this section, such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 7. AMENDMENT TO THE EQUAL PAY REQUIREMENT UNDER THE FAIR LABOR STANDARDS ACT OF 1938.

Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended by adding at the end the following new paragraph:

"(5) Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act) that would otherwise modify any of the powers and procedures expressly applicable to a right or claim arising under this subsection, such powers and procedures

shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 8. AMENDMENT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

Title IV of the Family and Medical Leave Act of 1993 (29 U.S.C. 2651 et seq.) is amended—

(1) by redesignating section 405 as section 406; and

(2) by inserting after section 404 the following new section:

"SEC. 405. EXCLUSIVITY OF REMEDIES.

"Notwithstanding any Federal law (other than a Federal law that expressly refers to this Act or a provision of subchapter V of chapter 63 of title 5, United States Code) that would modify any of the powers and procedures expressly applicable to a right or claim arising under this Act or under such subchapter such powers and procedures shall be the exclusive powers and procedures applicable to such right or such claim unless after such right or such claim arises the claimant voluntarily enters into an agreement to enforce such right or resolve such claim through arbitration or another procedure."

SEC. 9. AMENDMENT TO TITLE 9, UNITED STATES CODE.

Section 14 of title 9, United States Code, is amended—

(1) by inserting "(a)" before "This"; and

(2) by adding at the end the following new subsection:

"(b) This chapter shall not apply with respect to a claim of unlawful discrimination in employment if such claim arises from discrimination based on race, color, religion, sex, national origin, age, or disability."

SEC. 10. APPLICATION OF AMENDMENTS.

The amendments made by this Act shall apply with respect to claims arising not later than the date of enactment of this Act.

By Mr. FEINGOLD:

S. 122. A bill to amend title 37, United States Code, to ensure equitable treatment of members of the National Guard and the other reserve components of the United States with regard to eligibility to receive special duty assignment pay, and for other purposes; to the Committee on Armed Services.

NATIONAL GUARD AND RESERVE SPECIAL DUTY ASSIGNMENT PAY EQUITY ACT OF 1999

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation that restores a measure of pay equity for our nation's Guardsmen and Reservists. The men and women who serve in the Guard and Reserves are the cornerstones of our national defense and domestic infrastructure and deserve more than a pat on the back.

Mr. President, as I'm certain my colleagues are well aware, the Guard and Reserve are integral parts of overseas missions, including recent and ongoing missions to Iraq and Bosnia. According to statements by DOD officials, guardsmen and reservists will continue to play an increasingly important role in national defense strategy. The National Guard and Reserves deserve the full support they need to carry out their duties.