

110TH CONGRESS
1ST SESSION

S. 1782

To amend chapter 1 of title 9 of United States Code with respect to arbitration.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2007

Mr. FEINGOLD (for himself and Mr. DURBIN) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 1 of title 9 of 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 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The Federal Arbitration Act (now enacted
9 as chapter 1 of title 9 of the United States Code)
10 was intended to apply to disputes between commer-

1 cial entities of generally similar sophistication and
2 bargaining power.

3 (2) A series of United States Supreme Court
4 decisions have changed the meaning of the Act so
5 that it now extends to disputes between parties of
6 greatly disparate economic power, such as consumer
7 disputes and employment disputes. As a result, a
8 large and rapidly growing number of corporations
9 are requiring millions of consumers and employees
10 to give up their right to have disputes resolved by
11 a judge or jury, and instead submit their claims to
12 binding arbitration.

13 (3) Most consumers and employees have little
14 or no meaningful option whether to submit their
15 claims to arbitration. Few people realize, or under-
16 stand the importance of the deliberately fine print
17 that strips them of rights; and because entire indus-
18 tries are adopting these clauses, people increasingly
19 have no choice but to accept them. They must often
20 give up their rights as a condition of having a job,
21 getting necessary medical care, buying a car, open-
22 ing a bank account, getting a credit card, and the
23 like. Often times, they are not even aware that they
24 have given up their rights.

1 (4) Private arbitration companies are some-
2 times under great pressure to devise systems that
3 favor the corporate repeat players who decide wheth-
4 er those companies will receive their lucrative busi-
5 ness.

6 (5) Mandatory arbitration undermines the de-
7 velopment of public law for civil rights and consumer
8 rights, because there is no meaningful judicial review
9 of arbitrators' decisions. With the knowledge that
10 their rulings will not be seriously examined by a
11 court applying current law, arbitrators enjoy near
12 complete freedom to ignore the law and even their
13 own rules.

14 (6) Mandatory arbitration is a poor system for
15 protecting civil rights and consumer rights because
16 it is not transparent. While the American civil jus-
17 tice system features publicly accountable decision
18 makers who generally issue written decisions that
19 are widely available to the public, arbitration offers
20 none of these features.

21 (7) Many corporations add to their arbitration
22 clauses unfair provisions that deliberately tilt the
23 systems against individuals, including provisions
24 that strip individuals of substantive statutory rights,
25 ban class actions, and force people to arbitrate their

1 claims hundreds of miles from their homes. While
2 some courts have been protective of individuals, too
3 many courts have upheld even egregiously unfair
4 mandatory arbitration clauses in deference to a sup-
5 posed Federal policy favoring arbitration over the
6 constitutional rights of individuals.

7 **SEC. 3. DEFINITIONS.**

8 Section 1 of title 9, United States Code, is amend-
9 ed—

10 (1) by amending the heading to read as follows:

11 **“§ 1. Definitions”;**

12 (2) by inserting before “‘Maritime’” the fol-
13 lowing:

14 “As used in this chapter—”;

15 (3) by striking “‘Maritime transactions’” and
16 inserting the following:

17 “(1) ‘maritime transactions’”;

18 (4) by striking “commerce” and inserting the
19 following:

20 “(2) ‘commerce’”;

21 (5) by striking “, but nothing” and all that fol-
22 lows through the period at the end, and inserting a
23 semicolon; and

24 (6) by adding at the end the following:

1 “(3) ‘employment dispute’, as herein defined,
2 means a dispute between an employer and employee
3 arising out of the relationship of employer and em-
4 ployee as defined by the Fair Labor Standards Act;

5 “(4) ‘consumer dispute’, as herein defined,
6 means a dispute between a person other than an or-
7 ganization who seeks or acquires real or personal
8 property, services, money, or credit for personal,
9 family, or household purposes and the seller or pro-
10 vider of such property, services, money, or credit;

11 “(5) ‘franchise dispute’, as herein defined,
12 means a dispute between a franchisor and franchisee
13 arising out of or relating to contract or agreement
14 by which—

15 “(A) a franchisee is granted the right to
16 engage in the business of offering, selling, or
17 distributing goods or services under a mar-
18 keting plan or system prescribed in substantial
19 part by a franchisor;

20 “(B) the operation of the franchisee’s busi-
21 ness pursuant to such plan or system is sub-
22 stantially associated with the franchisor’s trade-
23 mark, service mark, trade name, logotype, ad-
24 vertising, or other commercial symbol desig-
25 nating the franchisor or its affiliate; and

1 “(C) the franchisee is required to pay, di-
2 rectly or indirectly, a franchise fee; and

3 “(6) ‘pre-dispute arbitration agreement’, as
4 herein defined, means any agreement to arbitrate
5 disputes that had not yet arisen at the time of the
6 making of the agreement.”.

7 **SEC. 4. VALIDITY AND ENFORCEABILITY.**

8 Section 2 of title 9, United States Code, is amend-
9 ed—

10 (1) by amending the heading to read as follows:

11 **“§ 2. Validity and enforceability”,**

12 (2) by inserting “(a)” before “A written”;

13 (3) by striking “, save” and all that follows
14 through “contract”, and inserting “to the same ex-
15 tent as contracts generally, except as otherwise pro-
16 vided in this title”; and

17 (4) by adding at the end the following:

18 “(b) No predispute arbitration agreement shall be
19 valid or enforceable if it requires arbitration of—

20 “(1) an employment, consumer, or franchise
21 dispute; or

22 “(2) a dispute arising under any statute in-
23 tended to protect civil rights or to regulate contracts
24 or transactions between parties of unequal bar-
25 gaining power.

1 “(c) An issue as to whether this chapter applies to
2 an arbitration agreement shall be determined by Federal
3 law. Except as otherwise provided in this chapter, the va-
4 lidity or enforceability of an agreement to arbitrate shall
5 be determined by the court, rather than the arbitrator,
6 irrespective of whether the party resisting arbitration chal-
7 lenges the arbitration agreement specifically or in conjunc-
8 tion with other terms of the contract containing such
9 agreement.

10 “(d) Nothing in this chapter shall apply to any arbi-
11 tration provision in a collective bargaining agreement.”.

12 **SEC. 5. EFFECTIVE DATE.**

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

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