

110TH CONGRESS
2D SESSION

S. 2838

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

IN THE SENATE OF THE UNITED STATES

APRIL 9, 2008

Mr. MARTINEZ (for himself and Mr. KOHL) 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 “Fairness in Nursing
5 Home Arbitration Act”.

6 **SEC. 2. DEFINITIONS.**

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

9 (1) by striking the section heading and insert-
10 ing the following:

1 **“§ 1. Definitions”;**

2 (2) by inserting before the first beginning
3 quotation mark, the following: “(a) As used in this
4 chapter, the term (1)”;

5 (3) by striking “Maritime” and inserting “mari-
6 time”;

7 (4) by striking “jurisdiction;” and inserting
8 “jurisdiction; (2)”; and

9 (5) by striking the period and inserting the fol-
10 lowing: “; (3) ‘long-term care facility’ means—

11 “(A) any skilled nursing facility, as defined in
12 1819(a) of the Social Security Act;

13 “(B) any nursing facility as defined in 1919(a)
14 of the Social Security Act; or

15 “(C) a public facility, proprietary facility, or fa-
16 cility of a private nonprofit corporation that—

17 “(i) makes available to adult residents sup-
18 portive services to assist the residents in car-
19 rying out activities such as bathing, dressing,
20 eating, getting in and out of bed or chairs,
21 walking, going outdoors, using the toilet, ob-
22 taining or taking medication, and which may
23 make available to residents home health care
24 services, such as nursing and therapy; and

25 “(ii) provides a dwelling place for residents
26 in order to deliver such supportive services re-

1 ferred to in clause (i), each of which may con-
 2 tain a full kitchen and bathroom, and which in-
 3 cludes common rooms and other facilities ap-
 4 propriate for the provision of supportive serv-
 5 ices to the residents of the facility; and

6 “(4) ‘pre-dispute arbitration agreement’ means any
 7 agreement to arbitrate disputes that had not yet arisen
 8 at the time of the making of the agreement.

9 “(b) The definition of ‘long-term care facility’ in sub-
 10 section (a)(3) shall not apply to any facility or portion of
 11 facility that—

12 “(1) does not provide the services described in
 13 subsection (a)(3)(C)(i); or

14 “(2) has as its primary purpose, to educate or
 15 to treat substance abuse problems.”.

16 **SEC. 3. VALIDITY AND ENFORCEMENT.**

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

19 (1) by striking the section heading and insert-
 20 ing the following:

21 **“§ 2. Validity and enforceability”;**

22 (2) by striking “A written” and inserting “(a)
 23 A Written”;

24 (3) by striking “, save” and all that follows
 25 through “contract”, and inserting “to the same ex-

1 tent as contracts generally, except as otherwise pro-
2 vided in this title”; and

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

4 “(b) A pre-dispute arbitration agreement between a
5 long-term care facility and a resident of a long-term care
6 facility (or anyone acting on behalf of such a resident, in-
7 cluding a person with financial responsibility for that resi-
8 dent) shall not be valid or specifically enforceable.

9 “(c) This section shall apply to any pre-dispute arbi-
10 tration agreement between a long-term care facility and
11 a resident (or anyone acting on behalf of such a resident),
12 and shall apply to a pre-dispute arbitration agreement en-
13 tered into either at any time during the admission process
14 or at any time thereafter.

15 “(d) A determination as to whether this chapter ap-
16 plies to an arbitration agreement described in subsection
17 (b) shall be determined by Federal law. Except as other-
18 wise provided in this chapter, the validity or enforceability
19 of such an agreement to arbitrate shall be determined by
20 the court, rather than the arbitrator, irrespective of
21 whether the party resisting the arbitration challenges the
22 arbitration agreement specifically or in conjunction with
23 other terms of the contract containing such agreement.”.

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

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

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