

117TH CONGRESS
2D SESSION

S. 3755

To amend the Consumer Financial Protection Act of 2010 with respect
to arbitration.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2022

Mr. BROWN (for himself, Mr. SCHATZ, Mr. WARNOCK, Ms. WARREN, Mr. MENENDEZ, Mr. VAN HOLLEN, Mrs. FEINSTEIN, Mr. SANDERS, Mr. MARKEY, Mr. REED, Mr. BLUMENTHAL, Mr. PADILLA, Mr. WYDEN, Mr. WHITEHOUSE, Ms. HIRONO, Ms. KLOBUCHAR, Ms. CORTEZ MASTO, Mr. DURBIN, Mr. BOOKER, Mr. CASEY, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Consumer Financial Protection Act of 2010
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 for Consumers Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

1 (1) prohibit predispute arbitration agreements
2 that force arbitration of a future consumer financial
3 product or service dispute; and

4 (2) prohibit agreements and practices that
5 interfere with the right of consumers to participate
6 in a joint, class, or collective action related to a con-
7 sumer financial product or service dispute.

8 **SEC. 3. NO VALIDITY OR ENFORCEABILITY OF PREDISPUTE**
9 **ARBITRATION AGREEMENTS OR JOINT-AC-**
10 **TION WAIVERS.**

11 (a) IN GENERAL.—Subtitle C of the Consumer Fi-
12 nancial Protection Act of 2010 (12 U.S.C. 5531 et seq.)
13 is amended by inserting after section 1036 (12 U.S.C.
14 5536) the following:

15 **“SEC. 1036A. NO VALIDITY OR ENFORCEABILITY OF**
16 **PREDISPUTE ARBITRATION AGREEMENTS OR**
17 **JOINT-ACTION WAIVERS.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) CLASS ACTION.—The term ‘class action’
20 means a lawsuit in which 1 or more parties seek or
21 obtain class treatment pursuant to rule 23 of the
22 Federal Rules of Civil Procedure or a comparable
23 rule or provision of State law.

1 “(2) CONSUMER DISPUTE.—The term ‘con-
2 sumer dispute’ means a dispute relating to a con-
3 sumer financial product or service between—

4 “(A) a consumer, including a consumer
5 who seeks certification as a class under rule 23
6 of the Federal Rules of Civil Procedure or a
7 comparable rule or provision of State law; and

8 “(B) a covered person.

9 “(3) PREDISPUTE ARBITRATION AGREEMENT.—
10 The term ‘predispute arbitration agreement’ means
11 an agreement to arbitrate a consumer dispute that
12 has not yet arisen at the time of the making of the
13 agreement.

14 “(4) PREDISPUTE JOINT-ACTION WAIVER.—The
15 term ‘predispute joint-action waiver’ means an
16 agreement, whether or not part of a predispute arbi-
17 tration agreement, that would prohibit, or waive the
18 right of, one of the parties to the agreement to par-
19 ticipate in a joint, class, or collective action in a ju-
20 dicial, arbitral, administrative, or other forum, con-
21 cerning a consumer dispute that has not yet arisen
22 at the time of the making of the agreement.

23 “(b) NO VALIDITY OR ENFORCEABILITY OF
24 PREDISPUTE ARBITRATION AGREEMENTS OR JOINT-AC-
25 TION WAIVERS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, no predispute arbitration agree-
3 ment or predispute joint-action waiver shall be valid
4 or enforceable with respect to a consumer dispute.

5 “(2) APPLICABILITY.—

6 “(A) IN GENERAL.—An issue as to wheth-
7 er this section applies with respect to a con-
8 sumer dispute shall be determined under Fed-
9 eral law.

10 “(B) DETERMINATION.—The applicability
11 of this section to an agreement to arbitrate and
12 the validity and enforceability of an agreement
13 to which this section applies shall be determined
14 by a court, rather than an arbitrator, irrespec-
15 tive of—

16 “(i) whether the party resisting arbi-
17 tration challenges the arbitration agree-
18 ment specifically or in conjunction with
19 other terms of the contract containing the
20 agreement; and

21 “(ii) whether the agreement purports
22 to delegate such determinations to an arbi-
23 trator.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

25 The table of contents for the Dodd-Frank Wall Street Re-

1 form and Consumer Protection Act (Public Law 111–203;
2 124 Stat. 1376) is amended by inserting after the item
3 relating to section 1036 the following:

“Sec. 1036A. No validity or enforceability of predispute arbitration agreements
or joint-action waivers.”.

4 **SEC. 4. APPLICABILITY.**

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

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