

Calendar No. 1109

110TH CONGRESS
2D SESSION

S. 2838

[Report No. 110–518]

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, Mr. KOHL, Mr. FEINGOLD, Mr. LEAHY, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

Reported by Mr. LEAHY, without amendment

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”.

1 **SEC. 2. DEFINITIONS.**

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

4 (1) by striking the section heading and insert-
5 ing the following:

6 **“§ 1. Definitions”;**

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

10 (3) by striking “Maritime” and inserting “mari-
11 time”;

12 (4) by striking “jurisdiction;” and inserting
13 “jurisdiction; (2)”;

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

16 “(A) any skilled nursing facility, as defined in
17 1819(a) of the Social Security Act;

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

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

22 “(i) makes available to adult residents sup-
23 portive services to assist the residents in car-
24 rying out activities such as bathing, dressing,
25 eating, getting in and out of bed or chairs,
26 walking, going outdoors, using the toilet, ob-

1 taining or taking medication, and which may
 2 make available to residents home health care
 3 services, such as nursing and therapy; and

4 “(ii) provides a dwelling place for residents
 5 in order to deliver such supportive services re-
 6 ferred to in clause (i), each of which may con-
 7 tain a full kitchen and bathroom, and which in-
 8 cludes common rooms and other facilities ap-
 9 propriate for the provision of supportive serv-
 10 ices to the residents of the facility; and

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

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

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

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

21 **SEC. 3. VALIDITY AND ENFORCEMENT.**

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

24 (1) by striking the section heading and insert-
 25 ing the following:

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

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

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

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

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

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

20 “(d) A determination as to whether this chapter ap-
21 plies to an arbitration agreement described in subsection
22 (b) shall be determined by Federal law. Except as other-
23 wise provided in this chapter, the validity or enforceability
24 of such an agreement to arbitrate shall be determined by
25 the court, rather than the arbitrator, irrespective of
26 whether the party resisting the arbitration challenges the

1 arbitration agreement specifically or in conjunction with
2 other terms of the contract containing such agreement.”.

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

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

Calendar No. 1109

110TH CONGRESS
2^D Session

S. 2838

[Report No. 110-518]

A BILL

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

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008
Reported without amendment