

112TH CONGRESS  
1ST SESSION

# S. 1652

To amend title 9 of the United States Code to prohibit mandatory arbitration clauses in contracts for mobile service.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2011

Mr. BLUMENTHAL (for himself, Mr. FRANKEN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 9 of the United States Code to prohibit mandatory arbitration clauses in contracts for mobile service.

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 “Consumer Mobile Fair-  
5       ness Act of 2011”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

8               (1) Consumer use of mobile services has dra-  
9       matically increased over the last 2 decades, with

1 many consumers relying primarily or solely on a mo-  
2 bile device for voice, data, and Internet use.

3 (2) Consumer disputes of mobile services agree-  
4 ments often involve small amounts in controversy.

5 (3) Disputes involving small amounts in con-  
6 troversy are well-suited for class litigation, as class  
7 litigation allows a more efficient process than nu-  
8 merous similar individual actions, distributes the  
9 costs of litigation across a large pool of plaintiffs,  
10 and may present a stronger incentive for a defend-  
11 ant to cease or change harmful behavior.

12 (4) Many contracts for mobile services contain  
13 clauses that require aggrieved consumers to waive  
14 their right to litigate as an individual or class and  
15 instead submit to binding arbitration of any future  
16 dispute.

17 (5) Several States have found, through legisla-  
18 tion or case law, that the clauses described in para-  
19 graph (4) are unconscionable or unenforceable when  
20 they bar class litigation.

21 (6) On April 27, 2011, the Supreme Court, in  
22 its decision in *AT&T Mobility, LLC v. Concepcion*,  
23 563 U.S. \_\_\_, slip op. (2011), held that States must  
24 enforce mandatory binding arbitration clauses even  
25 if they bar class litigation.

1           (7) The Concepcion decision restricts con-  
 2           sumers' ability to resolve disputes against providers  
 3           of mobile services.

4 **SEC. 3. ARBITRATION OF MOBILE SERVICE DISPUTES.**

5           (a) IN GENERAL.—Title 9, United States Code, is  
 6           amended by adding at the end the following:

7 **“CHAPTER 4—ARBITRATION OF COMMER-**  
 8 **CIAL MOBILE SERVICE DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

9 **“SEC. 401. DEFINITIONS.**

10           “In this chapter—

11                   “(1) the term ‘commercial mobile service’ has  
 12           the same meaning as in section 332 of the Commu-  
 13           nications Act of 1934 (47 U.S.C. 332);

14                   “(2) the term ‘covered individual’ means an in-  
 15           dividual who acquires, or attempts to acquire, com-  
 16           mercial mobile service for personal, family, or house-  
 17           hold use;

18                   “(3) the term ‘mobile broadband Internet ac-  
 19           cess service’ means a retail service by wire or radio  
 20           that provides the capability to transmit data and re-  
 21           ceive data from the Internet, including any capabili-  
 22           ties that are incidental to and enable the operation  
 23           of a communications service, that services end users  
 24           primarily using mobile stations;

1           “(4) the term ‘mobile service’ means commer-  
2           cial mobile service or mobile broadband Internet ac-  
3           cess service; and

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

8   **“SEC. 402. VALIDITY AND ENFORCEABILITY.**

9           “(a) IN GENERAL.—Notwithstanding any other pro-  
10          vision of law, a predispute arbitration agreement between  
11          a covered individual and a provider of mobile service shall  
12          not be valid or enforceable.

13          “(b) APPLICABILITY.—An issue as to whether this  
14          chapter applies to an arbitration agreement shall be deter-  
15          mined under Federal law. The applicability of this chapter  
16          to an agreement to arbitrate shall be determined by a  
17          court, rather than an arbitrator, irrespective of whether  
18          the party resisting arbitration challenges the arbitration  
19          agreement specifically or in conjunction with other terms  
20          of the contract containing the agreement.”.

21          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

22                  (1) IN GENERAL.—Title 9 of the United States  
23          Code is amended—

1 (A) in section 2, by inserting “or as other-  
2 wise provided in chapter 4” before the period at  
3 the end;

4 (B) in section 208—

5 (i) in the section heading, by striking  
6 **“Chapter 1; residual application”**  
7 and inserting **“Application”**; and

8 (ii) by adding at the end the fol-  
9 lowing: “This chapter applies to the extent  
10 that this chapter is not in conflict with  
11 chapter 4.”; and

12 (C) in section 307—

13 (i) in the section heading, by striking  
14 **“Chapter 1; residual application”**  
15 and inserting **“Application”**; and

16 (ii) by adding at the end the fol-  
17 lowing: “This chapter applies to the extent  
18 that this chapter is not in conflict with  
19 chapter 4.”.

20 (2) TABLE OF SECTIONS.—

21 (A) CHAPTER 2.—The table of sections for  
22 chapter 2 of title 9, United States Code, is  
23 amended by striking the item relating to section  
24 208 and inserting the following:

“208. Application.”.

1 (B) CHAPTER 3.—The table of sections for  
2 chapter 3 of title 9, United States Code, is  
3 amended by striking the item relating to section  
4 307 and inserting the following:

“307. Application.”.

5 (3) TABLE OF CHAPTERS.—The table of chap-  
6 ters for title 9, United States Code, is amended by  
7 adding at the end the following:

“4. Arbitration of mobile service disputes ..... 401”.

8 **SEC. 4. EFFECTIVE DATE.**

9 This Act, and the amendments made by this Act shall  
10 take effect on the date of enactment of this Act and shall  
11 apply with respect to any dispute or claim that arises on  
12 or after the date of enactment of this Act.

