

114TH CONGRESS
2D SESSION

H. R. 6423

To amend the Truth in Lending Act and the Electronic Fund Transfer Act to provide justice to victims of fraud.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2016

Mr. SHERMAN (for himself, Mr. CONYERS, Mr. CAPUANO, Ms. JUDY CHU of California, Mrs. NAPOLITANO, Ms. EDWARDS, Ms. NORTON, Mr. DANNY K. DAVIS of Illinois, Mrs. LAWRENCE, Mr. CARTWRIGHT, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act and the Electronic Fund Transfer Act to provide justice to victims of fraud.

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 “Justice for Victims
5 of Fraud Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The Bureau of Consumer Financial Protec-
9 tion found that Wells Fargo management imple-

1 mented sales incentives, including an incentive-com-
2 pensation program, in part to increase the number
3 of banking products and services that its employees
4 sold to its customers.

5 (2) The Bureau of Consumer Financial Protec-
6 tion found that Wells Fargo employees engaged in
7 improper sales practices to satisfy sales goals under
8 Wells Fargo's incentive compensation program, in-
9 cluding opening as many as 1,534,280 checking ac-
10 counts and 565,443 credit card accounts using con-
11 sumers' information without their knowledge or con-
12 sent between May 2011 and July 2015.

13 (3) Wells Fargo successfully claimed in *Jabbari*
14 v. Wells Fargo that customers had signed away their
15 rights to hold Wells Fargo accountable in court for
16 claims of fraud because those customers were bound
17 to a forced arbitration clause for their legitimate ac-
18 counts.

19 (4) After Wells Fargo publicly entered a settle-
20 ment with Federal regulators for the opening of
21 thousands of unauthorized customer accounts, Wells
22 Fargo claimed in *Mitchell et. al. v. Wells Fargo et.*
23 al. that customers' fraud claims must continue to be
24 forced into arbitration.

1 (5) Several courts have determined that despite
2 claims of fraud over unauthorized accounts opened
3 without customer knowledge or consent, those cus-
4 tomers are still bound by contracts forcing those
5 claims into arbitration based on the courts' interpre-
6 tation of the Federal Arbitration Act.

7 (6) The Federal Arbitration Act (now codified
8 as chapter 1 of title 9, United States Code) was in-
9 tended to apply to disputes between commercial enti-
10 ties of generally similar sophistication and bar-
11 gaining power, but a series of decisions by the Su-
12 preme Court of the United States have interpreted
13 the Federal Arbitration Act as applicable to claims
14 of fraud.

15 (7) Consumers have no meaningful choice
16 whether to submit their claims to arbitration and
17 are typically unaware that they have given up their
18 rights to file claims in court.

19 **SEC. 3. ARBITRATION OF CONSUMER DISPUTES RELATED**
20 **TO CREDIT CARD ACCOUNTS.**

21 Chapter 2 of the Truth in Lending Act (15 U.S.C.
22 1631 et seq.) is amended by adding at the end the fol-
23 lowing (and the table of contents for such chapter is con-
24 formed accordingly):

1 **“§ 140B. Validity and enforceability**

2 “(a) DEFINITIONS.—In this section—

3 “(1) the term ‘covered dispute’ means a dispute
4 that is not subject to a final judgment by a court;
5 and

6 “(2) the term ‘predispute arbitration agree-
7 ment’ means any agreement between a person and
8 a consumer providing for arbitration of any future
9 dispute between the parties.

10 “(b) VALIDITY AND ENFORCEABILITY.—No predis-
11 pute arbitration agreement shall be valid or enforceable
12 in a covered dispute that is related to a credit card that
13 was not issued in response to a request or application for
14 that credit card account.

15 “(c) APPLICABILITY.—The applicability of this sec-
16 tion to a predispute arbitration agreement shall be deter-
17 mined by a State or Federal court of competent jurisdic-
18 tion.”.

19 **SEC. 4. ARBITRATION OF CONSUMER DISPUTES RELATED**
20 **TO COVERED ACCOUNTS.**

21 The Electronic Fund Transfer Act (15 U.S.C. 1693
22 et seq.) is amended by inserting after section 920 (15
23 U.S.C. 1693o–2) the following:

24 **“SEC. 920A. VALIDITY AND ENFORCEABILITY.**

25 “(a) DEFINITIONS.—In this section—

26 “(1) the term ‘covered account’—

1 “(A) means a demand deposit, savings de-
2 posit, or other asset account (other than an oc-
3 casional or incidental credit balance in an open
4 end credit plan as defined in section 103(i)), as
5 described in regulations of the Bureau, estab-
6 lished primarily for personal, family, or house-
7 hold purposes, including demand accounts, time
8 accounts, negotiable order of withdrawal ac-
9 counts, and share draft accounts; and

10 “(B) does not include an account held by
11 a financial institution pursuant to a bona fide
12 trust agreement;

13 “(2) the term ‘covered dispute’ means a dispute
14 that is not subject to a final judgment by a court;
15 and

16 “(3) the term ‘predispute arbitration agree-
17 ment’ means any agreement between a financial in-
18 stitution and a consumer providing for arbitration of
19 any future dispute between the parties.

20 “(b) VALIDITY AND ENFORCEABILITY.—No predis-
21 pute arbitration agreement shall be valid or enforceable
22 in a covered dispute that is related to a covered account
23 that was not issued in response to a request or application
24 for that covered account.

1 “(c) APPLICABILITY.—The applicability of this sec-
2 tion to a predispute arbitration agreement shall be deter-
3 mined by a State or Federal court of competent jurisdic-
4 tion.”.

5 **SEC. 5. RULE OF CONSTRUCTION.**

6 Nothing in the amendments made by this Act shall
7 be construed—

8 (1) to authorize the imposition of a requirement
9 to submit a dispute to arbitration; or

10 (2) to restrict any court from ruling that a re-
11 quirement to submit a dispute to arbitration is in-
12 valid or unenforceable.

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