

114TH CONGRESS
2D SESSION

S. 3491

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

IN THE SENATE OF THE UNITED STATES

DECEMBER 1, 2016

Mr. BROWN (for himself, Mr. LEAHY, Mr. FRANKEN, Mr. DURBIN, Mr. TESTER, Mrs. MURRAY, Mr. MERKLEY, Ms. WARREN, Ms. HIRONO, Mr. CASEY, Mr. WARNER, Mr. MENENDEZ, Mr. BLUMENTHAL, Ms. HEITKAMP, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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 Congress finds that—

1 (1) the Bureau of Consumer Financial Protec-
2 tion found that Wells Fargo management imple-
3 mented sales incentives, including an incentive com-
4 pensation program, in part to increase the number
5 of banking products and services that its employees
6 sold to its customers;

7 (2) the Bureau of Consumer Financial Protec-
8 tion found that Wells Fargo employees engaged in
9 improper sales practices to satisfy sales goals under
10 an incentive compensation program of Wells Fargo,
11 including opening as many as 1,534,280 checking
12 accounts and 565,443 credit card accounts using in-
13 formation of consumers without their knowledge or
14 consent between May 2011 and July 2015;

15 (3) Wells Fargo successfully claimed in *Jabbari*
16 *v. Wells Fargo & Co.*, No. 15-cv-02159-VC (N.D.
17 Cal. Sept. 23, 2015), that customers had signed
18 away their rights to hold Wells Fargo accountable in
19 court for claims of fraud because those customers
20 were bound to a forced arbitration clause for their
21 legitimate accounts;

22 (4) after Wells Fargo publicly entered a settle-
23 ment with Federal regulators for the opening of
24 thousands of unauthorized customer accounts, Wells
25 Fargo claimed in *Mitchell v. Wells Fargo Bank*

1 N.A., No. 16–00966 (D. Utah complaint filed Sept.
2 16, 2016), that the fraud claims of customers must
3 continue to be forced into arbitration;

4 (5) several courts have determined that despite
5 claims of fraud over unauthorized accounts opened
6 without customer knowledge or consent, those cus-
7 tomers are still bound by contracts forcing those
8 claims into arbitration based on the interpretation of
9 courts of title 9, United States Code;

10 (6) the United States Arbitration Act (43 Stat.
11 883, ch. 213) (codified at title 9, United States
12 Code) was intended to apply to disputes between
13 commercial entities of generally similar sophistica-
14 tion and bargaining power, but a series of decisions
15 by the Supreme Court of the United States has in-
16 terpreted title 9, United States Code, to apply to
17 claims of fraud; and

18 (7) consumers have no meaningful choice
19 whether to submit their claims to arbitration and
20 are typically unaware that they have given up their
21 rights to file claims in court.

1 **SEC. 3. ARBITRATION OF CONSUMER DISPUTES RELATED**
2 **TO CREDIT CARD ACCOUNTS.**

3 Chapter 2 of the Truth in Lending Act (15 U.S.C.
4 1631 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“§ 140B. Validity and enforceability**

7 “(a) DEFINITIONS.—In this section—

8 “(1) the term ‘covered dispute’ means a dispute
9 that is not subject to a final judgment by a court;
10 and

11 “(2) the term ‘predispute arbitration agree-
12 ment’ means any agreement between a person and
13 a consumer providing for arbitration of any future
14 dispute between the parties.

15 “(b) VALIDITY AND ENFORCEABILITY.—No predis-
16 pute arbitration agreement shall be valid or enforceable
17 in a covered dispute that is related to a credit card that
18 was not issued in response to a request or application for
19 that credit card account.

20 “(c) APPLICABILITY.—The applicability of this sec-
21 tion to a predispute arbitration agreement shall be deter-
22 mined by a State or Federal court of competent jurisdic-
23 tion.”.

1 **SEC. 4. ARBITRATION OF CONSUMER DISPUTES RELATED**
 2 **TO COVERED ACCOUNTS.**

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

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

7 “(a) DEFINITIONS.—In this section—

8 “(1) the term ‘covered account’—

9 “(A) means a demand deposit, savings de-
 10 posit, or other asset account (other than an oc-
 11 casional or incidental credit balance in an open
 12 end credit plan as defined in section 103(i)), as
 13 described in regulations of the Bureau, estab-
 14 lished primarily for personal, family, or house-
 15 hold purposes, including demand accounts, time
 16 accounts, negotiable order of withdrawal ac-
 17 counts, and share draft accounts; and

18 “(B) does not include an account held by
 19 a financial institution pursuant to a bona fide
 20 trust agreement;

21 “(2) the term ‘covered dispute’ means a dispute
 22 that is not subject to a final judgment by a court;
 23 and

24 “(3) the term ‘predispute arbitration agree-
 25 ment’ means any agreement between a financial in-

1 stitution and a consumer providing for arbitration of
2 any future dispute between the parties.

3 “(b) VALIDITY AND ENFORCEABILITY.—No predis-
4 pute arbitration agreement shall be valid or enforceable
5 in a covered dispute that is related to a covered account
6 that was not issued in response to a request or application
7 for that covered account.

8 “(c) APPLICABILITY.—The applicability of this sec-
9 tion to a predispute arbitration agreement shall be deter-
10 mined by a State or Federal court of competent jurisdic-
11 tion.”.

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

13 Nothing in the amendments made by this Act shall
14 be construed—

15 (1) to authorize the imposition of a requirement
16 to submit a dispute to arbitration; or

17 (2) to restrict any court from ruling that a re-
18 quirement to submit a dispute to arbitration is in-
19 valid or unenforceable.

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