

112TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. FRANKEN (for himself, Mr. BLUMENTHAL, Mr. LEAHY, Mr. DURBIN, Mr. WHITEHOUSE, Mr. BROWN of Ohio, Mr. HARKIN, Mr. KERRY, Mr. MERKLEY, Mr. UDALL of New Mexico, Mr. WYDEN, Mr. CASEY, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend title 9 of the 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 “Arbitration Fairness  
5        Act of 2011”.

6        **SEC. 2. FINDINGS.**

7        The Congress finds the following:

8                (1) The Federal Arbitration Act (now enacted  
9        as chapter 1 of title 9 of the United States Code)

1 was intended to apply to disputes between commer-  
2 cial entities of generally similar sophistication and  
3 bargaining power.

4 (2) A series of decisions by the Supreme Court  
5 of the United States have changed the meaning of  
6 the Act so that it now extends to consumer disputes  
7 and employment disputes.

8 (3) Most consumers and employees have little  
9 or no meaningful choice whether to submit their  
10 claims to arbitration. Often, consumers and employ-  
11 ees are not even aware that they have given up their  
12 rights.

13 (4) Mandatory arbitration undermines the de-  
14 velopment of public law because there is inadequate  
15 transparency and inadequate judicial review of arbi-  
16 trators' decisions.

17 (5) Arbitration can be an acceptable alternative  
18 when consent to the arbitration is truly voluntary,  
19 and occurs after the dispute arises.

20 **SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, AND**  
21 **CIVIL RIGHTS DISPUTES.**

22 (a) IN GENERAL.—Title 9 of the United States Code  
23 is amended by adding at the end the following:

1 **“CHAPTER 4—ARBITRATION OF EMPLOY-**  
2 **MENT, CONSUMER, AND CIVIL RIGHTS**  
3 **DISPUTES**

“Sec.

“401. Definitions.

“402. Validity and enforceability.

4 **“§ 401. Definitions**

5 “In this chapter—

6 “(1) the term ‘civil rights dispute’ means a dis-  
7 pute—

8 “(A) arising under—

9 “(i) the Constitution of the United  
10 States or the constitution of a State; or

11 “(ii) a Federal or State statute that  
12 prohibits discrimination on the basis of  
13 race, sex, disability, religion, national ori-  
14 gin, or any invidious basis in education,  
15 employment, credit, housing, public accom-  
16 modations and facilities, voting, or pro-  
17 gram funded or conducted by the Federal  
18 Government or State government, includ-  
19 ing any statute enforced by the Civil  
20 Rights Division of the Department of Jus-  
21 tice and any statute enumerated in section  
22 62(e) of the Internal Revenue Code of  
23 1986 (relating to unlawful discrimination);  
24 and

1           “(B) in which at least 1 party alleging a  
2           violation of the Constitution of the United  
3           States, a State constitution, or a statute pro-  
4           hibiting discrimination is an individual;

5           “(2) the term ‘consumer dispute’ means a dis-  
6           pute between an individual who seeks or acquires  
7           real or personal property, services (including services  
8           relating to securities and other investments), money,  
9           or credit for personal, family, or household purposes  
10          and the seller or provider of such property, services,  
11          money, or credit;

12          “(3) the term ‘employment dispute’ means a  
13          dispute between an employer and employee arising  
14          out of the relationship of employer and employee as  
15          defined in section 3 of the Fair Labor Standards  
16          Act of 1938 (29 U.S.C. 203); and

17          “(4) the term ‘predispute arbitration agree-  
18          ment’ means any agreement to arbitrate a dispute  
19          that had not yet arisen at the time of the making  
20          of the agreement.

21   **“§ 402. Validity and enforceability**

22          “(a) IN GENERAL.—Notwithstanding any other pro-  
23          vision of this title, no predispute arbitration agreement  
24          shall be valid or enforceable if it requires arbitration of

1 an employment dispute, consumer dispute, or civil rights  
2 dispute.

3 “(b) APPLICABILITY.—

4 “(1) IN GENERAL.—An issue as to whether this  
5 chapter applies to an arbitration agreement shall be  
6 determined under Federal law. The applicability of  
7 this chapter to an agreement to arbitrate and the  
8 validity and enforceability of an agreement to which  
9 this chapter applies shall be determined by a court,  
10 rather than an arbitrator, irrespective of whether the  
11 party resisting arbitration challenges the arbitration  
12 agreement specifically or in conjunction with other  
13 terms of the contract containing such agreement.

14 “(2) COLLECTIVE BARGAINING AGREEMENTS.—  
15 Nothing in this chapter shall apply to any arbitra-  
16 tion provision in a contract between an employer and  
17 a labor organization or between labor organizations,  
18 except that no such arbitration provision shall have  
19 the effect of waiving the right of an employee to  
20 seek judicial enforcement of a right arising under a  
21 provision of the Constitution of the United States, a  
22 State constitution, or a Federal or State statute, or  
23 public policy arising therefrom.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

3 (A) in section 1, by striking “of seamen,”  
4 and all that follows through “interstate com-  
5 merce”;

6 (B) in section 2, by inserting “or as other-  
7 wise provided in chapter 4” before the period at  
8 the end;

9 (C) in section 208—

10 (i) in the section heading, by striking  
11 “**Chapter 1; residual application**”  
12 and inserting “**Application**”; and

13 (ii) by adding at the end the fol-  
14 lowing: “This chapter applies to the extent  
15 that this chapter is not in conflict with  
16 chapter 4.”; and

17 (D) in section 307—

18 (i) in the section heading, by striking  
19 “**Chapter 1; residual application**”  
20 and inserting “**Application**”; and

21 (ii) by adding at the end the fol-  
22 lowing: “This chapter applies to the extent  
23 that this chapter is not in conflict with  
24 chapter 4.”.

25 (2) TABLE OF SECTIONS.—

1 (A) CHAPTER 2.—The table of sections for  
2 chapter 2 of title 9, United States Code, is  
3 amended by striking the item relating to section  
4 208 and inserting the following:

“208. Application.”.

5 (B) CHAPTER 3.—The table of sections for  
6 chapter 3 of title 9, United States Code, is  
7 amended by striking the item relating to section  
8 307 and inserting the following:

“307. Application.”.

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

“4. Arbitration of employment, consumer, and civil rights disputes ..... 401”.

12 **SEC. 4. EFFECTIVE DATE.**

13 This Act, and the amendments made by this Act,  
14 shall take effect on the date of enactment of this Act and  
15 shall apply with respect to any dispute or claim that arises  
16 on or after such date.