

115TH CONGRESS  
1ST SESSION

# S. 552

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2017

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

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## 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 2017”.

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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