

113TH CONGRESS  
1ST SESSION

# S. 878

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

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## IN THE SENATE OF THE UNITED STATES

MAY 7, 2013

Mr. FRANKEN (for himself, Mr. LEAHY, Ms. WARREN, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Ms. HIRONO, Mr. SANDERS, Mr. UDALL of New Mexico, Mr. HARKIN, Mr. MENENDEZ, Mr. SCHATZ, Ms. HEITKAMP, Mr. BROWN, Mrs. BOXER, Mr. WYDEN, and Mr. LAUTENBERG) 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 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 2013”.

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 interpreted the Act so  
6 that it now extends to consumer disputes and em-  
7 ployment disputes, contrary to the intent of Con-  
8 gress.

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

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

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

21 **SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTI-**  
22 **TRUST, AND CIVIL RIGHTS DISPUTES.**

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

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

“Sec.

“401. Definitions.

“402. Validity and enforceability.

4 **“§ 401. Definitions**

5 “In this chapter—

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

8 “(A) involving a claim for damages alleg-  
 9 edly caused by a violation of the antitrust laws  
 10 (as defined in subsection (a) of the first section  
 11 of the Clayton Act (15 U.S.C. 12)) or State  
 12 antitrust laws; and

13 “(B) in which the plaintiffs seek certifi-  
 14 cation as a class under rule 23 of the Federal  
 15 Rules of Civil Procedure or a comparable rule  
 16 or provision of State law;

17 “(2) the term ‘civil rights dispute’ means a dis-  
 18 pute—

19 “(A) arising under—

20 “(i) the Constitution of the United  
 21 States or the constitution of a State; or

22 “(ii) a Federal or State statute that  
 23 prohibits discrimination on the basis of  
 24 race, sex, disability, religion, national ori-

1           gin, or any invidious basis in education,  
2           employment, credit, housing, public accom-  
3           modations and facilities, voting, or pro-  
4           gram funded or conducted by the Federal  
5           Government or State government, includ-  
6           ing any statute enforced by the Civil  
7           Rights Division of the Department of Jus-  
8           tice and any statute enumerated in section  
9           62(e) of the Internal Revenue Code of  
10          1986 (relating to unlawful discrimination);  
11          and

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

16           “(3) the term ‘consumer dispute’ means a dis-  
17          pute between an individual who seeks or acquires  
18          real or personal property, services (including services  
19          relating to securities and other investments), money,  
20          or credit for personal, family, or household purposes  
21          and the seller or provider of such property, services,  
22          money, or credit;

23           “(4) the term ‘employment dispute’ means a  
24          dispute between an employer and employee arising  
25          out of the relationship of employer and employee as

1 defined in section 3 of the Fair Labor Standards  
2 Act of 1938 (29 U.S.C. 203); and

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

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

8 “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of this title, no predispute arbitration agreement  
10 shall be valid or enforceable if it requires arbitration of  
11 an employment dispute, consumer dispute, antitrust dis-  
12 pute, or civil rights dispute.

13 “(b) APPLICABILITY.—

14 “(1) IN GENERAL.—An issue as to whether this  
15 chapter applies to an arbitration agreement shall be  
16 determined under Federal law. The applicability of  
17 this chapter to an agreement to arbitrate and the  
18 validity and enforceability of an agreement to which  
19 this chapter applies shall be determined by a court,  
20 rather than an arbitrator, irrespective of whether the  
21 party resisting arbitration challenges the arbitration  
22 agreement specifically or in conjunction with other  
23 terms of the contract containing such agreement.

24 “(2) COLLECTIVE BARGAINING AGREEMENTS.—

25 Nothing in this chapter shall apply to any arbitra-

1       tion provision in a contract between an employer and  
 2       a labor organization or between labor organizations,  
 3       except that no such arbitration provision shall have  
 4       the effect of waiving the right of an employee to  
 5       seek judicial enforcement of a right arising under a  
 6       provision of the Constitution of the United States, a  
 7       State constitution, or a Federal or State statute, or  
 8       public policy arising therefrom.”.

9       (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

12               (A) in section 1, by striking “of seamen,”  
 13               and all that follows through “interstate com-  
 14               merce”;

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

18               (C) in section 208—

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

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

1 (D) in section 307—

2 (i) in the section heading, by striking  
3 **“Chapter 1; residual application”**  
4 and inserting **“Application”**; and

5 (ii) by adding at the end the fol-  
6 lowing: “This chapter applies to the extent  
7 that this chapter is not in conflict with  
8 chapter 4.”.

9 (2) TABLE OF SECTIONS.—

10 (A) CHAPTER 2.—The table of sections for  
11 chapter 2 of title 9, United States Code, is  
12 amended by striking the item relating to section  
13 208 and inserting the following:

“208. Application.”.

14 (B) CHAPTER 3.—The table of sections for  
15 chapter 3 of title 9, United States Code, is  
16 amended by striking the item relating to section  
17 307 and inserting the following:

“307. Application.”.

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

“4. Arbitration of employment, consumer, antitrust, and civil rights dis-  
putes ..... 401”.

1 **SEC. 4. EFFECTIVE DATE.**

2       This Act, and the amendments made by this Act,  
3 shall take effect on the date of enactment of this Act and  
4 shall apply with respect to any dispute or claim that arises  
5 on or after such date.

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