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Arbitration Fairness Act of 2007 (Introduced in Senate)

S 1782 IS

110th CONGRESS

1st Session

S. 1782

To amend chapter 1 of title 9 of United States Code with respect to arbitration .

IN THE SENATE OF THE UNITED STATES

July 12, 2007

Mr. FEINGOLD (for himself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 1 of title 9 of United States Code with respect to arbitration .

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Arbitration Fairness Act of 2007'.

SEC. 2. FINDINGS.

The Congress finds the following:

- (1) The Federal Arbitration Act (now enacted as chapter 1 of title 9 of the United States Code) was intended to apply to disputes between commercial entities of generally similar sophistication and bargaining power.
- (2) A series of United States Supreme Court decisions have changed the meaning of the Act so that it now extends to disputes between parties of greatly disparate economic power, such as consumer disputes and employment disputes. As a result, a large and rapidly growing number of corporations are requiring millions of consumers and employees to give up their right to have disputes resolved by a judge or jury, and instead submit their claims to binding arbitration .
- (3) Most consumers and employees have little or no meaningful option whether to submit their claims to arbitration . Few people realize, or understand the importance of the deliberately fine print that strips them of rights; and because entire industries are adopting these clauses, people increasingly have no choice but to accept them. They must often give up their rights as a condition of having a job, getting necessary medical care, buying a car, opening a bank account, getting a credit card, and the like. Often times, they are not even aware that they have given up

their rights.

(4) Private arbitration companies are sometimes under great pressure to devise systems that favor the corporate repeat players who decide whether those companies will receive their lucrative business.

(5) Mandatory arbitration undermines the development of public law for civil rights and consumer rights, because there is no meaningful judicial review of arbitrators' decisions. With the knowledge that their rulings will not be seriously examined by a court applying current law, arbitrators enjoy near complete freedom to ignore the law and even their own rules.

(6) Mandatory arbitration is a poor system for protecting civil rights and consumer rights because it is not transparent. While the American civil justice system features publicly accountable decision makers who generally issue written decisions that are widely available to the public, arbitration offers none of these features.

(7) Many corporations add to their arbitration clauses unfair provisions that deliberately tilt the systems against individuals, including provisions that strip individuals of substantive statutory rights, ban class actions, and force people to arbitrate their claims hundreds of miles from their homes. While some courts have been protective of individuals, too many courts have upheld even egregiously unfair mandatory arbitration clauses in deference to a supposed Federal policy favoring arbitration over the constitutional rights of individuals.

SEC. 3. DEFINITIONS.

Section 1 of title 9, United States Code, is amended--

(1) by amending the heading to read as follows:

`Sec. 1. Definitions';

(2) by inserting before `Maritime' the following:

`As used in this chapter--';

(3) by striking `Maritime transactions' and inserting the following:

`(1) `maritime transactions';';

(4) by striking `commerce' and inserting the following:

`(2) `commerce';

(5) by striking `, but nothing' and all that follows through the period at the end, and inserting a semicolon; and

(6) by adding at the end the following:

`(3) `employment dispute', as herein defined, means a dispute between an employer and employee arising out of the relationship of employer and employee as defined by the Fair Labor Standards Act ;

`(4) `consumer dispute', as herein defined, means a dispute between a person other than an organization who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes and the seller or provider of such property, services, money, or credit;

`(5) `franchise dispute', as herein defined, means a dispute between a franchisor and franchisee arising out of or relating to contract or agreement by which--

(A) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;

(B) the operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name,

logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and

(C) the franchisee is required to pay, directly or indirectly, a franchise fee; and

(6) 'pre-dispute arbitration agreement', as herein defined, means any agreement to arbitrate disputes that had not yet arisen at the time of the making of the agreement.'

SEC. 4. VALIDITY AND ENFORCEABILITY.

Section 2 of title 9, United States Code, is amended--

(1) by amending the heading to read as follows:

'Sec. 2. Validity and enforceability',

(2) by inserting '(a)' before 'A written';

(3) by striking ', save' and all that follows through 'contract', and inserting 'to the same extent as contracts generally, except as otherwise provided in this title'; and

(4) by adding at the end the following:

(b) No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of--

(1) an employment, consumer, or franchise dispute; or

(2) a dispute arising under any statute intended to protect civil rights or to regulate contracts or transactions between parties of unequal bargaining power.

(c) An issue as to whether this chapter applies to an arbitration agreement shall be determined by Federal law. Except as otherwise provided in this chapter, the validity or enforceability of an agreement to arbitrate shall be determined by the court, rather than the arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

(d) Nothing in this chapter shall apply to any arbitration provision in a collective bargaining agreement.'

SEC. 5. EFFECTIVE DATE.

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

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