

#### 115TH CONGRESS 1ST SESSION

# S. 537

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

### IN THE SENATE OF THE UNITED STATES

March 7, 2017

Mr. Franken (for himself, Ms. Baldwin, Mr. Blumenthal, Mr. Booker, Mr. Brown, Mr. Casey, Mr. Coons, Mr. Durbin, Ms. Heitkamp, Ms. Hirono, Mr. Leahy, Mr. Markey, Mr. Menendez, Mr. Merkley, Mrs. Murray, Mr. Reed, Mr. Sanders, Mr. Schatz, Mrs. Shaheen, Mr. Udall, Ms. Warren, Mr. Whitehouse, and Mr. Wyden) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

# 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 2017".
- 6 SEC. 2. FINDINGS.
- 7 The Congress finds the following:

- 1 (1) The Federal Arbitration Act (now enacted 2 as chapter 1 of title 9 of the United States Code) 3 was intended to apply to disputes between commer-4 cial entities of generally similar sophistication and 5 bargaining power.
  - (2) A series of decisions by the Supreme Court of the United States have interpreted the Act so that it now extends to consumer disputes and employment disputes, contrary to the intent of Congress.
  - (3) Most consumers and employees have little or no meaningful choice whether to submit their claims to arbitration. Often, consumers and employees are not even aware that they have given up their rights.
  - (4) Mandatory arbitration undermines the development of public law because there is inadequate transparency and inadequate judicial review of arbitrators' decisions.
  - (5) Arbitration can be an acceptable alternative when consent to the arbitration is truly voluntary, and occurs after the dispute arises.

1	SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, ANTI-
2	TRUST, AND CIVIL RIGHTS DISPUTES.
3	(a) In General.—Title 9 of the United States Code
4	is amended by adding at the end the following:
5	"CHAPTER 4—ARBITRATION OF EMPLOY-
6	MENT, CONSUMER, ANTITRUST, AND
7	CIVIL RIGHTS DISPUTES
	"Sec. "401. Definitions. "402. Validity and enforceability.
8	"§ 401. Definitions
9	"In this chapter—
10	"(1) the term 'antitrust dispute' means a dis-
11	pute—
12	"(A) involving a claim for damages alleg-
13	edly caused by a violation of the antitrust laws
14	(as defined in subsection (a) of the first section
15	of the Clayton Act (15 U.S.C. 12)) or State
16	antitrust laws; and
17	"(B) in which the plaintiffs seek certifi-
18	cation as a class under rule 23 of the Federal
19	Rules of Civil Procedure or a comparable rule
20	or provision of State law;
21	"(2) the term 'civil rights dispute' means a dis-
22	pute—
23	"(A) arising under—

1	"(i) the Constitution of the United
2	States or the constitution of a State; or
3	"(ii) a Federal or State statute that
4	prohibits discrimination on the basis of
5	race, sex, disability, religion, national ori-
6	gin, or any invidious basis in education,
7	employment, credit, housing, public accom-
8	modations and facilities, voting, or pro-
9	gram funded or conducted by the Federal
10	Government or State government, includ-
11	ing any statute enforced by the Civil
12	Rights Division of the Department of Jus-
13	tice and any statute enumerated in section
14	62(e) of the Internal Revenue Code of
15	1986 (relating to unlawful discrimination);
16	and
17	"(B) in which at least 1 party alleging a
18	violation of the Constitution of the United
19	States, a State constitution, or a statute pro-
20	hibiting discrimination is an individual;
21	"(3) the term 'consumer dispute' means a dis-
22	pute between an individual who seeks or acquires
23	real or personal property, services, securities or
24	other investments, money, or credit for personal,
25	family, or household purposes and the seller or pro-

- vider of such property, services, securities or other investments, money, or credit;
- "(4) the term 'employment dispute' means a dispute between an employer and employee arising out of the relationship of employer and employee as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203); and
- 8 "(5) the term 'predispute arbitration agree-9 ment' means any agreement to arbitrate a dispute 10 that had not yet arisen at the time of the making 11 of the agreement.

## 12 "§ 402. Validity and enforceability

- "(a) In General.—Notwithstanding any other provision of this title, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute.
- 18 "(b) Applicability.—
- "(1) IN GENERAL.—An issue as to whether this chapter applies to an arbitration agreement shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the

1	party resisting arbitration challenges the arbitration
2	agreement specifically or in conjunction with other
3	terms of the contract containing such agreement.
4	"(2) Collective bargaining agreements.—
5	Nothing in this chapter shall apply to any arbitra-
6	tion provision in a contract between an employer and
7	a labor organization or between labor organizations,
8	except that no such arbitration provision shall have
9	the effect of waiving the right of an employee to
10	seek judicial enforcement of a right arising under a
11	provision of the Constitution of the United States, a
12	State constitution, or a Federal or State statute, or
13	public policy arising therefrom.".
14	(b) Technical and Conforming Amendments.—
15	(1) In General.—Title 9 of the United States
16	Code is amended—
17	(A) in section 1, by striking "of seamen,"
18	and all that follows through "interstate com-
19	merce";
20	(B) in section 2, by inserting "or as other-
21	wise provided in chapter 4" before the period at
22	the end;
23	(C) in section 208—

1	(i) in the section heading, by striking
2	"Chapter 1; residual application"
3	and inserting "Application"; and
4	(ii) by adding at the end the fol-
5	lowing: "This chapter applies to the extent
6	that this chapter is not in conflict with
7	chapter 4."; and
8	(D) in section 307—
9	(i) in the section heading, by striking
10	"Chapter 1; residual application"
11	and inserting "Application"; and
12	(ii) by adding at the end the fol-
13	lowing: "This chapter applies to the extent
14	that this chapter is not in conflict with
15	chapter 4.".
16	(2) Table of Sections.—
17	(A) CHAPTER 2.—The table of sections for
18	chapter 2 of title 9, United States Code, is
19	amended by striking the item relating to section
20	208 and inserting the following:
	"208. Application.".
21	(B) Chapter 3.—The table of sections for
22	chapter 3 of title 9, United States Code, is
23	amended by striking the item relating to section
24	307 and inserting the following:
	(907 A1:1: 22

- 1 (3) Table of Chapters.—The table of chap-2 ters for title 9, United States Code, is amended by 3 adding at the end the following:

### 4 SEC. 4. EFFECTIVE DATE.

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

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