

116TH CONGRESS  
1ST SESSION

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

To amend the Consumer Financial Protection Act of 2010 with respect to arbitration.

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IN THE SENATE OF THE UNITED STATES

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\_\_\_\_\_ introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the Consumer Financial Protection Act of 2010 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 for Consumers Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

- 8 (1) prohibit predispute arbitration agreements  
9 that force arbitration of future consumer financial  
10 product or service dispute; and

1           (2) prohibit agreements and practices that  
2           interfere with the right of individuals and small  
3           businesses to participate in a joint, class, or collec-  
4           tive action related to a consumer financial product  
5           or service dispute.

6 **SEC. 3. NO VALIDITY OR ENFORCEABILITY OF PREDISPUTE**  
7                           **ARBITRATION AGREEMENTS OR JOINT-AC-**  
8                           **TION WAIVERS.**

9           (a) IN GENERAL.—Subtitle C of the Consumer Fi-  
10          nancial Protection Act of 2010 (12 U.S.C. 5531 et seq.)  
11          is amended by inserting after section 1036 (15 U.S.C.  
12          5536) the following:

13 **“SEC. 1036A. NO VALIDITY OR ENFORCEABILITY OF**  
14                           **PREDISPUTE ARBITRATION AGREEMENTS OR**  
15                           **JOINT-ACTION WAIVERS.**

16          “(a) DEFINITIONS.—In this section:

17                   “(1) CLASS ACTION.—The term ‘class action’  
18                   means a lawsuit in which 1 or more parties seek or  
19                   obtain class treatment pursuant to rule 23 of the  
20                   Federal Rules of Civil Procedure or comparable rule  
21                   or provision of State law.

22                   “(2) CONSUMER DISPUTE.—The term ‘con-  
23                   sumer dispute’ means a dispute between—

24                           “(A) an individual, including an individual  
25                           or who seeks certification as a class under rule

1           23 of the Federal Rules of Civil Procedure or  
2           a comparable rule or provision of State law,  
3           who for personal, family, or household pur-  
4           poses, seeks or acquires—

5                   “(i) real or personal property;

6                   “(ii) services, including services re-  
7                   lated to digital technology;

8                   “(iii) securities or other investments;

9                   “(iv) money; or

10                  “(v) credit; and

11                  “(B) the seller or provider of such prop-  
12                  erty, services, securities or other investments,  
13                  money, or credit, including a third party in-  
14                  volved in the selling, providing of, payment for,  
15                  receipt or use of information about, or other re-  
16                  lationship to any such property, services, securi-  
17                  ties or other investments, money, or credit.

18                  “(3) PREDISPUTE ARBITRATION AGREEMENT.—

19                  The term ‘predispute arbitration agreement’ means  
20                  an agreement to arbitrate a dispute that has not yet  
21                  arisen at the time of the making of the agreement.

22                  “(4) PREDISPUTE JOINT-ACTION WAIVER.—The  
23                  term ‘pre-dispute joint-action waiver’ means an  
24                  agreement, whether or not part of a predispute arbi-  
25                  tration agreement, that would prohibit, or waive the

1 right of, one of the parties to the agreement to par-  
2 ticipate in a joint, class, or collective action in a ju-  
3 dicial, arbitral, administrative, or other forum, con-  
4 cerning a dispute that has not yet arisen at the time  
5 of the making of the agreement.

6 “(b) NO VALIDITY OR ENFORCEABILITY OF PRE-DIS-  
7 PUTE ARBITRATION AGREEMENTS OR JOINT-ACTION  
8 WAIVERS.—

9 “(1) IN GENERAL.—Notwithstanding any other  
10 provision of law, no predispute arbitration agree-  
11 ment or predispute joint-action waiver shall be valid  
12 or enforceable with respect to a consumer dispute  
13 between a covered person and a consumer that re-  
14 lates to a consumer financial product or service.

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

1       irrespective of whether the agreement purports to  
2       delegate such determinations to an arbitrator.”.

3       (b) **TECHNICAL AND CONFORMING AMENDMENTS.**—

4       The table of contents for the Dodd-Frank Wall Street Re-  
5       form and Consumer Protection Act is amended by insert-  
6       ing after the item relating to section 1036 the following:

      “1036A. No validity or enforceability of pre-dispute arbitration agreements or  
          joint-action waivers.”.

7       **SEC. 4. APPLICABILITY.**

8       This Act, and the amendments made by this Act,  
9       shall apply with respect to any dispute or claim that arises  
10      or accrues on or after the date of enactment of this Act.