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

IN THE SENATE OF THE UNITED STATES

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

A BILL

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arbitration Fairness for Consumers Act”.

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) prohibit predispute arbitration agreements that force arbitration of future consumer financial product or service dispute; and
(2) prohibit agreements and practices that interfere with the right of individuals and small businesses to participate in a joint, class, or collective action related to a consumer financial product or service dispute.

SEC. 3. NO VALIDITY OR ENFORCEABILITY OF PREDISPUTE ARBITRATION AGREEMENTS OR JOINT-ACTION WAIVERS.

(a) In General.—Subtitle C of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5531 et seq.) is amended by inserting after section 1036 (15 U.S.C. 5536) the following:

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

“(a) Definitions.—In this section:

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

“(2) Consumer dispute.—The term ‘consumer dispute’ means a dispute between—

“(A) an individual, including an individual or who seeks certification as a class under rule
23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law, who for personal, family, or household purposes, seeks or acquires—

“(i) real or personal property;

“(ii) services, including services related to digital technology;

“(iii) securities or other investments;

“(iv) money; or

“(v) credit; and

“(B) the seller or provider of such property, services, securities or other investments, money, or credit, including a third party involved in the selling, providing of, payment for, receipt or use of information about, or other relationship to any such property, services, securities or other investments, money, or credit.

“(3) PREDISPUTE ARBITRATION AGREEMENT.—The term ‘predispute arbitration agreement’ means an agreement to arbitrate a dispute that has not yet arisen at the time of the making of the agreement.

“(4) PREDISPUTE JOINT-ACTION WAIVER.—The term ‘pre-dispute joint-action waiver’ means an agreement, whether or not part of a predispute arbitration agreement, that would prohibit, or waive the
right of, one of the parties to the agreement to par-

ticipate in a joint, class, or collective action in a ju-
dicial, arbitral, administrative, or other forum, con-
cerning a dispute that has not yet arisen at the time
of the making of the agreement.

“(b) No Validity or Enforceability of Pre-dis-
pute Arbitration Agreements or Joint-Action
Waivers.—

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

“(2) Applicability.—An issue as to whether
this section applies with respect to a dispute 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 section applies shall be determined by a court,
rather than an arbitrator, irrespective of whether the
party resisting arbitration challenges the arbitration
agreement specifically or in conjunction with other
terms of the contract containing the agreement, and
irrespective of whether the agreement purports to delegate such determinations to an arbitrator.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

The table of contents for the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended by inserting after the item relating to section 1036 the following:

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

SEC. 4. APPLICABILITY.

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