

At least one state court has found that mandatory arbitration provisions in credit card bill stuffers are unenforceable. A suit filed in California state court arose out of a mandatory arbitration provision announced in mailings by Bank of America to its credit card and deposit account holders. In 1998, the California Court of Appeals ruled that the mandatory arbitration clauses unilaterally imposed on the Bank's customers were invalid and unenforceable. The California Supreme Court refused to review the decision of the lower court. As a result, credit card companies in California cannot invoke mandatory arbitration in their disputes with customers. In fact, the American Express bill stuffer notes that the mandatory, binding arbitration provision will not apply to California residents until further notice from the company. The California appellate court decision was wise and well-reasoned, but consumers in other states cannot be sure that all courts will reach the same conclusion.

My bill extends the wisdom of the California appellate decision to every credit cardholder and consumer loan borrower. It amends the Federal Arbitration Act to invalidate mandatory, binding arbitration provisions in consumer credit agreements. Now, let me be clear. I believe that arbitration can be a fair and efficient way to settle disputes. I agree we ought to encourage alternative dispute resolution. But I also believe that arbitration is a fair way to settle disputes between consumers and lenders only when it is entered into knowingly and voluntarily by both parties to the dispute after the dispute has arisen. Pre-dispute agreements to take disputes to arbitration cannot be voluntary and knowing in the consumer lending context because the bargaining power of the parties is so unequal. My bill does not prohibit arbitration of consumer credit transactions. It merely prohibits mandatory, binding arbitration provisions in consumer credit agreements.

Credit card companies and consumer credit lenders are increasingly slamming the courthouse doors shut on consumers, often unbeknownst to them. This is grossly unjust. We need to restore fairness to the resolution of consumer credit disputes. I urge my colleagues to support the Consumer Credit Fair Dispute Resolution Act.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following my statement.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 192

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 "Consumer Credit Fair Dispute Resolution Act of 2001".

SEC. 2. CONSUMER CREDIT TRANSACTIONS.

(a) DEFINITIONS.—Section 1 of title 9, United States Code, is amended—

(1) in the section heading, by striking "AND 'COMMERCE' DEFINED" and inserting "COMMERCE', 'CONSUMER CREDIT TRANSACTION', AND 'CONSUMER CREDIT CONTRACT' DEFINED"; and

(2) by inserting before the period at the end the following: " 'consumer credit transaction', as herein defined, means the right granted to a natural person to incur debt and defer its payment, where the credit is intended primarily for personal, family, or household purposes; and 'consumer credit contract', as herein defined, means any contract between the parties to a consumer credit transaction."

(b) AGREEMENTS TO ARBITRATE.—Section 2 of title 9, United States Code, is amended—

(1) by striking "A written" and inserting "(a) IN GENERAL.—A written"; and

(2) by adding at the end the following:

"(b) CONSUMER CREDIT CONTRACTS.—
"(1) IN GENERAL.—Notwithstanding the preceding sentence, a written provision in any consumer credit contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of the contract, or the refusal to perform the whole or any part thereof, shall not be valid or enforceable.
"(2) LIMITATION.—Nothing in this section shall prohibit the enforcement of any written agreement to settle by arbitration a controversy arising out of a consumer credit contract, if such written agreement has been entered into by the parties to the consumer credit contract after the controversy has arisen."

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. HAGEL, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 22, a bill to amend the Federal Election Campaign Act of 1971 to provide meaningful campaign finance reform through requiring better reporting, decreasing the role of soft money, and increasing individual contribution limits, and for other purposes.

S. 27

At the request of Mr. FEINGOLD, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 27, a bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

S. 35

At the request of Mr. GRAMM, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 35, a bill to provide relief to America's working families and to promote continued economic growth by returning a portion of the tax surplus to those who created it.

S. 37

At the request of Mr. LUGAR, the names of the Senator from Missouri (Mr. BOND), the Senator from Michigan (Mr. LEVIN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 37, a bill to amend the

Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory.

S. 39

At the request of Mr. STEVENS, the name of the Senator from Alaska (Mr. MURKOWSKI) was added as a cosponsor of S. 39, a bill to provide a national medal for public safety officers who act with extraordinary valor above and beyond the call of duty, and for other purposes.

S. 60

At the request of Mr. BYRD, the names of the Senator from Kentucky (Mr. MCCONNELL), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Nevada (Mr. REID), the Senator from North Dakota (Mr. DORGAN), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 60, a bill to authorize the Department of Energy programs to develop and implement an accelerated research and development program for advanced clean coal technologies for use in coal-based electricity generating facilities and to amend the Internal Revenue Code of 1986 to provide financial incentives to encourage the retrofitting, repowering, or replacement of coal-based electricity generating facilities to protect the environment and improve efficiency and encourage the early commercial application of advanced clean coal technologies, so as to allow coal to help meet the growing need of the United States for the generation of reliable and affordable electricity.

S. 127

At the request of Mr. MCCAIN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 127, a bill to give American companies, American workers, and American ports the opportunity to compete in the United States cruise market.

S. 148

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

ORDER OF BUSINESS

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent to speak as in morning business for up to 15 minutes notwithstanding the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

MOVING FROM POLITICS TO POLICY: THE PRESIDING OFFICER'S CHALLENGE ON NATIONAL MISSILE DEFENSE

Mr. BIDEN. Mr. President, last week-end the nation inaugurated a new President, President George W. Bush.