

September 21, 2007

To Members of the United States Senate:

The undersigned members of the Coalition to Preserve Arbitration strongly oppose to S. 1782, the “Arbitration Fairness Act.” This legislation would effectively abolish pre-dispute arbitration agreements as a way to fairly, quickly and easily resolve consumer, employment, and franchise related contractual disputes, as well as disrupt commercial arbitration well beyond the bill’s advertised scope. We urge you to oppose S. 1782.

S. 1782 not only eliminates the use of pre-dispute arbitration clauses in future consumer, employment, and franchise contracts, it also nullifies pre-dispute arbitration clauses in existing contracts if a dispute arises under that contract after enactment of the legislation. This bill undermines what has been a long-standing and effective form of alternative dispute resolution since at least 1925, when Congress enacted the Federal Arbitration Act. In developing and passing the Federal Arbitration Act, Congress rightly recognized that arbitration can be a more efficient, more effective, and less expensive way to resolve disputes than further flooding the courts with litigation. A significant outcome of this legislation will be to turn what could be easily resolved disputes into huge class action lawsuits. In many circumstances, these lawsuits will ultimately provide little justice to allegedly aggrieved consumers, employees and franchisees.

The changes made by this legislation are unwarranted. For example, a RoperASW survey found that 64% of participants would prefer to take a dispute to arbitration instead of filing a lawsuit. It should also be noted that research shows that arbitration may provide a greater likelihood of an award to a consumer, and in the employment context it can be about one-third times faster than litigation. According to American Bar Association statistics, even trial lawyers understand arbitration works: 78% say it is faster than going to court, and 56% say it is more cost effective.

This legislation is also constructed on faulty premises. Arbitrators cannot ignore the law—courts will overturn awards made in “manifest disregard” of the law. Nor does arbitration deprive parties of their rights; it merely shifts the forum in which claims are heard, and the courts have been vigilant in refusing to enforce agreements that would deprive a party of his or her statutory rights.

Also of great concern is the fact that the legislation would likely disrupt commercial arbitration as it is currently practiced among corporations and other commercial entities—including arbitration over antitrust matters allowed by the Supreme Court’s *Mitsubishi* case decided in 1985. Furthermore, the broad application of the legislation to “transactions between parties of unequal bargaining power” would put the enforceability of almost every arbitration clause in doubt. This resulting uncertainty would cause a significant problem for American businesses, especially in their international transactions, where the foreign party would be likely to insist that all

contractual and legal proceedings be conducted outside the United States in order to avoid the effects of this legislation.

Enactment of S. 1782 would severely damage an alternative dispute resolution system that consumers and businesses have relied on for decades. Adopting such a measure would only serve to increase litigation and undermine a system that has provided tremendous benefit to all involved—including consumers, employees and franchisees. Accordingly, we strongly oppose S. 1782 and urge you to do so as well.

Sincerely,

American Bankers Association
American Financial Services Association
American Health Care Association/National Center for Assisted Living
American Insurance Association
American Meat Institute
AT&T
Business Roundtable
Coors Brewing Company
Council for Employment Law Equity
CTIA – The Wireless Association®
International Franchise Association
Johnson & Johnson
National Association of Home Builders
National Association of Manufacturers
Securities Industry and Financial Markets Association
T-Mobile USA
The Financial Services Roundtable
U.S. Chamber of Commerce
U.S. Chamber Institute for Legal Reform