

Introduced by Senator Wieckowski
(Coauthors: Senators Jackson and Leno)
(Coauthor: Assembly Member Mark Stone)

August 3, 2016

Senate Joint Resolution No. 25—Relative to mandatory arbitration clauses.

LEGISLATIVE COUNSEL'S DIGEST

SJR 25, as introduced, Wieckowski. Arbitration: class actions.

This measure would urge the Consumer Financial Protection Bureau to issue final rules protecting consumers' interests with respect to mandatory arbitration clauses that prohibit class actions.

Fiscal committee: no.

- 1 WHEREAS, Class actions are the only remedy for consumers
2 who cannot afford to seek redress alone but who can band together
3 to stop illegal practices; and
4 WHEREAS, Contract language that bans consumers from
5 joining class actions prevents consumers from exercising strength
6 in numbers and allows corporations to pilfer small amounts of
7 money from millions of individuals who cannot band together to
8 stop that practice; and
9 WHEREAS, Bans against class actions are substantively
10 unconscionable because they are one-sided—only consumers bring
11 claims against corporations through class actions, not the other
12 way around; and
13 WHEREAS, Bans against class actions are procedurally
14 unconscionable because consumer contracts barring class actions
15 are “take-it-or-leave-it” contracts that prohibit consumers from

1 negotiating contract terms, effectively leaving consumers to choose
2 between access to modern goods and services and access to justice;
3 and

4 WHEREAS, In the Dodd-Frank Wall Street Reform and
5 Consumer Protection Act of 2010, Congress authorized the
6 Consumer Financial Protection Bureau (the Bureau) to study
7 mandatory arbitration clauses in consumer contracts and to issue
8 regulations restricting or prohibiting their use if the Bureau found
9 that such regulations would be in the public interest and protect
10 consumers; and

11 WHEREAS, The Bureau found that nearly all contracts
12 containing mandatory arbitration clauses not only barred consumers
13 from participating in future class action lawsuits, but also specified
14 that any resulting arbitration proceeding could only be conducted
15 on an individual, not a class, basis; and

16 WHEREAS, Accordingly, the Bureau has proposed a rule that
17 would prohibit contracts for financial products or services from
18 containing mandatory arbitration clauses barring consumers from
19 filing or participating in a class action relating to the financial
20 product or service; and

21 WHEREAS, This proposed rule is based on a finding that
22 mandatory arbitration clauses are being widely used to prevent
23 consumers from seeking relief from legal violations on a class
24 basis and that consumers rarely seek redress as individuals; and

25 WHEREAS, Class actions deter violations from occurring and
26 redress violations of consumers' rights when they do occur; and

27 WHEREAS, Without class actions, corporations that engage in
28 illegal practices will effectively remain unpunished, undeterred,
29 and unaccountable; now, therefore, be it

30 *Resolved by the Senate and the Assembly of the State of*
31 *California, jointly*, That the Legislature of the State of California
32 encourages the Bureau to move forward in issuing final rules,
33 either as proposed or in an amended form that even more
34 stringently protects the right of consumers to pursue justice and
35 relief and deters companies from violating the law; and be it further

36 *Resolved*, That the Secretary of the Senate transmit copies of
37 this resolution to the author for appropriate distribution.

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