

AMENDED IN ASSEMBLY AUGUST 18, 2016

Senate Joint Resolution

No. 25

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 amended, 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 often one-sided—only consumers~~
11 ~~bring claims against corporations through class actions, not the~~
12 ~~other way around; and deprive consumers of their substantive and~~

1 *procedural rights, preventing consumers from bringing claims*
2 *against corporations; and*

3 WHEREAS, Bans against class actions are ~~procedurally~~
4 ~~unconscionable because consumer contracts barring class actions~~
5 ~~are found in~~ “take-it-or-leave-it” contracts that prohibit consumers
6 from negotiating contract terms, effectively leaving consumers to
7 choose between access to modern goods and services and access
8 to justice; and

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

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

21 WHEREAS, Accordingly, the Bureau has proposed a rule that
22 would prohibit contracts for financial products or services from
23 containing mandatory arbitration clauses barring consumers from
24 filing or participating in a class action relating to the financial
25 product or service; and

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

30 WHEREAS, Class actions deter violations from occurring and
31 redress violations of consumers’ rights when they do occur; and

32 WHEREAS, Without class actions, corporations that engage in
33 illegal practices will effectively remain unpunished, undeterred,
34 and unaccountable; now, therefore, be it

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

- 1 *Resolved*, That the Secretary of the Senate transmit copies of
- 2 this resolution to the author for appropriate distribution.

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