

(C) notwithstanding subparagraph (B), the vote on final passage shall be on the Commission Schedule and Review bill of the other House. Upon disposition of a Commission Schedule and Review bill that is received by one House from the other House, it shall no longer be in order to consider the Commission Schedule and Review bill that was introduced in the receiving House.

(c) RULES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a Commission Schedule and Review bill, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

By Mr. LEAHY (for himself and Mr. SANDERS):

S. 929. A bill to amend the Internal Revenue Code of 1986 to provide a Federal income tax credit for the purchase of certain nonroad equipment powered by alternative power sources; to the Committee on Finance.

Mr. LEAHY. Mr. President, I rise today with my good friend from Vermont, Senator SANDERS, to introduce legislation that will help our environment and our economy by providing a 25 percent tax credit towards the purchase of environmentally friendly lawn, garden, and forestry power equipment.

There are an estimated 50 million acres of lawns and managed turf grass in the U.S. and the small engines used in power equipment predominantly used today to maintain these lawns emit a variety of pollutants that can be harmful to people and the environment. By promoting the use of alternative fuels, we can reduce the carbon footprint of lawn and garden equipment and reduce air and water pollution.

The Environmental Protection Agency, EPA, recently finalized a new emission control program to reduce hydrocarbon emissions and evaporative emissions from the small, spark-ignition engines that are commonly used in lawn, garden, and forestry equipment. I applaud the EPA for setting these new emissions standards because they eventually will reduce the harmful health effects of ozone and carbon monoxide. I also appreciate the work being done in the State of California to set the stage for these tougher standards and to provide State funds for rebates to consumers who purchase the cleanest types of lawn and garden equipment.

We can do more, though, to advance the use of cleaner, alternative fueled equipment. Currently, the cleanest, alternative powered equipment typically costs dramatically more to produce—in part due to their relatively low vol-

umes—compared to higher volume products powered by traditional technologies. Our bill is designed to help partially close this price differential so that consumers can afford the very cleanest products and help advance the most cutting-edge, new technologies.

That is why the bill we are introducing today would reduce air pollution even further than the EPA or California standards by providing an immediate incentive for people to go beyond the current powered equipment emission standards and purchase cleaner, alternatively powered or alternative fuel engines and equipment that emit half of the emission levels called for by the EPA and that operate on little or no fossil fuels. In line with past tax credits that were successful in advancing new technologies and boosting consumer demand for environmentally friendly products like hybrid vehicles and energy efficient home appliances, our new tax credit would give Americans a powerful incentive to buy clean, alternative energy power equipment.

I want to thank the Outdoor Power Equipment Institute and the National Audubon Society for their early endorsements of this bill. As the Senate prepares to take a thorough look at our energy and environmental policies this year, I look forward to working with my colleagues to find new ways to further reduce the air emissions and fossil fuel consumption of our Nation's lawn, garden, and forestry equipment.

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

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

S. 929

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. CREDIT FOR CERTAIN NONROAD EQUIPMENT.**

(a) ALLOWANCE OF CREDIT.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25D the following new section:

**“SEC. 25E. CREDIT FOR CERTAIN NONROAD EQUIPMENT.**

“(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to 25 percent of the qualified nonroad equipment expenses for the taxable year.

“(b) LIMITATION.—The credit allowed under subsection (a) shall not exceed \$1,000.

“(c) QUALIFIED NONROAD EQUIPMENT EXPENSES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified nonroad equipment expenses’ means the cost of any alternative power nonroad equipment the original use of which commences with the taxpayer and which is placed in service by the taxpayer during the taxable year.

“(2) ALTERNATIVE POWER NONROAD EQUIPMENT.—The term ‘alternative power nonroad equipment’ means any equipment that is primarily used for lawn, garden, or forestry purposes, and that—

“(A) is powered by a motor drawing current from solar power, electricity, or rechargeable or replaceable batteries,

“(B) has a hybrid-electric drive train or cutting system which is powered by a generator or electrical storage device combined with a small engine, or

“(C) is powered by alternative power sources and—

“(i) is regulated by the Environmental Protection Agency as a new, spark-ignition engine under part 1054 of title 40, Code of Federal Regulations (or any successor regulation), and

“(ii) is certified by the Environmental Protection Agency as having an engine family that emits no more than 50 percent of the number of grams per kilowatt hour of regulated pollutants allowable under Phase 3 of the exhaust emissions standards under section 103 of part 1054 of title 40, Code of Federal Regulations (or any successor regulation), relating to handheld engines, or section 105 of such part, relating to nonhandheld engines, whichever is applicable.

“(3) ALTERNATIVE POWER SOURCES.—The term ‘alternative power sources’ means any alternative fuel as determined by the Secretary, in coordination with the Office of Energy Efficiency and Renewable Energy.”

(b) CONFORMING AMENDMENTS.—

(1) Section 24(b)(3)(B) of the Internal Revenue Code of 1986 is amended by striking “and 25B” and inserting “, 25B, and 25E”.

(2) Section 25(e)(1)(C)(ii) of such Code is amended by inserting “25E,” after “25D,”.

(3) Section 25B(g)(2) of such Code is amended by striking “section 23” and inserting “sections 23 and 25E”.

(4) Section 904(i) of such Code is amended by striking “and 25B” and inserting “25B, and 25E”.

(5) Section 1400C(d)(2) of such Code is amended by striking “and 25D” and inserting “25D, and 25E”.

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25D the following new item:

“Sec. 25E. Credit for certain nonroad equipment.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to purchases made after the date of the enactment of this Act.

By Mr. FEINGOLD (for himself, Mr. DURBIN, Mr. KERRY, Mr. WHITEHOUSE, Mr. WYDEN, Mr. UDALL of New Mexico, Mr. MERKLEY, and Mr. KENNEDY):

S. 931. A bill to amend title 9 of the United States Code with respect to arbitration; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I will introduce the Arbitration Fairness Act of 2007. Just as its name suggests, the Arbitration Fairness Act is designed to return fairness to the arbitration system. This bill is not an anti-arbitration bill. If anything, it is pro-arbitration. I firmly believe that this bill will strengthen the arbitration system by returning arbitration to a more equitable design that reflects the intent of the original arbitration legislation, the Federal Arbitration Act.

President Calvin Coolidge signed the Federal Arbitration Act, FAA, into law on February 12, 1925. Congress passed the FAA to make arbitration an enforceable alternative to the civil courts. Even as early as the 1920's,

there were concerns about the efficiency of the civil court system and a desire to allow a speedier alternative. The intent of the FAA, as expressed in a 1923 hearing before a Subcommittee of the Senate Judiciary Committee, was “to enable business men to settle their disputes expeditiously and economically.” In a later hearing on the FAA, it was clarified that the legislation was not intended to apply to the employment contracts of those businesses. This distinction is important because it illustrates that, while arbitration was something that the FAA’s original sponsors wanted to promote, they were also careful to make clear that they didn’t intend for arbitration to become a weapon to be wielded by the powerful against those with less financial and negotiating power.

Since the FAA’s enactment, the use of arbitration has grown exponentially. Arbitration certainly has advantages. It can be a fair and efficient way to settle disputes. I strongly support voluntary, alternative dispute resolution methods, and I believe we ought to encourage their use. 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. Otherwise arbitration can be used as a weapon by the stronger party against the weaker party.

One of the most fundamental principles of our justice system is the constitutional right to take a dispute to court. Indeed, all Americans have the right in civil and criminal cases to a trial by jury. The right to a jury trial in civil cases in Federal court is contained in the Seventh Amendment to the Constitution. Many States provide a similar right to a jury trial in civil matters filed in state court.

I have been concerned for many years that mandatory arbitration clauses are slowly eroding the legal protections that should be available to all Americans. A large and growing number of corporations now require millions of consumers and employees to sign contracts that include mandatory arbitration clauses. Most of these individuals have little or no meaningful opportunity to negotiate the terms of their contracts and so find themselves having to choose either to accept a mandatory arbitration clause or to forgo securing employment or needed goods and services. Incredibly, mandatory arbitration clauses have been used to prevent individuals from trying to vindicate their civil rights under statutes specifically passed by Congress to protect them.

There is a range of ways in which mandatory arbitration can be particularly hostile to individuals attempting to assert their rights. For example, the administrative fees—both to gain access to the arbitration forum and to pay for the ongoing services of the arbitrator or arbitrators—can be so high as to act as a de facto bar for many in-

dividuals who have a claim that requires resolution. In addition, arbitration generally lacks discovery proceedings and other civil due process protections.

Furthermore, there is no meaningful judicial review of arbitrators’ decisions. Under mandatory, binding arbitration, even if a party believes that the arbitrator did not consider all the facts or follow the law, the party cannot file a suit in court. The only basis for challenging a binding arbitration decision is fairly narrow: if there is reason to believe that the arbitrator committed actual fraud, or was biased, corrupt, or guilty of misconduct, or exceeded his or her powers. Because mandatory, binding arbitration is so conclusive, it is a credible means of dispute resolution only when all parties understand the full ramifications of agreeing to it.

Unfortunately, in a variety of contexts—employment agreements, credit card agreements, HMO contracts, securities broker contracts, and other consumer and franchise agreements—mandatory arbitration is fast becoming the rule, rather than the exception. The practice of forcing employees to use arbitration has been on the rise since the Supreme Court’s Circuit City decision in 2001. Unless Congress acts, the protections it has provided through law for American workers, investors, and consumers, will slowly become irrelevant.

The Arbitration Fairness Act of 2009, which I am happy to say has already been introduced in the House by Rep. HANK JOHNSON, reinstates the FAA’s original intent by requiring that agreements to arbitrate employment, consumer, franchise, or civil rights disputes be made after the dispute has arisen. The bill does not prohibit arbitration. What it does do is prevent a party with greater bargaining power from forcing individuals into arbitration through a contractual provision. It will ensure that citizens once again have a true choice between arbitration and the traditional civil court system.

I should note that the bill includes two notable changes from versions that have been introduced in previous Congresses. First, the bill creates a new Chapter 4 of Title 9, separating the new provisions concerning arbitration of consumer, employment, franchise, and civil rights disputes from the Federal Arbitration Act. This should give some comfort to those who are concerned that the bill might have an unintended effect on business to business arbitration.

Second, the bill reverses the Supreme Court’s April 2009 decision in *14 Park Plaza v. Pyett*. In that case, the Court held that arbitration provisions included in collective bargaining agreements can have the effect of preventing employees from pursuing employment discrimination claims in court. Unions have never believed this was the case. The decision once again expands the reach of arbitration, making less effec-

tive statutes specifically intended by Congress to protect workers. Therefore, the bill provides that it generally does not apply to arbitration provisions contained in collective bargaining agreements, except that such provisions may not waive employees’ rights to take constitutional or statutory claims to court.

In our system of Government, Congress and state legislatures pass laws and the courts are available to citizens to make sure those laws are enforced. But the rule of law means little if the only forum available to those who believe they have been wronged is an alternative, unaccountable system where the law passed by the legislature does not necessarily apply. This legislation both protects Americans from exploitation and strengthens a valuable alternative method of dispute resolution. These are both worthy ends, and I hope that my colleagues in the Senate will join me in working to pass this important bill.

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

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

S. 931

*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 “Arbitration Fairness Act of 2009”.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) The Federal Arbitration Act (now enacted as chapter 1 of title 9 of the United States Code) was intended to apply to disputes between commercial entities of generally similar sophistication and bargaining power.

(2) A series of United States Supreme Court decisions have changed the meaning of the Act so that it now extends to disputes between parties of greatly disparate economic power, such as consumer disputes and employment disputes. As a result, a large and rapidly growing number of corporations are forcing millions of consumers and employees to give up their right to have disputes resolved by a judge or jury, and instead submit their claims to binding arbitration.

(3) Most consumers and employees have little or no meaningful option whether to submit their claims to arbitration. Few people realize or understand the importance of the deliberately fine print that strips them of rights, and because entire industries are adopting these clauses, people increasingly have no choice but to accept them. They must often give up their rights as a condition of having a job, getting necessary medical care, buying a car, opening a bank account, getting a credit card, and the like. Often times, they are not even aware that they have given up their rights.

(4) Private arbitration companies are sometimes under great pressure to devise systems that favor the corporate repeat players who decide whether those companies will receive their lucrative business.

(5) Mandatory arbitration undermines the development of public law for civil rights and consumer rights because there is no meaningful judicial review of arbitrators’ decisions. With the knowledge that their rulings will not be seriously examined by a

court applying current law, arbitrators enjoy near complete freedom to ignore the law and even their own rules.

(6) Mandatory arbitration is a poor system for protecting civil rights and consumer rights because it is not transparent. While the American civil justice system features publicly accountable decision makers who generally issue public, written decisions, arbitration often offers none of these features.

(7) Many corporations add to arbitration clauses unfair provisions that deliberately tilt the systems against individuals, including provisions that strip individuals of substantive statutory rights, ban class actions, and force people to arbitrate their claims hundreds of miles from their homes. While some courts have been protective of individuals, too many courts have erroneously upheld even egregiously unfair mandatory arbitration clauses in deference to a supposed Federal policy favoring arbitration over the constitutional rights of individuals.

SEC. 3. ARBITRATION OF EMPLOYMENT, CONSUMER, FRANCHISE, AND CIVIL RIGHTS DISPUTES.

(a) IN GENERAL.—Title 9 of the United States Code is amended by adding at the end the following:

CHAPTER 4—ARBITRATION OF EMPLOYMENT, CONSUMER, FRANCHISE, AND CIVIL RIGHTS DISPUTES

Sec.

401. Definitions.

402. Validity and enforceability.

§ 401. Definitions

“In this chapter—

“(1) the term ‘civil rights dispute’ means a dispute—

“(A) arising under—

“(i) the Constitution of the United States or the constitution of a State; or

“(ii) a Federal or State statute that prohibits discrimination on the basis of race, sex, disability, religion, national origin, or any invidious basis in education, employment, credit, housing, public accommodations and facilities, voting, or program funded or conducted by the Federal Government or State government, including any statute enforced by the Civil Rights Division of the Department of Justice and any statute enumerated in section 62(e) of the Internal Revenue Code of 1986 (relating to unlawful discrimination); and

“(B) in which at least 1 party alleging a violation of the Constitution of the United States, a State constitution, or a statute prohibiting discrimination is an individual;

“(2) the term ‘consumer dispute’ means a dispute between a person other than an organization who seeks or acquires real or personal property, services (including services relating to securities and other investments), money, or credit for personal, family, or household purposes and the seller or provider of such property, services, money, or credit;

“(3) the term ‘employment dispute’ means a dispute between an employer and employee arising out of the relationship of employer and employee as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203);

“(4) the term ‘franchise dispute’ means a dispute between a franchisee with a principal place of business in the United States and a franchisor arising out of or relating to contract or agreement by which—

“(A) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;

“(B) the operation of the franchisee’s business pursuant to such plan or system is substantially associated with the franchisor’s

trademark, service mark, trade name, logo-type, advertising, or other commercial symbol designating the franchisor or its affiliate; and

“(C) the franchisee is required to pay, directly or indirectly, a franchise fee; and

“(5) the term ‘predispute arbitration agreement’ means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

§ 402. Validity and enforceability

“(a) IN GENERAL.—Notwithstanding any other provision of this title, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment, consumer, franchise, or civil rights dispute.

“(b) APPLICABILITY.—

“(1) IN GENERAL.—An issue as to whether this chapter applies to an arbitration agreement 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 chapter applies shall be determined by the court, rather than the arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

“(2) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this chapter shall apply to any arbitration provision in a contract between an employer and a labor organization or between labor organizations, except that no such arbitration provision shall have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, a State constitution, or a Federal or State statute, or public policy arising therefrom.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Title 9 of the United States Code is amended—

(A) in section 1, by striking “of seamen,” and all that follows through “interstate commerce”;

(B) in section 2, by inserting “or as otherwise provided in chapter 4” before the period at the end;

(C) in section 208—

(i) in the section heading, by striking “Chapter 1; residual application” and inserting “Application”; and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”; and

(D) in section 307—

(i) in the section heading, by striking “Chapter 1; residual application” and inserting “Application”; and

(ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”

(2) TABLE OF SECTIONS.—

(A) CHAPTER 2.—The table of sections for chapter 2 of title 9, United States Code, is amended by striking the item relating to section 208 and inserting the following: “208. Application.”

(B) CHAPTER 3.—The table of sections for chapter 3 of title 9, United States Code, is amended by striking the item relating to section 307 and inserting the following: “307. Application.”

(3) TABLE OF CHAPTERS.—The table of chapters for title 9, United States Code, is amended by adding at the end the following:

“4. Arbitration of employment, consumer, franchise, and civil rights disputes ..... 401”

SEC. 4. EFFECTIVE DATE.

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

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 117—COMMEMORATING THE 80TH ANNIVERSARY OF THE DAUGHTERS OF PENELOPE, A PREEMINENT INTERNATIONAL WOMEN’S ASSOCIATION AND AFFILIATE ORGANIZATION OF THE AMERICAN HELLENIC EDUCATIONAL PROGRESSIVE ASSOCIATION (AHEPA)

Ms. SNOWE (for herself and Mr. MENENDEZ) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 117

Whereas the Daughters of Penelope is a leading international organization of women of Hellenic descent and Philhellenes, founded November 16, 1929, in San Francisco, California, to improve the status and well-being of women and their families and to provide women the opportunity to make significant contributions to their community and country;

Whereas the mission of the Daughters of Penelope is to promote the ideals of ancient Greece, philanthropy, education, civic responsibility, good citizenship, and family and individual excellence, through community service and volunteerism;

Whereas the chapters of the Daughters of Penelope sponsor affordable and dignified housing to the Nation’s senior citizen population by participating in the Department of Housing and Urban Development’s section 202 housing program (12 U.S.C. 1701q);

Whereas Penelope House, a domestic violence shelter for women and their children sponsored by the Daughters of Penelope, is the first of its kind in the State of Alabama and is recognized as a model shelter for others to emulate throughout the United States;

Whereas the Daughters of Penelope Foundation, Inc. supports the educational objectives of the Daughters of Penelope by providing tens of thousands of dollars annually for scholarships, sponsoring educational seminars, and donating children’s books to libraries, schools, shelters, and churches through the “Open Books” program;

Whereas the Daughters of Penelope is the first ethnic organization to submit oral history tapes to the Library of Congress, providing an oral history of first generation Greek-American women in the United States;

Whereas the Daughters of Penelope promotes awareness of cancer research, such as thalassemia (Cooley’s anemia), lymphangioliomyomatosis (LAM), Alzheimer’s disease, muscular dystrophy, and others;

Whereas the Daughters of Penelope provides financial support for many medical research and charitable organizations such as the University of Miami Sylvester Comprehensive Cancer Center (formerly the Papanicolaou Cancer Center), the Alzheimer’s Foundation of America, the American Heart Association, the Special Olympics, the Barbara Bush Foundation for Family Literacy, the Children’s Wish Foundation International, the United Nations Children’s Fund (UNICEF), Habitat for Humanity, St. Basil Academy, and others; and