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Text of S. 512: Fairness in Nursing Home Arbitration Act

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This version: Introduced in Senate. This is the original text of the bill as it was written by its sponsor and submitted to the Senate for consideration. This is the latest version of the bill available on this website.

S 512 IS

111th CONGRESS

1st Session

S. 512

To amend chapter 1 of title 9 of United States Code with respect to arbitration.

IN THE SENATE OF THE UNITED STATES

March 3, 2009

Mr. MARTINEZ (for himself, Mr. KOHL, Mr. DURBIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 1 of title 9 of United States Code with respect to arbitration.

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 'Fairness in Nursing Home Arbitration Act'.

SEC. 2. DEFINITIONS.

[Section 1 of title 9, United States Code](#), is amended-

(1) by striking the section heading and inserting the following:

“**Sec. 1. Definitions**’;

(2) by inserting before the first beginning quotation mark, the following: '(a) As used in

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this chapter, the term (1)';

(3) by striking 'Maritime' and inserting 'maritime';

(4) by striking 'jurisdiction;' and inserting 'jurisdiction; (2)'; and

(5) by striking the period and inserting the following: '; (3) 'long-term care facility' means--

“(A) any skilled nursing facility, as defined in 1819(a) of the Social Security Act;

“(B) any nursing facility as defined in 1919(a) of the Social Security Act; or

“(C) a public facility, proprietary facility, or facility of a private nonprofit corporation that--

“(i) makes available to adult residents supportive services to assist the residents in carrying out activities such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, obtaining or taking medication, and which may make available to residents home health care services, such as nursing and therapy; and

“(ii) provides a dwelling place for residents in order to deliver such supportive services referred to in clause (i), each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility; and

“(4) 'pre-dispute arbitration agreement' means any agreement to arbitrate disputes that had not yet arisen at the time of the making of the agreement.

“(b) The definition of 'long-term care facility' in subsection (a)(3) shall not apply to any facility or portion of facility that--

“(1) does not provide the services described in subsection (a)(3)(C)(i); or

“(2) has as its primary purpose, to educate or to treat substance abuse problems.'.

SEC. 3. VALIDITY AND ENFORCEMENT.

[Section 2 of title 9, United States Code](#), is amended--

(1) by striking the section heading and inserting the following:

“(Sec. 2. Validity and enforceability”;

(2) by striking 'A written' and inserting '(a) A Written';

(3) by striking ', save' and all that follows through 'contract', and inserting 'to the same extent as contracts generally, except as otherwise provided in this title'; and

(4) by adding at the end the following:

“(b) A pre-dispute arbitration agreement between a long-term care facility and a resident of a long-term care facility (or anyone acting on behalf of such a resident, including a person with financial responsibility for that resident) shall not be valid or specifically enforceable.

“(c) This section shall apply to any pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on behalf of such a resident), and shall apply to a pre-dispute arbitration agreement entered into either at any time during the admission process or at any time thereafter.

“(d) A determination as to whether this chapter applies to an arbitration agreement described in subsection (b) shall be determined by Federal law. Except as otherwise provided in this chapter, the validity or enforceability of such an agreement to arbitrate shall be determined by the court, rather than the arbitrator, irrespective of whether the party resisting the arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.’.

SEC. 4. EFFECTIVE DATE.

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

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