

(Note: The use of (X), (X1), (X2) or (XX) is simply to reflect a letter or number to be determined based on the final structure of the overall legislation.)

### **`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.

#### **`Sec. 401. Definitions**

`In this chapter—

(X) As used in this Chapter the term “employment arbitration agreement”---

(X1) means a written provision in a transaction or contract involving commerce to which an employee is a party, which would settle by arbitration a controversy arising under that transaction or controversy under that contract; and

(X2) does not include such a provision that is part of a collective bargaining agreement or an employment contract that is individually and freely negotiated.

#### **`Sec. 402. Validity and enforceability**

(X) An employment arbitration agreement that submits to arbitration a claim by an employee arising under any law, including any regulation or rule of decision, shall be enforceable only if it is adequate to vindicate the purposes of law under which the claim arises.

(XX) **“Adequacy” for the purpose of section (X) includes but is not limited to the following requirements:**

**(1) The employee has the right to be represented by a representative of his or her choosing;**

**(2) The time limit within which the claim must be brought is that applicable to the law under which the claim arises;**

**(3) The parties have access to such pre-hearing discovery as is appropriate for the disposition of the claim, with questions of discovery subject to decision by the arbitrator;**

**(4) The bringing of group or class claims as is reasonable for the vindication of the law is allowed, with questions concerning the management of such claims subject to decision by the arbitrator;**

**(5) (i) Absent a post-dispute agreement of the parties, arbitrators are to be selected from the membership of neutral organizations or from panels that are prepared by agencies of recognized neutrality and that include experienced arbitrators who do not represent employers or employees;**

**(ii) if the panels include persons who represent employers or employees, the nature and extent of such representation will be disclosed to the parties prior to selection;**

**(iii) in the event the parties are unable to agree on the selection of an arbitrator, the agency preparing the panel will designate as the arbitrator a person who does not represent employees or employers; and**

**(iv) the arbitrator shall disclose to the parties any conflict of interest of which he or she is aware or becomes aware during the proceedings;**

**(6) The hearing is held at such a location and time as will reasonably accommodate the employee's ability to be present and participate;**

**(7) The fee and expenses of the arbitrator are borne by the employer, the employee being liable for his or her own expenses and such filing fee as the instrument may require not to exceed that applicable to the initiation of civil litigation in a federal district court;**

**(8) The arbitrator has authority to award all relief, legal and equitable, that would be available in civil litigation under the applicable law; and**

**(9) The arbitrator shall provide a written opinion and award, with the opinion setting out the facts, resolving any material factual dispute, and drawing such legal conclusions as the disposition of the claim requires, applying the same standards as would a civil court under the law in question.**

