

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 10  
OFFERED BY MR. SHERMAN OF CALIFORNIA**

Add at the end of title V the following new subtitle:

1     **Subtitle S—Justice for Victims of**  
2                                     **Fraud**

3     **SEC. 591. SHORT TITLE.**

4         This subtitle may be cited as the “Justice for Victims  
5 of Fraud Act”.

6     **SEC. 592. FINDINGS.**

7         The Congress finds the following:

8             (1) The Bureau of Consumer Financial Protec-  
9             tion found that Wells Fargo management imple-  
10            mented sales incentives, including an incentive-com-  
11            pensation program, in part to increase the number  
12            of banking products and services that its employees  
13            sold to its customers.

14            (2) The Bureau of Consumer Financial Protec-  
15            tion found that Wells Fargo employees engaged in  
16            improper sales practices to satisfy sales goals under  
17            Wells Fargo’s incentive compensation program, in-  
18            cluding opening as many as 1,534,280 checking ac-  
19            counts and 565,443 credit card accounts using con-

1 consumers' information without their knowledge or con-  
2 sent between May 2011 and July 2015.

3 (3) Wells Fargo successfully claimed in *Jabbari*  
4 *v. Wells Fargo* that customers had signed away their  
5 rights to hold Wells Fargo accountable in court for  
6 claims of fraud because those customers were bound  
7 to a forced arbitration clause for their legitimate ac-  
8 counts.

9 (4) After Wells Fargo publicly entered a settle-  
10 ment with Federal regulators for the opening of  
11 thousands of unauthorized customer accounts, Wells  
12 Fargo claimed in *Mitchell et. al. v. Wells Fargo et.*  
13 *al.* that customers' fraud claims must continue to be  
14 forced into arbitration.

15 (5) Several courts have determined that despite  
16 claims of fraud over unauthorized accounts opened  
17 without customer knowledge or consent, those cus-  
18 tomers are still bound by contracts forcing those  
19 claims into arbitration based on the courts' interpre-  
20 tation of the Federal Arbitration Act.

21 (6) The Federal Arbitration Act (now codified  
22 as chapter 1 of title 9, United States Code) was in-  
23 tended to apply to disputes between commercial enti-  
24 ties of generally similar sophistication and bar-  
25 gaining power, but a series of decisions by the Su-

1       preme Court of the United States have interpreted  
2       the Federal Arbitration Act as applicable to claims  
3       of fraud.

4           (7) Consumers have no meaningful choice  
5       whether to submit their claims to arbitration and  
6       are typically unaware that they have given up their  
7       rights to file claims in court.

8       **SEC. 593. ARBITRATION OF CONSUMER DISPUTES RELATED**  
9                                   **TO CREDIT CARD ACCOUNTS.**

10       Chapter 2 of the Truth in Lending Act (15 U.S.C.  
11 1631 et seq.) is amended by adding at the end the fol-  
12 lowing (and the table of contents for such chapter is con-  
13 formed accordingly):

14       **“§ 140B. Validity and enforceability**

15           “(a) DEFINITIONS.—In this section—

16                   “(1) the term ‘covered dispute’ means a dispute  
17       that is not subject to a final judgment by a court;  
18       and

19                   “(2) the term ‘predispute arbitration agree-  
20       ment’ means any agreement between a person and  
21       a consumer providing for arbitration of any future  
22       dispute between the parties.

23           “(b) VALIDITY AND ENFORCEABILITY.—No predis-  
24       pute arbitration agreement shall be valid or enforceable  
25       in a covered dispute that is related to a credit card that

1 was not issued in response to a request or application for  
2 that credit card account.

3 “(c) APPLICABILITY.—The applicability of this sec-  
4 tion to a predispute arbitration agreement shall be deter-  
5 mined by a State or Federal court of competent jurisdic-  
6 tion.”.

7 **SEC. 594. ARBITRATION OF CONSUMER DISPUTES RELATED**  
8 **TO COVERED ACCOUNTS.**

9 The Electronic Fund Transfer Act (15 U.S.C. 1693  
10 et seq.) is amended by inserting after section 920 (15  
11 U.S.C. 1693o-2) the following:

12 **“SEC. 920A. VALIDITY AND ENFORCEABILITY.**

13 “(a) DEFINITIONS.—In this section—

14 “(1) the term ‘covered account’—

15 “(A) means a demand deposit, savings de-  
16 posit, or other asset account (other than an oc-  
17 casional or incidental credit balance in an open  
18 end credit plan as defined in section 103(i)), as  
19 described in regulations of the Bureau, estab-  
20 lished primarily for personal, family, or house-  
21 hold purposes, including demand accounts, time  
22 accounts, negotiable order of withdrawal ac-  
23 counts, and share draft accounts; and

1           “(B) does not include an account held by  
2           a financial institution pursuant to a bona fide  
3           trust agreement;

4           “(2) the term ‘covered dispute’ means a dispute  
5           that is not subject to a final judgment by a court;  
6           and

7           “(3) the term ‘predispute arbitration agree-  
8           ment’ means any agreement between a financial in-  
9           stitution and a consumer providing for arbitration of  
10          any future dispute between the parties.

11          “(b) **VALIDITY AND ENFORCEABILITY.**—No predis-  
12          pute arbitration agreement shall be valid or enforceable  
13          in a covered dispute that is related to a covered account  
14          that was not issued in response to a request or application  
15          for that covered account.

16          “(c) **APPLICABILITY.**—The applicability of this sec-  
17          tion to a predispute arbitration agreement shall be deter-  
18          mined by a State or Federal court of competent jurisdic-  
19          tion.”.

20          **SEC. 595. RULE OF CONSTRUCTION.**

21          Nothing in the amendments made by this Act shall  
22          be construed—

23                  (1) to authorize the imposition of a requirement  
24          to submit a dispute to arbitration; or

1           (2) to restrict any court from ruling that a re-  
2           quirement to submit a dispute to arbitration is in-  
3           valid or unenforceable.

