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119TH CONGRESS
2D SESSION

H. R. 10641

To amend the Employee Retirement Income Security Act of 1974 to provide that any mandatory predispute or coerced postdispute arbitration clause, class action waiver, representation waiver, or discretionary clause with respect to a plan is unenforceable, to prohibit any such clause or waiver from being included in a plan document or other agreement with plan participants, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2026

Mr. DESAULNIER (for himself and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Education and Workforce

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A BILL

To amend the Employee Retirement Income Security Act of 1974 to provide that any mandatory predispute or coerced postdispute arbitration clause, class action waiver, representation waiver, or discretionary clause with respect to a plan is unenforceable, to prohibit any such clause or waiver from being included in a plan document or other agreement with plan participants, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Employee and Retiree Access to Justice Act''.

SEC. 2. UNENFORCEABLE ARBITRATION CLAUSES, CLASS ACTION WAIVERS, REPRESENTATION WAIVERS, AND DISCRETIONARY CLAUSES.

(a) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n)(1) In any civil action brought by, or on behalf of, a participant or beneficiary pursuant to this section or with respect to a common law claim involving a plan or plan benefit, notwithstanding any other provision of law—

''(A) no predispute arbitration provision shall be valid or enforceable if it requires arbitration of a matter related to a claim brought under this section;

''(B) no postdispute arbitration provision shall be valid or enforceable unless—

''(i) the provision was not required by any person, obtained by coercion or threat of adverse action, or made a condition of participating in a plan, receiving benefits under a plan, or receiving any other employment, work, or any employment-related or work-related privilege or benefit;

"(ii) each participant or beneficiary agreeing to the provision was informed, through a paper notice, in a manner reasonably calculated to be understood by the average plan participant, of the right of the participant or beneficiary under subparagraph (C) to refuse to agree to the provision without retaliation or threat of retaliation;

"(iii) each participant or beneficiary agreeing to the provision so agreed after a waiting period of not fewer than 45 days, beginning on the date on which the participant or beneficiary was provided both the final text of the provision and the disclosures required under clause (ii); and

"(iv) each participant or beneficiary agreeing to the provision affirmatively consented to the provision in writing;

"(C) no covered provision shall be valid or enforceable, if prior to a dispute to which the covered provision applies, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim available under this

section in any forum that, but for such covered provision, is of competent jurisdiction;

''(D) no covered provision shall be valid or enforceable, if after a dispute to which the covered provision applies arises, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim under this section in any forum that, but for such covered provision, is of competent jurisdiction, unless the covered provision meets the requirements of subparagraph (B); and

''(E) no covered provision related to a plan other than a multiemployer plan shall be valid or enforceable that purports to confer discretionary authority to any person with respect to benefit determinations or interpretation of plan language, or to provide a standard of review of such determinations or interpretation by a reviewing court in an action brought under this section that would require anything other than de novo review of such determinations or interpretation.

''(2) In this subsection—

''(A) the term 'covered provision' means any document, instrument, or agreement related to a

plan or plan benefit, regardless of whether such provision appears in a plan document or in a separate agreement;

"(B) the term 'predispute arbitration provision' means a covered provision, other than a covered provision that the Secretary finds to be the product of bona fide collective bargaining, that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that had not yet arisen at the time such provision took effect;

"(C) the term 'postdispute arbitration provision' means a covered provision, other than a covered provision that the Secretary finds to be the product of bona fide collective bargaining, that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that arose before the time such provision took effect; and

"(D) the term 'retaliation' means any action in violation of section 510.

"(3)(A) Any dispute as to whether a covered provision that requires a participant or beneficiary to arbitrate a dispute related to a plan is valid and enforceable shall be determined by a court, rather than an arbitrator, regardless of whether any contractual provision purports to

delegate such determinations to the arbitrator and irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

"(B) For purposes of this subsection, a dispute shall be considered to arise only when a plaintiff has actual knowledge (within the meaning of such term in section 413) of a breach or violation giving rise to a claim under this section.".

(b) REGULATIONS.—The Secretary of Labor may promulgate such regulations as may be necessary to carry out the amendment made by subsection (a), including providing for the form and content of notices required pursuant to such amendment.

SEC. 3. PROHIBITION ON MANDATORY ARBITRATION CLAUSES, CLASS ACTION WAIVERS, REPRESENTATION WAIVERS, AND DISCRETIONARY CLAUSES.

Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by adding at the end the following:

"(d)(1) No covered person may—

"(A) require participants or beneficiaries to agree to a predispute arbitration provision as a con-

dition for participation in, or receipt of benefits under, a plan;

"(B) agree to a postdispute arbitration provision with a participant or beneficiary with respect to a plan or plan benefit unless the conditions of clauses (i) through (iv) of section 502(n)(1)(B) are satisfied with respect to such provision; or

"(C) agree to any other covered provision with respect to a plan or plan benefit under any circumstances under which such provision would not be valid and enforceable under subparagraphs (C) through (E) of section 502(n)(1).

"(2) In this subsection—

"(A) the term 'covered person' means—

"(i) a plan;

"(ii) a plan sponsor;

"(iii) an employer; or

"(iv) a person engaged by a plan for purposes of administering or operating the plan; and

"(B) the terms 'covered provision', 'predispute arbitration provision' and 'postdispute arbitration provision' have the meanings given such terms in section 502(n)(2).".

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by sections 2 and 3 shall take effect on the date of enactment of this Act and shall apply with respect to any dispute or claim that arises or accrues on or after such date, including any dispute or claim to which a provision predating such date applies, regardless of whether plan documents have been updated in accordance with such amendments.

(b) ENFORCEMENT WITH RESPECT TO PLAN DOCUMENT UPDATES.—Notwithstanding subsection (a), no person shall be deemed to be in violation of such amendments on account of plan documents that have not been updated in accordance with such amendments until after the beginning of the first plan year that begins on or after the date that is 1 year after the date of enactment of this Act, provided that such person acts in accordance with such amendments during the period in which the plan documents have not been updated.

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