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Chapter 1 : What does "preemption" mean in law? - Rottenstein Law Group LLP

Supreme Court Confirms Federal Arbitration Act's Broad Preemption of State Law Share On May 15, the United States Supreme Court issued a nearly unanimous opinion that rejected a state's attempt to subject arbitration agreements to a heightened "clear statement" standard.

State efforts to ban the clauses in credit card and bank deposit agreements rarely survive preemption by the Federal Arbitration Act, a law which recognizes the validity of arbitration provisions in contracts involving interstate commerce. Federal efforts to ban the clauses in financial services contracts have also met stiff resistance. These include the embattled final anti-arbitration rule issued by the Consumer Financial Protection Bureau on July That act lets states regulate insurance to the extent that the federal government does not do so explicitly. Today, the federal government regulates flood insurance and large swaths of health care insurance, but leaves everything else to the states. The Federal Reserve and the Federal Insurance Office started monitoring insurers for systemic risk after the financial crisis. But federal encroachment so far has been the exception rather than the rule. But state law varies regarding their enforceability. A significant number of states ban mandatory arbitration provisions in contracts for many or specified personal lines of insurance. The statutes run the gamut. Some include an exception for insurance contracts in statutes that generally validate arbitration agreements. Yet others allow arbitration provisions, but give only the policyholder the option to arbitrate. State regulators have also weighed in. For example, the New York Department of Financial Services has banned mandatory arbitration provisions in individual variable life insurance policies. First, the federal law that the insurer hopes will preempt state law cannot specifically relate to the business of insurance. For example, insurers have less leverage if they have to worry about potential exposure to punitive or other extra-contractual damages, which juries may be more willing than arbitrators to impose in cases involving unfair claims handling practices. The third condition is easy to meet if the state law in question bans the arbitration of insurance disputes. The third condition is much harder to meet if state law regulates insurance they all do , but is silent or ambiguous as to arbitration. The outcome may also depend on whether the insurer drafts its arbitration provision broadly enough to delegate to an arbitrator instead of a court the power to rule on its own authority to decide whether it has jurisdiction in the first place. For example, life insurers routinely off-load risk to captive reinsurers located in jurisdictions with low capital reserve requirements so that they can free up money to write new business, or to pay dividends or executive compensation. In a similar way, insurers may also have incentive to shift their disputes from states that ban arbitration to states that do not. For example, insurers can try to include a general choice of law provision to have their policies governed by the law of an arbitration-friendly state. Courts in some jurisdictions might refuse to enforce a choice of law clause if the selected law the law of a state that allows arbitration conflicts with the law or public policy of the forum state, especially if the forum state views state anti-arbitration law as procedural rather than substantive law. Ultimately for insurers, getting to arbitration is just a means to the end of lowering their exposure. They have to be careful how they exploit the interplay between substantive and procedural law, as well as the rules of any independent arbitrator they might select. The failure to do so could lead to unintended exposure that they might have avoided by just staying in court. The views expressed here are his own. Regulatory Intelligence provides a single source for regulatory news, analysis, rules and developments, with global coverage of more than regulators and exchanges. Follow Regulatory Intelligence compliance news on Twitter:

Chapter 2 : Federal Arbitration Actâ€”Preemption of State Law - Lexology

which permits a court to stay arbitration pending resolution of related litigation. Applying Â§ (c), the trial court stayed the arbitration The case made its way to the Supreme Court, where Volt argued that Â§ (c) was.

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Chapter 3 : Federal Arbitration Act - Wikipedia

In doing so, it confirmed that the Federal Arbitration Act (FAA) will preempt not only a state law that "discriminat[es] on its face against arbitration," but also a state law that "covertly.

Chapter 4 : Federal Arbitration Actâ€”Preemption of State Law - Mayer Brown Supreme Court & Appellate

the arbitration context from traditional conflict preemption to today's unprecedented "impact preemption," which first emerged in the landmark case of AT&T Mobility LLC v.