

114TH CONGRESS
2D SESSION

S. _____

To restore statutory rights to the people of the United States from forced arbitration.

IN THE SENATE OF THE UNITED STATES

Mr. LEAHY (for himself, Mr. FRANKEN, Mr. BLUMENTHAL, Mr. DURBIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To restore statutory rights to the people of the United States from forced arbitration.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Statutory
5 Rights and Interests of the States Act of 2016”.

6 **SEC. 2. FINDINGS AND INTENT.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Chapter 1 of title 9, United States Code
9 (commonly known as the “Federal Arbitration
10 Act”), represented an exercise of legislative power

1 that required courts to recognize private voluntary
2 agreements to arbitrate commercial disputes at a
3 time when the courts were refusing to do so on
4 grounds that arbitration represented a usurpation of
5 the authority of the courts to resolve legal disputes.

6 (2) The Federal Arbitration Act did not, and
7 should not have been interpreted to, supplant or nul-
8 lify the legislatively created rights and remedies
9 which Congress, exercising its power under article I
10 of the Constitution of the United States, has grant-
11 ed to the people of the United States for resolving
12 disputes in State and Federal courts.

13 (3) Recent court decisions, including *AT&T Mo-*
14 *bility v. Concepcion*, 563 U.S. 333 (2011) and
15 *American Express Co. v. Italian Colors Restaurant*,
16 133 S.Ct. 2304 (June 20, 2013), have interpreted
17 the Federal Arbitration Act to broadly preempt
18 rights and remedies established under substantive
19 State and Federal law. As a result, these decisions
20 have enabled business entities to avoid or nullify
21 legal duties created by congressional enactment, re-
22 sulting in millions of people in the United States
23 being unable to vindicate their rights in State and
24 Federal courts.

1 (4) States have a compelling interest in enact-
2 ing rights and remedies to protect the welfare of
3 their citizens, and the Federal Arbitration Act
4 should not be, and should not have been, interpreted
5 to preempt State legislation that enacted rights and
6 remedies to protect the welfare of their citizens.

7 (b) INTENT OF CONGRESS.—In enacting this Act, it
8 is the intent of Congress—

9 (1) to restate and reinstitute the primacy of
10 Congressional and State legislative bodies as the cre-
11 ators of the rights and remedies available to all the
12 people of the United States;

13 (2) to clarify that congressionally established
14 rights and remedies may not be waived prior to the
15 institution of a dispute by the party intended to be
16 protected by such statute; and

17 (3) to reinstate and reaffirm existing rights and
18 remedies of the people of the United States enacted
19 since the enactment of the Federal Arbitration Act
20 regarding access to the courts that have, or may
21 have been, abrogated or diminished.

1 **SEC. 3. ARBITRATION OF FEDERAL STATUTORY CAUSES OF**
2 **ACTION.**

3 (a) ADJUDICATION OF FEDERAL STATUTORY RIGHTS
4 OF ACTION.—Section 2 of title 9, United States Code, is
5 amended—

6 (1) by striking “A written” and inserting “(a)
7 IN GENERAL.—Except as provided in subsection (b),
8 a written”; and

9 (2) by adding at the end the following:

10 “(b) EXCEPTION.—Subsection (a) shall not apply to
11 a written provision that requires arbitration of a claim for
12 damages or injunctive relief brought by an individual or
13 small business concern (as defined in section 3 of the
14 Small Business Act (15 U.S.C. 632)), in either an indi-
15 vidual or representative capacity, arising from the alleged
16 violation of a Federal or State statute, the Constitution
17 of the United States, or a constitution of a State, unless
18 the written agreement to arbitrate is entered into by both
19 parties after the claim has arisen and pertains solely to
20 an existing claim.

21 “(c) INTERACTION WITH STATE LAW.—For pur-
22 poses of subsection (a), the phrase ‘grounds as exist at
23 law or in equity for the revocation of a contract’ shall in-
24 clude a Federal or State statute, or the finding of a Fed-
25 eral or State court, that prohibits the agreement to arbi-
26 trate on grounds that the agreement is unconscionable, in-

1 valid because there was no meeting of the minds, or other-
2 wise unenforceable as a matter of contract law or public
3 policy.

4 “(d) VALIDITY AND ENFORCEABILITY.—A deter-
5 mination as to whether this chapter applies to an agree-
6 ment to arbitrate shall be made by a court, rather than
7 an arbitrator, irrespective of whether the party resisting
8 arbitration challenges the agreement to arbitrate specifi-
9 cally or in conjunction with other terms of the contract
10 containing such agreement.”.

11 **SEC. 4. VACATING AN AWARD MADE IN VIOLATION OF SEC-**
12 **TION 2 OF TITLE 9, UNITED STATES CODE.**

13 Section 10(a) of title 9, United States Code, is
14 amended—

15 (1) in paragraph (3), by striking “or” at the
16 end;

17 (2) in paragraph (4), by striking the period at
18 the end and inserting “; or”; and

19 (3) by adding at the end the following:

20 “(5) where the arbitration took place in viola-
21 tion of section 2.”.

22 **SEC. 5. EFFECTIVE DATE.**

23 This Act, and the amendments made by this Act,
24 shall take effect on the date of enactment of this Act and

- 1 shall apply with respect to any dispute or claim that arises
- 2 on or after such date of enactment.