

115TH CONGRESS  
1ST SESSION

# S. 550

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

---

## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2017

Mr. LEAHY (for himself, Mr. FRANKEN, Mr. BLUMENTHAL, Mr. DURBIN, Mr. WHITEHOUSE, Mr. MARKEY, Ms. WARREN, Mrs. MURRAY, Ms. BALDWIN, Ms. HEITKAMP, Ms. HIRONO, Mr. BROWN, Mr. BOOKER, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## 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 2017”.

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

1 Act”), represented an exercise of legislative power  
2 that required courts to recognize private voluntary  
3 agreements to arbitrate commercial disputes at a  
4 time when the courts were refusing to do so on  
5 grounds that arbitration represented a usurpation of  
6 the authority of the courts to resolve legal disputes.

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

14 (3) Recent court decisions, including *AT&T Mo-*  
15 *bility LLC v. Concepcion*, 563 U.S. 333 (2011) and  
16 *American Express Co. v. Italian Colors Restaurant*,  
17 133 S. Ct. 2304 (2013), have interpreted the Fed-  
18 eral Arbitration Act to broadly preempt rights and  
19 remedies established under substantive State and  
20 Federal law. As a result, these decisions have en-  
21 abled business entities to avoid or nullify legal duties  
22 created by congressional enactment, resulting in mil-  
23 lions of people in the United States being unable to  
24 vindicate their rights in State and 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.—In sub-  
 22 section (a), the term ‘grounds as exist at law or in equity  
 23 for the revocation of a contract’ includes a Federal or  
 24 State statute, or the finding of a Federal or State court,  
 25 that prohibits the agreement to arbitrate on grounds that  
 26 the agreement is unconscionable, invalid because there was

1 no meeting of the minds, or otherwise unenforceable as  
 2 a matter of contract law or public policy.

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

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

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

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

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

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

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

21 **SEC. 5. APPLICABILITY.**

22 This Act, and the amendments made by this Act,  
 23 shall apply with respect to any dispute or claim that arises  
 24 on or after the date of enactment of this Act.

○