

116TH CONGRESS
1ST SESSION

S. 635

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2019

Mr. LEAHY (for himself, Mr. BLUMENTHAL, Mr. DURBIN, Mr. WHITEHOUSE, Mr. MARKEY, Ms. HIRONO, and Mr. COONS) 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 2019”.

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 that
9 Congress, exercising its power under article I of the
10 Constitution of the United States, has granted to
11 the people of the United States for resolving dis-
12 putes in State and Federal courts.

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

24 (4) States have a compelling interest in enact-
25 ing rights and remedies to protect the welfare of

1 their citizens, and the Federal Arbitration Act
2 should not be, and should not have been, interpreted
3 to preempt State legislation that enacted rights and
4 remedies to protect the welfare of their citizens.

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

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

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

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

20 **SEC. 3. ARBITRATION OF FEDERAL STATUTORY CAUSES OF**
21 **ACTION.**

22 (a) ADJUDICATION OF FEDERAL STATUTORY RIGHTS
23 OF ACTION.—Section 2 of title 9, United States Code, is
24 amended—

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

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

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

16 “(c) INTERACTION WITH STATE LAW.—In sub-
17 section (a), the term ‘grounds as exist at law or in equity
18 for the revocation of a contract’ includes a Federal or
19 State statute, or the finding of a Federal or State court,
20 that prohibits the agreement to arbitrate on grounds that
21 the agreement is unconscionable, invalid because there was
22 no meeting of the minds, or otherwise unenforceable as
23 a matter of contract law or public policy.

24 “(d) VALIDITY AND ENFORCEABILITY.—A deter-
25 mination as to whether this chapter applies to an agree-

1 ment to arbitrate shall be made by a court, rather than
 2 an arbitrator, irrespective of whether the party resisting
 3 arbitration challenges the agreement to arbitrate specifi-
 4 cally or in conjunction with other terms of the contract
 5 containing such agreement.”.

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

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

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

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

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

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

17 **SEC. 5. APPLICABILITY.**

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

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