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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2016

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 the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND INTENT.

(a) FINDINGS.—Congress finds the following:

(1) Chapter 1 of title 9, United States Code (commonly known as the “Federal Arbitration Act”), represented an exercise of legislative power
that required courts to recognize private voluntary
agreements to arbitrate commercial disputes at a
time when the courts were refusing to do so on
grounds that arbitration represented a usurpation of
the authority of the courts to resolve legal disputes.

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

(3) Recent court decisions, including AT&T Mo-
bility v. Concepcion, 563 U.S. 333 (2011) and
American Express Co. v. Italian Colors Restaurant,
133 S.Ct. 2304 (June 20, 2013), have interpreted
the Federal Arbitration Act to broadly preempt
rights and remedies established under substantive
State and Federal law. As a result, these decisions
have enabled business entities to avoid or nullify
legal duties created by congressional enactment, re-
sulting in millions of people in the United States
being unable to vindicate their rights in State and
Federal courts.
(4) States have a compelling interest in enacting rights and remedies to protect the welfare of their citizens, and the Federal Arbitration Act should not be, and should not have been, interpreted to preempt State legislation that enacted rights and remedies to protect the welfare of their citizens.

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

(1) to restate and reinstitute the primacy of congressional and State legislative bodies as the creators of the rights and remedies available to all the people of the United States;

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

(3) to reinstate and reaffirm existing rights and remedies of the people of the United States enacted since the enactment of the Federal Arbitration Act regarding access to the courts that have, or may have been, abrogated or diminished.
SEC. 3. ARBITRATION OF FEDERAL STATUTORY CAUSES OF ACTION.

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

(1) by striking “A written” and inserting “(a)

IN GENERAL.—Except as provided in subsection (b),
a written”; and

(2) by adding at the end the following:

“(b) EXCEPTION.—Subsection (a) shall not apply to

a written provision that requires arbitration of a claim for
damages or injunctive relief brought by an individual or
small business concern (as defined in section 3 of the
Small Business Act (15 U.S.C. 632)), in either an indi-
vidual or representative capacity, arising from the alleged
violation of a Federal or State statute, the Constitution
of the United States, or a constitution of a State, unless
the written agreement to arbitrate is entered into by both
parties after the claim has arisen and pertains solely to
an existing claim.

“(c) INTERACTION WITH STATE LAW.—For pur-
poses of subsection (a), the phrase ‘grounds as exist at
law or in equity for the revocation of a contract’ shall in-
clude a Federal or State statute, or the finding of a Fed-
eral or State court, that prohibits the agreement to arbi-
trate on grounds that the agreement is unconscionable, in-
valid because there was no meeting of the minds, or otherwise unenforceable as a matter of contract law or public policy.

“(d) VALIDITY AND ENFORCEABILITY.—A determination as to whether this chapter applies to an agreement to arbitrate shall be made by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the agreement to arbitrate specifically or in conjunction with other terms of the contract containing such agreement.”.

SEC. 4. VACATING AN AWARD MADE IN VIOLATION OF SECTION 2 OF TITLE 9, UNITED STATES CODE.

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

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

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

(3) by adding at the end the following:

“(5) where the arbitration took place in violation of section 2.”.

SEC. 5. EFFECTIVE DATE.

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