

115TH CONGRESS  
1ST SESSION

# H. R. 1396

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2017

Mr. CICILLINE (for himself, Mr. CONYERS, Ms. MAXINE WATERS of California, Mr. JOHNSON of Georgia, Ms. JACKSON LEE, Ms. SCHAKOWSKY, Mr. COHEN, Ms. JAYAPAL, Mr. RASKIN, Mr. TED LIEU of California, Ms. HANABUSA, Ms. BONAMICI, Mr. SEAN PATRICK MALONEY of New York, and Mr. GRIJALVA) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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:

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

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

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

1 being unable to vindicate their rights in State and  
2 Federal courts.

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

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

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

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

19 (3) to reinstate and reaffirm existing rights and  
20 remedies of the people of the United States enacted  
21 since the enactment of the Federal Arbitration Act  
22 regarding access to the courts that have, or may  
23 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 determi-  
5 nation as to whether this chapter applies to an agreement  
6 to arbitrate shall be made by a court, rather than an arbi-  
7 trator, irrespective of whether the party resisting arbitra-  
8 tion challenges the agreement to arbitrate specifically or  
9 in conjunction with other terms of the contract containing  
10 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.

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