

114TH CONGRESS  
1ST SESSION

# H. R. 2110

To prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services that were the subject of the contract.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2015

Mr. ISSA (for himself, Mr. SWALWELL of California, Mr. SHERMAN, Mr. FARENTHOLD, Ms. ESHOO, and Mr. COHEN) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services that were the subject of the contract.

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 “Consumer Review  
5 Freedom Act of 2015”.

1 **SEC. 2. PROTECTING CONSUMER SPEECH.**

2 (a) PROHIBITION.—A provision of a form contract is  
3 void from the inception of such contract if such provi-  
4 sion—

5 (1) prohibits or restricts the ability of a person  
6 who is a party to the form contract to engage in a  
7 covered communication;

8 (2) imposes a penalty or fee against a person  
9 who is a party to the form contract for engaging in  
10 a covered communication; or

11 (3) transfers or requires the individual to trans-  
12 fer to any person or business any intellectual prop-  
13 erty rights that the individual may have in any oth-  
14 erwise lawful covered communication about the per-  
15 son or the goods or services provided by the person  
16 or business;

17 (b) RULE OF CONSTRUCTION.—Nothing in sub-  
18 section (a) shall be construed to affect—

19 (1) any duty of confidentiality imposed by law  
20 (including agency guidance); or

21 (2) any civil action for defamation, libel, or  
22 slander, or any similar cause of action.

23 (c) EXCEPTIONS.—Subsection (a) shall not apply to  
24 the extent that a provision of a form contract prohibits  
25 disclosure of the following:

1           (1) Trade secrets or commercial or financial in-  
2           formation obtained from a person and considered  
3           privileged or confidential.

4           (2) Personnel and medical files and similar files  
5           the disclosure of which would constitute a clearly un-  
6           warranted invasion of personal privacy.

7           (3) Records or information compiled for law en-  
8           forcement purposes, the disclosure of which would  
9           constitute a clearly unwarranted invasion of personal  
10          privacy.

11          (d) UNLAWFUL CONDUCT.—It shall be unlawful for  
12          a business to offer or enter into a form contract containing  
13          a provision described as void in subsection (a).

14          (e) PENALTY.—The Attorney General shall bring an  
15          action against any business who violates subsection (d) for  
16          a civil penalty of not more than \$16,000 for each day that  
17          the business so requires the use of such a contract by a  
18          distinct person.

19          (f) STATE ENFORCEMENT.—The attorney general of  
20          a State may file an action to enforce subsection (d) seek-  
21          ing appropriate relief. In any case in which the attorney  
22          general of a State has reason to believe that an interest  
23          of the residents of that State has been or is threatened  
24          or adversely affected by the engagement of any person in  
25          a practice that violates any regulation of the Commission

1 prescribed under this section, the State, as *parens patriae*,  
2 may bring a civil action on behalf of the residents of the  
3 State in a district court of the United States of appro-  
4 priate jurisdiction to seek appropriate relief.

5 (g) DEFINITIONS.—

6 (1) The term “person” means a natural person.

7 (2) The term “business” means a legal entity  
8 organized to accomplish a business purpose, includ-  
9 ing either for-profit or not-for-profit.

10 (3) The term “form contract” means a stand-  
11 ardized contract used by a business and imposed on  
12 a party without a meaningful opportunity for said  
13 party to negotiate the standardized terms, but does  
14 not include a contract establishing an employer-em-  
15 ployee or independent contractor relationship.

16 (4) The term “covered communication” means  
17 a person’s written, verbal, or pictorial review, per-  
18 formance assessment of, or other similar analysis of,  
19 the products, services, or conduct of a business or  
20 person which is a party to the form contract.

21 (5) The term “written” includes words provided  
22 by electronic means.

23 (6) The term “verbal” includes speech provided  
24 by electronic means.

1           (7) The term “pictorial” includes pictures, pho-  
2           tographs, and video provided by electronic means.

3           (h) EFFECTIVE DATES.—

4           (1) Subsections (a), (b), (c), (d), and (g) shall  
5           apply to any contracts in effect on or after date of  
6           enactment.

7           (2) Subsections (e) and (f) shall apply to any  
8           contracts in effect on or after one year after date of  
9           enactment.

10 **SEC. 3. RELATION TO STATE CAUSES OF ACTION.**

11           Nothing in this Act shall be construed to affect any  
12           cause of action brought by a person that exists or may  
13           exist under State law.

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