

114TH CONGRESS  
1ST SESSION

# S. 2044

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2015

Referred to the Committee on Energy and Commerce

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## AN ACT

To prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services offered in interstate commerce that were the subject of the contract, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Consumer Review  
3 Freedom Act of 2015”.

4 **SEC. 2. CONSUMER REVIEW PROTECTION.**

5 (a) DEFINITIONS.—In this section:

6 (1) COMMISSION.—The term “Commission”  
7 means the Federal Trade Commission.

8 (2) COVERED COMMUNICATION.—The term  
9 “covered communication” means a written, oral, or  
10 pictorial review, performance assessment of, or other  
11 similar analysis of, including by electronic means,  
12 the goods, services, or conduct of a person by an in-  
13 dividual who is party to a form contract with respect  
14 to which such person is also a party.

15 (3) FORM CONTRACT.—

16 (A) IN GENERAL.—Except as provided in  
17 subparagraph (B), the term “form contract”  
18 means a contract with standardized terms—

19 (i) used by a person in the course of  
20 selling or leasing the person’s goods or  
21 services; and

22 (ii) imposed on an individual without  
23 a meaningful opportunity for such indi-  
24 vidual to negotiate the standardized terms.

1 (B) EXCEPTION.—The term “form con-  
 2 tract” does not include an employer-employee  
 3 or independent contractor contract.

4 (4) PICTORIAL.—The term “pictorial” includes  
 5 pictures, photographs, video, illustrations, and sym-  
 6 bols.

7 (b) INVALIDITY OF CONTRACTS THAT IMPEDE CON-  
 8 SUMER REVIEWS.—

9 (1) IN GENERAL.—Except as provided in para-  
 10 graphs (2) and (3), a provision of a form contract  
 11 is void from the inception of such contract if such  
 12 provision—

13 (A) prohibits or restricts the ability of an  
 14 individual who is a party to the form contract  
 15 to engage in a covered communication;

16 (B) imposes a penalty or fee against an in-  
 17 dividual who is a party to the form contract for  
 18 engaging in a covered communication; or

19 (C) transfers or requires an individual who  
 20 is a party to the form contract to transfer to  
 21 any person any intellectual property rights in  
 22 review or feedback content, with the exception  
 23 of a non-exclusive license to use the content,  
 24 that the individual may have in any otherwise  
 25 lawful covered communication about such per-

1 son or the goods or services provided by such  
2 person.

3 (2) RULE OF CONSTRUCTION.—Nothing in  
4 paragraph (1) shall be construed to affect—

5 (A) any duty of confidentiality imposed by  
6 law (including agency guidance);

7 (B) any civil cause of action for defama-  
8 tion, libel, or slander, or any similar cause of  
9 action;

10 (C) any party's right to remove or refuse  
11 to display publicly on an Internet website or  
12 webpage owned, operated, or otherwise con-  
13 trolled by such party any content of a covered  
14 communication that—

15 (i) contains the personal information  
16 or likeness of another person or is libelous,  
17 harassing, abusive, obscene, vulgar, sexu-  
18 ally explicit, or inappropriate with respect  
19 to race, gender, sexuality, ethnicity, or  
20 other intrinsic characteristic;

21 (ii) is unrelated to the goods or serv-  
22 ices offered by or available at such party's  
23 Internet website or webpage; or

24 (iii) is clearly false or misleading; or

1 (D) a party's right to establish terms and  
2 conditions with respect to the creation of photo-  
3 graphs or video of such party's property when  
4 those photographs or video are created by an  
5 employee or independent contractor of a com-  
6 mercial entity and solely intended for commer-  
7 cial purposes by that entity.

8 (3) EXCEPTIONS.—Paragraph (1) shall not  
9 apply to the extent that a provision of a form con-  
10 tract prohibits disclosure or submission of, or re-  
11 serves the right of a person or business that hosts  
12 online consumer reviews or comments to remove—

13 (A) trade secrets or commercial or finan-  
14 cial information obtained from a person and  
15 considered privileged or confidential;

16 (B) personnel and medical files and similar  
17 information the disclosure of which would con-  
18 stitute a clearly unwarranted invasion of per-  
19 sonal privacy;

20 (C) records or information compiled for  
21 law enforcement purposes, the disclosure of  
22 which would constitute a clearly unwarranted  
23 invasion of personal privacy;

24 (D) content that is unlawful or otherwise  
25 meets the requirements of paragraph (2)(C); or

1           (E) content that contains any computer vi-  
2           ruses, worms, or other potentially damaging  
3           computer code, processes, programs, applica-  
4           tions, or files.

5           (c) PROHIBITION.—It shall be unlawful for a person  
6 to offer a form contract containing a provision described  
7 as void in subsection (b).

8           (d) ENFORCEMENT BY COMMISSION.—

9           (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
10          TICES.—A violation of subsection (c) by a person  
11 with respect to which the Commission is empowered  
12 under section 5(a)(2) of the Federal Trade Commis-  
13 sion Act (15 U.S.C. 45(a)(2)) shall be treated as a  
14 violation of a rule defining an unfair or deceptive act  
15 or practice prescribed under section 18(a)(1)(B) of  
16 the Federal Trade Commission Act (15 U.S.C.  
17 57a(a)(1)(B)).

18          (2) POWERS OF COMMISSION.—

19          (A) IN GENERAL.—The Commission shall  
20 enforce this section in the same manner, by the  
21 same means, and with the same jurisdiction,  
22 powers, and duties as though all applicable  
23 terms and provisions of the Federal Trade  
24 Commission Act (15 U.S.C. 41 et seq.) were in-  
25 corporated into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Any  
2 person who violates this section shall be subject  
3 to the penalties and entitled to the privileges  
4 and immunities provided in the Federal Trade  
5 Commission Act (15 U.S.C. 41 et seq.).

6 (e) ENFORCEMENT BY STATES.—

7 (1) AUTHORIZATION.—Subject to subparagraph  
8 (B), in any case in which the attorney general of a  
9 State has reason to believe that an interest of the  
10 residents of the State has been or is threatened or  
11 adversely affected by the engagement of any person  
12 subject to subsection (c) in a practice that violates  
13 such subsection, the attorney general of the State  
14 may, as *parens patriae*, bring a civil action on behalf  
15 of the residents of the State in an appropriate dis-  
16 trict court of the United States to obtain appro-  
17 priate relief.

18 (2) RIGHTS OF FEDERAL TRADE COMMIS-  
19 SION.—

20 (A) NOTICE TO FEDERAL TRADE COMMIS-  
21 SION.—

22 (i) IN GENERAL.—Except as provided  
23 in clause (iii), the attorney general of a  
24 State shall notify the Commission in writ-  
25 ing that the attorney general intends to

1 bring a civil action under paragraph (1)  
2 before initiating the civil action against a  
3 person described in subsection (d)(1).

4 (ii) CONTENTS.—The notification re-  
5 quired by clause (i) with respect to a civil  
6 action shall include a copy of the complaint  
7 to be filed to initiate the civil action.

8 (iii) EXCEPTION.—If it is not feasible  
9 for the attorney general of a State to pro-  
10 vide the notification required by clause (i)  
11 before initiating a civil action under para-  
12 graph (1), the attorney general shall notify  
13 the Commission immediately upon insti-  
14 tuting the civil action.

15 (B) INTERVENTION BY FEDERAL TRADE  
16 COMMISSION.—The Commission may—

17 (i) intervene in any civil action  
18 brought by the attorney general of a State  
19 under paragraph (1) against a person de-  
20 scribed in subsection (d)(1); and

21 (ii) upon intervening—

22 (I) be heard on all matters aris-  
23 ing in the civil action; and

24 (II) file petitions for appeal of a  
25 decision in the civil action.



1           (3) INVESTIGATORY POWERS.—Nothing in this  
2 subsection may be construed to prevent the attorney  
3 general of a State from exercising the powers con-  
4 ferred on the attorney general by the laws of the  
5 State to conduct investigations, to administer oaths  
6 or affirmations, or to compel the attendance of wit-  
7 nesses or the production of documentary or other  
8 evidence.

9           (4) PREEMPTIVE ACTION BY FEDERAL TRADE  
10 COMMISSION.—If the Federal Trade Commission in-  
11 stitutes a civil action or an administrative action  
12 with respect to a violation of subsection (c), the at-  
13 torney general of a State may not, during the pend-  
14 ency of such action, bring a civil action under para-  
15 graph (1) against any defendant named in the com-  
16 plaint of the Commission for the violation with re-  
17 spect to which the Commission instituted such ac-  
18 tion.

19           (5) VENUE; SERVICE OF PROCESS.—

20           (A) VENUE.—Any action brought under  
21 paragraph (1) may be brought in—

22           (i) the district court of the United  
23 States that meets applicable requirements  
24 relating to venue under section 1391 of  
25 title 28, United States Code; or

1 (ii) another court of competent juris-  
2 diction.

3 (B) SERVICE OF PROCESS.—In an action  
4 brought under paragraph (1), process may be  
5 served in any district in which the defendant—

6 (i) is an inhabitant; or

7 (ii) may be found.

8 (6) ACTIONS BY OTHER STATE OFFICIALS.—

9 (A) IN GENERAL.—In addition to civil ac-  
10 tions brought by attorneys general under para-  
11 graph (1), any other consumer protection offi-  
12 cer of a State who is authorized by the State  
13 to do so may bring a civil action under para-  
14 graph (1), subject to the same requirements  
15 and limitations that apply under this subsection  
16 to civil actions brought by attorneys general.

17 (B) SAVINGS PROVISION.—Nothing in this  
18 subsection may be construed to prohibit an au-  
19 thorized official of a State from initiating or  
20 continuing any proceeding in a court of the  
21 State for a violation of any civil or criminal law  
22 of the State.

23 (f) EDUCATION AND OUTREACH FOR BUSINESSES.—  
24 Not later than 60 days after the date of the enactment  
25 of this Act, the Commission shall commence conducting

1 education and outreach that provides businesses with non-  
2 binding best practices for compliance with this Act.

3 (g) RELATION TO STATE CAUSES OF ACTION.—

4 Nothing in this section shall be construed to affect any  
5 cause of action brought by a person that exists or may  
6 exist under State law.

7 (h) EFFECTIVE DATES.—This section shall take ef-  
8 fect on the date of the enactment of this Act, except  
9 that—

10 (1) subsections (b) and (c) shall apply with re-  
11 spect to contracts in effect on or after the date that  
12 is 90 days after the date of the enactment of this  
13 Act; and

14 (2) subsections (d) and (e) shall apply with re-  
15 spect to contracts in effect on or after the date that  
16 is 1 year after the date of the enactment of this Act.

Passed the Senate December 14, 2015.

Attest:

JULIE E. ADAMS,

*Secretary.*