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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.

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.

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 ''Consumer Review Freedom Act of 2015''.

SEC. 2. PROTECTING CONSUMER SPEECH.

(a) PROHIBITION.—A provision of a form contract is void from the inception of such contract if such provision—

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

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

(3) transfers or requires the individual to transfer to any person or business any intellectual property rights that the individual may have in any otherwise lawful covered communication about the person or the goods or services provided by the person or business;

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to affect—

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

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

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

(1) Trade secrets or commercial or financial information obtained from a person and considered privileged or confidential.

(2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(3) Records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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

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

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

prescribed under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to seek appropriate relief.

(g) DEFINITIONS.—

(1) The term ''person'' means a natural person.

(2) The term ''business'' means a legal entity organized to accomplish a business purpose, including either for-profit or not-for-profit.

(3) The term ''form contract'' means a standardized contract used by a business and imposed on a party without a meaningful opportunity for said party to negotiate the standardized terms, but does not include a contract establishing an employer-employee or independent contractor relationship.

(4) The term ''covered communication'' means a person's written, verbal, or pictorial review, performance assessment of, or other similar analysis of, the products, services, or conduct of a business or person which is a party to the form contract.

(5) The term ''written'' includes words provided by electronic means.

(6) The term ''verbal'' includes speech provided by electronic means.

(7) The term ''pictorial'' includes pictures, photographs, and video provided by electronic means.

(h) EFFECTIVE DATES.—

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

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

SEC. 3. RELATION TO STATE CAUSES OF ACTION.

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

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