

(1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after the date of the enactment of this Act; and

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

## CONSUMER REVIEW FREEDOM ACT OF 2015

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 316, S. 2044.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 2044) 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.

There being no objection, the Senate proceeded to the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

### SECTION 1. SHORT TITLE.

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

### SEC. 2. CONSUMER REVIEW PROTECTION.

(a) DEFINITIONS.—In this section:

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

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

#### (3) FORM CONTRACT.—

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

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

(ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

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

(4) PICTORIAL.—The term “pictorial” includes pictures, photographs, video, illustrations, and symbols.

(b) INVALIDITY OF CONTRACTS THAT IMPEDE CONSUMER REVIEWS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision—

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

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

(C) transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

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

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

(B) any civil action for defamation, libel, or slander, or any similar cause of action;

(C) any party’s right to remove or refuse to publish any statement on an Internet website owned or operated by such party that contains the personal information or likeness of another person or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic, or that is unrelated to the goods or services offered by such party; or

(D) a party’s right to establish terms and conditions with respect to the creation of photographs or video of such party’s property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.

(3) EXCEPTIONS.—Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure of the following:

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

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

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

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

#### (d) ENFORCEMENT BY COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

#### (2) POWERS OF COMMISSION.—

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

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

#### (e) ENFORCEMENT BY STATES.—

(1) AUTHORIZATION.—Subject to subparagraph (B), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (c) in a practice that violates such subsection, the attorney general of the State may, as *parents patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

#### (2) RIGHTS OF FEDERAL TRADE COMMISSION.—

(A) NOTICE TO FEDERAL TRADE COMMISSION.—(i) IN GENERAL.—Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

(ii) CONTENTS.—The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

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

(i) intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and

#### (ii) upon intervening—

(I) be heard on all matters arising in the civil action; and

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

(3) INVESTIGATORY POWERS.—Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(4) PREEMPTIVE ACTION BY FEDERAL TRADE COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

#### (5) VENUE; SERVICE OF PROCESS.—

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

(i) the district court of the United States that meets applicable requirements relating to venue under section 1331 of title 28, United States Code; or

(ii) another court of competent jurisdiction.

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

(i) is an inhabitant; or

(ii) may be found.

#### (6) ACTIONS BY OTHER STATE OFFICIALS.—

(A) IN GENERAL.—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) SAVINGS PROVISION.—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(f) EDUCATION AND OUTREACH FOR BUSINESSES.—Not later than 60 days after the date of the enactment of this Act, the Commission shall commence conducting education and outreach that provides businesses with non-binding best practices for compliance with this Act.

(g) RELATION TO STATE CAUSES OF ACTION.—Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.

(h) EFFECTIVE DATES.—This section shall take effect on the date of the enactment of this Act, except that—

(1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after the date of the enactment of this Act; and

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

Mr. McCONNELL. Mr. President, I ask unanimous consent that the committee-reported substitute be withdrawn; that the Thune substitute amendment be agreed to; that the bill,

as amended, be read a third time and passed, and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee-reported substitute amendment was withdrawn.

The amendment (No. 2927) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 2044), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

#### BILLY FRANK JR. TELL YOUR STORY ACT

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2270, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (H.R. 2270) to redesignate the Nisqually National Wildlife Refuge, located in the State of Washington, as the Billy Frank Jr. Nisqually National Wildlife Refuge, to establish the Medicine Creek Treaty National Memorial within the wildlife refuge, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. McCONNELL. I further ask unanimous consent that the bill be read three times and passed and the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2270) was ordered to a third reading, was read the third time, and passed.

#### CONGRATULATING THE PENNSYLVANIA STATE UNIVERSITY WOMEN'S SOCCER TEAM FOR WINNING THE 2015 NATIONAL COLLEGIATE ATHLETIC ASSOCIATION SOCCER CHAMPIONSHIP

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 334, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The bill clerk read as follows:

A resolution (S. Res. 334) congratulating the Pennsylvania State University women's soccer team for winning the 2015 National Collegiate Athletic Association Soccer Championship.

There being no objection, the Senate proceeded to consider the resolution.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motions to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 334) was agreed to.

The preamble was agreed to.

(The resolution, with its preamble, is printed in today's RECORD under "Submitted Resolutions.")

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair announces, on behalf of the Democratic leader, pursuant to the provisions of Public Law 106-398, as amended by Public Law 108-7, and in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, the appointment of the following individuals to serve as members of the United States-China Economic Security Review Commission: Byron Dorgan of North Dakota and Carte P. Goodwin of West Virginia.

#### ORDERS FOR TUESDAY, DECEMBER 15, 2015

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 15; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, and the time for the two leaders be reserved for their use later in the day; further, that following leader remarks, the Senate be in a period of morning business until 5 p.m., with Senators permitted to speak therein for up to 10 minutes each; finally, that the Senate recess from 12:30 p.m. until 2:15 p.m. to allow for the weekly conference meetings.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 6:34 p.m., adjourned until Tuesday, December 15, 2015, at 10 a.m.

#### NOMINATIONS

Executive nominations received by the Senate:

##### DEPARTMENT OF THE TREASURY

ALAN J. KRECZKO, OF CONNECTICUT, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2019, VICE PAUL CHERECWICH, JR., RESIGNED.

JAMES R. WHITE, OF MARYLAND, TO BE A MEMBER OF THE INTERNAL REVENUE SERVICE OVERSIGHT BOARD FOR A TERM EXPIRING SEPTEMBER 14, 2020, VICE NANCY KILLEFER, TERM EXPIRED.

##### FEDERAL TRADE COMMISSION

EDITH RAMIREZ, OF CALIFORNIA, TO BE A FEDERAL TRADE COMMISSIONER FOR THE TERM OF SEVEN YEARS FROM SEPTEMBER 26, 2015. (REAPPOINTMENT)

##### EXECUTIVE OFFICE OF THE PRESIDENT

ANDREW MAYOCK, OF ILLINOIS, TO BE DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, VICE BETH F. COBERT.

#### IN THE AIR FORCE

THE FOLLOWING NAMED INDIVIDUALS FOR APPOINTMENT TO THE GRADES INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531:

*To be lieutenant colonel*

PETER L. REYNOLDS

*To be major*

CHRISTOPHER P. CALDER

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

JEREMY W. CANNON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

TED W. LIEU

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

JODENE M. ALEXANDER

MICHAEL C. BRICE

EDWARD L. CULLUMBER

DEBORAH J. ROBINSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

JOHN LOUIS ARENDALE II

KAMMIE J. DEGHETTO

KAREN L. GARDNER

JAMES P. PALMISANO

MINH-TRI BA TRINH

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

BONNIE JOY BOSLER

LEE W. BRADSHAW

ADA MIREA COLLIER

SUSAN G. GEER

MILDRED CAMILLA GLOVER

GARY W. HOPKINS

JEANNE K. LAFOUNTAIN

DIANNE LOUISE SLATEN

STEVEN J. THEOHARES

MICHELLE R. TIRADO

JENNIFER LYNN WEDEL

ESTHER L. WEIGHTMAN

LIAINE L. WEINBERGER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

ARDEN B. ANDERSEN

JEFFREY S. BUI

PETER K. DERUSSY

DAVID A. GERBER

CRYSTAL L. HNATKO

PATRICK U. HSIEH

MIGUEL ANGEL PIRELA-CRUZ

CATHERINE R. S. PLATT

STEVEN D. PODNOS

NEAL PATRICK RIDGE

SIRAJ A. SAYEED

HENRY SCHWARTZ

JOSHUA L. WRIGHT

MARK A. ZELKOVIC

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

TODD ANDREW LUCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

LEBANE S. HALL

DAVID F. PENDLETON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

WILLIAM CHARLES DUNLAP

JOHN P. GILLESPIE

ROBERT K. MCGHEE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

DAWN D. BELLACK

WALTER F. COPPERSMITH

CHRISTOPHER W. DENTEL

SCOTT S. DRIGGS