

2027

2015-2016 Regular Sessions

I N A S S E M B L Y

January 15, 2015

Introduced by M. of A. DINOWITZ, GOTTFRIED, GALEF, BRAUNSTEIN, MAGNARELLI, ABINANTI, OTIS -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to requiring contractees to waive their rights relating to the making of certain statements about contractors

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general obligations law is amended by adding a new
2 section 5-336 to read as follows:

3 S 5-336. AGREEMENTS REQUIRING CONTRACTEES TO WAIVE THEIR RIGHTS IN
4 RELATION TO EXPRESSING CERTAIN OPINIONS ABOUT CONTRACTORS VOID AND UNEN-
5 FORCEABLE. 1. (A) A CONTRACT OR PROPOSED CONTRACT FOR THE SALE OR LEASE
6 OF CONSUMER GOODS OR SERVICES MAY NOT INCLUDE A PROVISION WAIVING THE
7 CONSUMER'S RIGHT TO MAKE ANY STATEMENT REGARDING THE SELLER OR LESSOR OR
8 ITS EMPLOYEES OR AGENTS, OR CONCERNING THE GOODS OR SERVICES.

9 (B) IT SHALL BE UNLAWFUL TO THREATEN OR TO SEEK TO ENFORCE A PROVISION
10 MADE UNLAWFUL UNDER THIS SECTION, OR TO OTHERWISE PENALIZE A CONSUMER
11 FOR MAKING ANY STATEMENT PROTECTED UNDER THIS SECTION.

12 2. ANY WAIVER OF THE PROVISIONS OF THIS SECTION IS CONTRARY TO PUBLIC
13 POLICY, AND IS VOID AND UNENFORCEABLE.

14 3. ANY PERSON WHO VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL
15 PENALTY NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS FOR THE FIRST
16 VIOLATION, AND FIVE THOUSAND DOLLARS FOR THE SECOND AND FOR EACH SUBSE-
17 QUENT VIOLATION, TO BE ASSESSED AND COLLECTED IN A CIVIL ACTION BROUGHT
18 BY THE CONSUMER, BY THE ATTORNEY GENERAL, OR BY THE DISTRICT ATTORNEY OR
19 CITY ATTORNEY OF THE COUNTY OR CITY IN WHICH THE VIOLATION OCCURRED.
20 WHEN COLLECTED, THE CIVIL PENALTY SHALL BE PAYABLE, AS APPROPRIATE, TO
21 THE CONSUMER OR TO THE GENERAL FUND OF WHICHEVER GOVERNMENTAL ENTITY
22 BROUGHT THE ACTION TO ASSESS THE CIVIL PENALTY.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 4. IN ADDITION, FOR A WILLFUL, INTENTIONAL, OR RECKLESS VIOLATION OF
2 THIS SECTION, A CONSUMER OR PUBLIC PROSECUTOR MAY RECOVER A CIVIL PENAL-
3 TY NOT TO EXCEED TEN THOUSAND DOLLARS.
4 5. THE PENALTY PROVIDED BY THIS SECTION IS NOT AN EXCLUSIVE REMEDY,
5 AND DOES NOT AFFECT ANY OTHER RELIEF OR REMEDY PROVIDED BY LAW. THIS
6 SECTION SHALL NOT BE CONSTRUED TO PROHIBIT OR LIMIT A PERSON OR BUSINESS
7 THAT HOSTS ONLINE CONSUMER REVIEWS OR COMMENTS FROM REMOVING A STATEMENT
8 THAT IS OTHERWISE LAWFUL TO REMOVE.
9 S 2. This act shall take effect on the ninetieth day after it shall
10 have become a law.