STATE OF NEW YORK

1859--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 13, 2017

Introduced by M. of A. DINOWITZ, GOTTFRIED, GALEF, BRAUNSTEIN, MAGNARELLI, ABINANTI, OTIS -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The general obligations law is amended by adding a new section 5-337 to read as follows:

§ 5-337. Agreements requiring contractees to waive their rights in relation to expressing certain opinions about contractors void and unenforceable. 1. (a) A contract or proposed contract for the sale or lease of consumer goods or services may not include a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services.

(b) It shall be unlawful to threaten or to seek to enforce a provision made unlawful under this section, or to otherwise penalize a consumer for making any statement protected under this section.

2. Any waiver of the provisions of this section is contrary to public policy, and is void and unenforceable.

3. Any person or entity that violates this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars for the first violation, and five thousand dollars for the second and for each subsequent violation, to be assessed and collected in a civil action brought by the consumer or by the attorney general. In addition, for a willful or intentional violation of this section, a consumer or the attorney general may recover a civil penalty not to exceed ten thousand

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

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dollars. Under this section, when the civil action is brought by the consumer, the civil penalty shall be payable to the consumer and when the civil action is brought by the attorney general, such civil penalty shall be payable to the state.

4. The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law. This section shall not be construed to prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.