STATE OF NEW YORK

6367--B

2017-2018 Regular Sessions

IN SENATE

May 11, 2017

Introduced by Sen. CARLUCCI -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to the prohibition of the use of non-disparagement clauses in consumer contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 399-cccc to read as follows:

§ 399-cccc. Non-disparagement clauses in consumer contracts or services prohibited. 1. Definitions.

a. The term "consumer" shall mean a natural person residing in this state.

b. The term "consumer goods" shall mean goods, wares, paid merchandise or services purchased or paid for by a consumer, the intended use or benefit of which is intended for the personal, family or household purposes of such consumer.

c. The term "consumer services" shall mean services provided to consumers including, but not limited to, legal services, medical services or cleaning services.

d. The term "non-disparagement clause" shall mean a provision waiving the consumer's right to make any statement regarding a seller or lessor or its employees or agents, or concerning the goods or services.

2. Prohibition. a. A contract or proposed contract for the sale or lease of consumer goods or services may not include a non-disparagement clause. The inclusion of such clause in a contract or proposed contract for the sale or lease of consumer goods or services shall not serve to impair the enforceability of any other provision of such contract.

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

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b. It shall be unlawful to threaten or to seek to enforce a non-disparagement clause made unlawful under this section, or to otherwise penalize a consumer for making any statement protected under this section. The inclusion of such clause in a written contract for the sale or purchase of consumer goods shall not serve to impair the enforceability of any other provision of such contract.

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

3. Penalty. a. Any person who violates this section shall be subject to a civil penalty not to exceed five hundred dollars for the first violation, and one thousand dollars for the second and for each subsequent violation, to be assessed and collected in a civil action brought by the attorney general.

b. Any person who seeks to enforce a non-disparagement clause made unlawful under this section or otherwise penalize a consumer for making any statement protected under this section shall be subject to a civil penalty not to exceed five thousand dollars to be assessed and collected in a civil action by the attorney general.

c. Any consumer damaged by a violation of this section may bring an action for recovery of damages. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorney's fees. 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.