

STATE OF NEW YORK

10331

IN ASSEMBLY

April 29, 2020

Introduced by M. of A. DenDEKKER -- read once and referred to the
Committee on Consumer Affairs and Protection

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 Assem-
bly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section
2 399-k to read as follows:

3 § 399-k. Non-disparagement clauses in consumer contracts or services
4 prohibited. 1. Definitions.

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

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

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

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

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

22 b. It shall be unlawful to threaten or to seek to enforce a non-dis-
23 paragement clause made unlawful under this section, or to otherwise
24 penalize a consumer for making any statement protected under this
25 section. The inclusion of such clause in a written contract for the sale
26 or purchase of consumer goods shall not serve to impair the enforceabil-
27 ity 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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1 c. Any waiver of the provisions of this section is contrary to public
2 policy, and is void and unenforceable.

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

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

13 c. Any consumer damaged by a violation of this section may bring an
14 action for recovery of damages. Judgment may be entered in an amount not
15 to exceed three times the actual damages plus reasonable attorney's
16 fees. The penalty provided by this section is not an exclusive remedy,
17 and does not affect any other relief or remedy provided by law. This
18 section shall not be construed to prohibit or limit a person or business
19 that hosts online consumer reviews or comments from removing a statement
20 that is otherwise lawful to remove.

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