

# STATE OF NEW YORK

1722

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 Assembly, 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

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

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1 or purchase of consumer goods shall not serve to impair the enforceabil-  
2 ity of any other provision of such contract.

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

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

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

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

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