STATE OF NEW YORK

6544

2019-2020 Regular Sessions

IN ASSEMBLY

March 11, 2019

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

AN ACT to amend the general business law, in relation to prohibiting consumer contract provisions waiving the consumer's right to make statements concerning goods or services

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 398-f to read as follows:

§ 398-f. Provisions waiving the consumer's right to make statements concerning goods or services in consumer contracts prohibited. 1. (a) A contract or proposed contract for the sale or lease of consumer goods or services shall 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 who 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, by the attorney general, or by the district attorney or city attorney of the county or city in which the violation occurred. When collected, the civil penalty shall be payable, as appropriate, to the consumer or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

4. In addition, for a willful, intentional, or reckless violation of this section, a consumer, the attorney general, or the district attorney

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

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or city attorney of the county or city in which the violation occurred may recover a civil penalty not to exceed ten thousand dollars.

5. 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 immediately.