

STATE OF NEW YORK

3349

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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:

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

3 § 5-337. Agreements requiring contractees to waive their rights in
4 relation to expressing certain opinions about contractors void and unen-
5 forceable. 1. (a) A contract or proposed contract for the sale or lease
6 of consumer goods or services may not include a provision waiving the
7 consumer's right to make any statement regarding the seller or lessor or
8 its employees or agents, or concerning the goods or services.

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

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

14 3. Any person or entity that violates this section shall be subject to
15 a civil penalty not to exceed two thousand five hundred dollars for the
16 first violation, and five thousand dollars for the second and for each
17 subsequent violation, to be assessed and collected in a civil action
18 brought by the consumer or by the attorney general. In addition, for a
19 willful or intentional violation of this section, a consumer or the
20 attorney general may recover a civil penalty not to exceed ten thousand
21 dollars. Under this section, when the civil action is brought by the
22 consumer, the civil penalty shall be payable to the consumer and when
23 the civil action is brought by the attorney general, such civil penalty
24 shall be payable to the state.

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

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

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