

113TH CONGRESS
2D SESSION

H. R. 5499

To prohibit contracts that prohibit consumers from making certain public comments on businesses.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2014

Mr. SWALWELL of California (for himself, Mr. SHERMAN, Mr. COHEN, and Mr. CÁRDENAS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit contracts that prohibit consumers from making certain public comments on businesses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Review
5 Freedom Act of 2014”.

6 **SEC. 2. PROTECTING CONSUMER SPEECH.**

7 (a) PROHIBITION.—A provision of a form contract is
8 void from the inception of such contract if said provision—

1 (1) prohibits or restricts the ability of a person
2 who is a party to the form contract to engage in a
3 covered communication;

4 (2) imposes a penalty or fee against a person
5 who is a party to the form contract for engaging in
6 a covered communication; or

7 (3) assigns or provides an exclusive license, or
8 requires a person who is a party to the form con-
9 tract to assign or provide an exclusive license, to any
10 business, other person, or entity any intellectual
11 property rights that such party to the form contract
12 has or may have in a covered communication.

13 (b) RULE OF CONSTRUCTION.—Nothing in sub-
14 section (a) shall be construed to affect—

15 (1) any duty of confidentiality imposed by law
16 (including agency guidance); or

17 (2) any civil action for defamation, libel, or
18 slander, or any similar cause of action.

19 (c) EXCEPTIONS.—Subsection (a) shall not apply to
20 the extent that a provision of a form contract prohibits
21 disclosure of the following:

22 (1) Trade secrets or commercial or financial in-
23 formation obtained from a person and privileged or
24 confidential.

1 (2) Personnel and medical files and similar files
2 the disclosure of which would constitute a clearly un-
3 warranted invasion of personal privacy.

4 (3) Records or information compiled for law en-
5 forcement purposes, the disclosure of which would
6 constitute a clearly unwarranted invasion of personal
7 privacy.

8 (d) UNLAWFUL CONDUCT.—It shall be unlawful for
9 a business to offer or enter into a form contract containing
10 a provision described as void in subsection (a).

11 (e) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—

13 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
14 TICES.—A violation of subsection (d) shall be treat-
15 ed as a violation of a regulation under section
16 18(a)(1)(B) of the Federal Trade Commission Act
17 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-
18 tive acts or practices.

19 (2) POWERS OF COMMISSION.—The Federal
20 Trade Commission shall enforce this section in the
21 same manner, by the same means, and with the
22 same jurisdiction, powers, and duties as though all
23 applicable terms and provisions of the Federal Trade
24 Commission Act (15 U.S.C. 41 et seq.) were incor-
25 porated into and made a part of this Act. Any per-

1 son who violates this section or a regulation promul-
2 gated under this section shall be subject to the pen-
3 alties and entitled to the privileges and immunities
4 provided in the Federal Trade Commission Act.

5 (f) STATE ENFORCEMENT.—The attorney general of
6 a State may file an action to enforce subsection (d) seek-
7 ing appropriate relief. In any case in which the attorney
8 general of a State has reason to believe that an interest
9 of the residents of that State has been or is threatened
10 or adversely affected by the engagement of any person in
11 a practice that violates any regulation of the Commission
12 prescribed under this section, the State, as *parens patriae*,
13 may bring a civil action on behalf of the residents of the
14 State in a district court of the United States of appro-
15 priate jurisdiction to seek appropriate relief.

16 (g) DEFINITIONS.—

17 (1) The term “person” means a natural person.

18 (2) The term “business” means a legal entity
19 organized to accomplish a business purpose, includ-
20 ing either for-profit or not-for-profit.

21 (3) The term “form contract” means a stand-
22 ardized contract used by a business and imposed on
23 a party without a meaningful opportunity for said
24 party to negotiate the standardized terms, but does

1 not include a contract establishing an employer-em-
2 ployee or independent contractor relationship.

3 (4) The term “covered communication” means
4 a person’s written, verbal, or pictorial review, per-
5 formance assessment of, or other similar analysis of,
6 the products, services, or conduct of a business
7 which is a party to the form contract.

8 (5) The term “written” includes words provided
9 by electronic means.

10 (6) The term “verbal” includes speech provided
11 by electronic means.

12 (7) The term “pictorial” includes pictures, pho-
13 tographs, and video provided by electronic means.

14 (h) EFFECTIVE DATES.—

15 (1) Subsections (a), (b), (c), (d), and (g) shall
16 apply to any contracts in effect on or after date of
17 enactment.

18 (2) Subsections (e) and (f) shall apply to any
19 contracts in effect on or after one year after date of
20 enactment.

21 **SEC. 3. RELATION TO STATE CAUSES OF ACTION.**

22 Nothing in this Act shall be construed to affect any
23 cause of action brought by a person that exists or may
24 exist under State law.

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