

ASSEMBLY BILL

No. 2365

Introduced by Assembly Member John A. Pérez

February 21, 2014

An act to add Section 1670.8 to the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, as introduced, John A. Pérez. Contracts: unlawful contracts.

Existing law generally regulates formation and enforcement of contracts, including what constitutes an unlawful contract. Under existing law a contract is unlawful if it is contrary to an express provision of law, contrary to the policy of express law, though not expressly prohibited, or otherwise contrary to good morals.

This bill would declare a contract or proposed contract for the sale or lease of consumer goods or services unlawful if it contains a provision requiring the consumer to waive his or her right to make any statement regarding the consumer's experience with the business, unless the waiver was knowing, voluntary, and intelligent, as specified. The bill would impose civil penalties in an unspecified amount upon any person who violates the provisions of the bill, as well as an additional penalty in an unspecified amount if that violation was willful, intentional, or reckless. The bill would authorize the consumer, the Attorney General, or a district attorney or city attorney to bring a civil action for a violation of the provisions of the bill. The bill would provide that the penalty set forth in the bill is not an exclusive remedy, and does not affect any other relief or remedy provided by law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1670.8 is added to the Civil Code, to read:

1670.8. (a) A contract or proposed contract for the sale or lease of consumer goods or services is unlawful if it includes a provision requiring the consumer to waive his or her right to make any statement regarding the consumer's experience with the business, or to threaten or seek to enforce such a provision or to otherwise penalize a consumer for making such a statement, unless the waiver of this right was knowing, voluntary, and intelligent. A provision in violation of this section is unconscionable and against public policy.

(b) The party that drafted the waiver provision has the burden of proving that the waiver was knowing, voluntary, and intelligent.

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

(d) Any person who violates this section shall be subject to a civil penalty not to exceed ____ dollars (\$____) for the first violation and ____ dollars (\$____) 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.

(e) In addition, for a willful, intentional, or reckless violation of this section, a consumer or public prosecutor may recover a civil penalty not to exceed ____ dollars (\$ ____).

(f) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law.