

AMENDED IN ASSEMBLY APRIL 24, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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, a seller or lessor or its employees or agents~~, unless the waiver was knowing, voluntary, and intelligent, as specified. *The bill would make it unlawful to threaten or seek to enforce, a provision made unlawful under the bill, or to otherwise penalize a consumer for making any statement regarding the consumer's experience with a seller or lessor, or its employees or agent, absent the consumer's knowing, voluntary, and intelligent waiver of his or her right to do so.* The bill would impose civil penalties ~~in an unspecified amount~~ upon any person who violates the provisions of the bill, *of \$2,500 for the initial violation and \$5,000 for each subsequent violation*, as well as an additional penalty ~~in an unspecified amount of \$10,000 if that~~ the 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:

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

3 1670.8. (a) (1) A contract or proposed contract for the sale
4 or lease of consumer goods or services is unlawful if it includes a
5 provision requiring the consumer to waive his or her right to make
6 any statement regarding the consumer’s experience with the
7 ~~business, or to threaten or seek to enforce such a provision or to~~
8 ~~otherwise penalize a consumer for making such a statement~~ *seller*
9 *or lessor or its employees or agents*, unless the waiver of this right
10 was knowing, voluntary, and intelligent. ~~A provision in violation~~
11 ~~of this section is unconscionable and against public policy.~~

12 (2) *It shall be unlawful to threaten or seek to enforce a provision*
13 *made unlawful under this section, or to otherwise penalize a*
14 *consumer for making any statement regarding the consumer’s*
15 *experience with a seller or lessor, or its employees or agent, unless*
16 *the consumer has knowingly, voluntarily, and intelligently waived*
17 *his or her right to do so.*

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

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

22 (d) Any person who violates this section shall be subject to a
23 civil penalty not to exceed ~~_____ dollars (\$_____)~~ *two thousand five*
24 *hundred dollars (\$2,500)* for the first ~~violation and _____ dollars~~
25 ~~(\$_____)~~ *violation, and five thousand dollars (\$5,000)* for the second
26 *and* for each subsequent violation, to be assessed and collected in
27 a civil action brought by the consumer, by the Attorney General,
28 or by the district attorney or city attorney of the county or city in
29 which the violation occurred. When collected, the civil penalty
30 shall be payable, as appropriate, to the consumer or to the general

1 fund of whichever governmental entity brought the action to assess
2 the civil penalty.

3 (e) In addition, for a willful, intentional, or reckless violation
4 of this section, a consumer or public prosecutor may recover a
5 civil penalty not to exceed _____ dollars (~~\$ _____~~) *ten thousand*
6 *dollars (\$10,000)*.

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

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