

AMENDED IN SENATE JUNE 12, 2014

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 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 *to* 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 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 of \$10,000 if 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. *The bill would not limit any authority otherwise provided by law of a person or business to remove an online consumer statement that is libelous, harassing, obscene, vulgar, or sexually explicit, contains the personal information or likeness of a person other than the consumer, or violates a person’s civil right to be treated equal to all others no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation.*

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 or
- 4 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 seller
- 7 or lessor or its employees or agents, unless the waiver of this right
- 8 was knowing, voluntary, and intelligent.
- 9 (2) It shall be unlawful to threaten or *to* seek to enforce a
- 10 provision made unlawful under this section, or to otherwise
- 11 penalize a consumer for making any statement regarding the
- 12 consumer’s experience with a seller or lessor, or its employees or
- 13 agent, unless the consumer has knowingly, voluntarily, and
- 14 intelligently waived his or her right to do so.
- 15 (b) The party that drafted the waiver provision has the burden
- 16 of proving that the waiver was knowing, voluntary, and intelligent.
- 17 (c) Any waiver of the provisions of this section is contrary to
- 18 public policy, and is void and unenforceable.
- 19 (d) Any person who violates this section shall be subject to a
- 20 civil penalty not to exceed two thousand five hundred dollars
- 21 (\$2,500) for the first violation, and five thousand dollars (\$5,000)
- 22 for the second and for each subsequent violation, to be assessed

1 and collected in a civil action brought by the consumer, by the
2 Attorney General, or by the district attorney or city attorney of the
3 county or city in which the violation occurred. When collected,
4 the civil penalty shall be payable, as appropriate, to the consumer
5 or to the general fund of whichever governmental entity brought
6 the action to assess the civil penalty.

7 (e) In addition, for a willful, intentional, or reckless violation
8 of this section, a consumer or public prosecutor may recover a
9 civil penalty not to exceed ten thousand dollars (\$10,000).

10 (f) The penalty provided by this section is not an exclusive
11 remedy, and does not affect any other relief or remedy provided
12 by law. *This section shall not be construed to limit any authority*
13 *otherwise provided by law of a person or business to remove an*
14 *online consumer statement that is libelous, harassing, obscene,*
15 *vulgar, or sexually explicit, contains the personal information or*
16 *likeness of a person other than the consumer, or violates Section*
17 *51.*