

AMENDED IN SENATE AUGUST 11, 2014

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~~ *prohibit* a contract or proposed contract for the sale or lease of consumer goods or services ~~unlawful if it contains from including a provision requiring the consumer to waive his or her waiving the consumer's~~ 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.~~ *seller or lessor or its employees or agents, or concerning the goods or services.* 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. protected under the bill.~~ 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 *prohibit or 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.~~ *that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.*

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~~ *may*
 5 *not include* a provision ~~requiring the consumer to waive his or her~~
 6 *waiving the consumer’s* right to make any statement regarding the
 7 ~~consumer’s experience with the seller or lessor or its employees~~
 8 ~~or agents, unless the waiver of this right was knowing, voluntary,~~
 9 ~~and intelligent.~~ *agents, or concerning the goods or services.*
 10 (2) It shall be unlawful to threaten or to seek to enforce a
 11 provision made unlawful under this section, or to otherwise
 12 penalize a consumer for making any statement ~~regarding the~~
 13 ~~consumer’s experience with a seller or lessor, or its employees or~~
 14 ~~agent, unless the consumer has knowingly, voluntarily, and~~
 15 ~~intelligently waived his or her right to do so.~~ *protected under this*
 16 *section.*

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

3 ~~(e)~~

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

6 ~~(d)~~

7 (c) Any person who violates this section shall be subject to a
8 civil penalty not to exceed two thousand five hundred dollars
9 (\$2,500) for the first violation, and five thousand dollars (\$5,000)
10 for the second and for each subsequent violation, to be assessed
11 and collected in a civil action brought by the consumer, by the
12 Attorney General, or by the district attorney or city attorney of the
13 county or city in which the violation occurred. When collected,
14 the civil penalty shall be payable, as appropriate, to the consumer
15 or to the general fund of whichever governmental entity brought
16 the action to assess the civil penalty.

17 ~~(e)~~

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

21 ~~(f)~~

22 (e) The penalty provided by this section is not an exclusive
23 remedy, and does not affect any other relief or remedy provided
24 by law. This section shall not be construed to *prohibit or limit any*
25 ~~authority otherwise provided by law of a person or business to~~
26 ~~remove an online consumer statement that is libelous, harassing,~~
27 ~~obscene, vulgar, or sexually explicit, contains the personal~~
28 ~~information or likeness of a person other than the consumer, or~~
29 ~~violates Section 51. that hosts online consumer reviews or~~
30 ~~comments from removing a statement that is otherwise lawful to~~
31 ~~remove.~~