

Assembly Bill No. 2365

CHAPTER 308

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

[Approved by Governor September 9, 2014. Filed with
Secretary of State September 9, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, 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 prohibit a contract or proposed contract for the sale or lease of consumer goods or services from including a provision waiving the consumer's right to make any statement regarding the 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 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 a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.

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) (1) A contract or proposed contract for the sale or lease of consumer goods or services may not include a provision waiving the consumer's right to make any statement regarding the seller or lessor or its employees or agents, or concerning the goods or services.

(2) It shall be unlawful to threaten or to seek to enforce a provision made unlawful under this section, or to otherwise penalize a consumer for making any statement protected under this section.

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

(c) Any person who violates this section shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for the first violation, and five thousand dollars (\$5,000) for the second and 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.

(d) 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 ten thousand dollars (\$10,000).

(e) The penalty provided by this section is not an exclusive remedy, and does not affect any other relief or remedy provided by law. This section shall not be construed to prohibit or limit a person or business that hosts online consumer reviews or comments from removing a statement that is otherwise lawful to remove.