

1.

Short title

This Act may be cited as the Consumer Review Freedom Act of 2015.

2.

Consumer review protection

(a)

Definitions

In this section:

(1)

Commission

The term *Commission* means the Federal Trade Commission.

(2)

Covered communication

The term *covered communication* means a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.

(3)

Form contract

(A)

In general

Except as provided in subparagraph (B), the term *form contract* means a contract with standardized terms—

(i)

used by a person in the course of selling or leasing the person's goods or services; and

(ii)

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imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

(B)

Exception

The term *form contract* does not include an employer-employee or independent contractor contract.

(4)

Pictorial

The term *pictorial* includes pictures, photographs, video, illustrations, and symbols.

(b)

Invalidity of contracts that impede consumer reviews

(1)

In general

Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision—

(A)

prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication;

(B)

imposes a penalty or fee against an individual who is a party to the form contract for engaging in a covered communication; or

(C)

transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

(2)

Rule of construction

Nothing in paragraph (1) shall be construed to affect—

(A)

any duty of confidentiality imposed by law (including agency guidance);

(B)

any civil cause of action for defamation, libel, or slander, or any similar cause of action;

(C)

any party's right to remove or refuse to ~~publish any statement~~display publicly on an Internet website or webpage owned ~~or~~ operated or otherwise controlled by such party any content of a covered communication that—

(i)

contains the personal information or likeness of another person or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic ~~or that is unrelated to the goods or services offered by such party; or;~~

(ii)

is unrelated to the goods or services offered by or available at such party's Internet website or webpage; or

(iii)

is clearly false or misleading; or

(D)

a party's right to establish terms and conditions with respect to the creation of photographs or video of such party's property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.

(3)

Exceptions

Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure ~~of the following: or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove—~~

(A)

~~Trade~~ secrets or commercial or financial information obtained from a person and considered privileged or confidential;

(B)

~~Personnel~~personnel and medical files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(C)

~~Records~~records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(D)

content that is unlawful or otherwise meets the requirements of paragraph (2)(C); or

(E)

content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications, or files.

(c)

Prohibition

It shall be unlawful for a person to offer ~~or enter into~~ a form contract containing a provision described as void in subsection (b).

(d)

Enforcement by Commission

(1)

Unfair or deceptive acts or practices

A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2)

Powers of commission

(A)

In general

The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(B)

Privileges and immunities

Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e)

Enforcement by States

(1)

Authorization

Subject to subparagraph (B), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (c) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2)

Rights of Federal Trade Commission

(A)

Notice to Federal Trade Commission

(i)

In general

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

(ii)

Contents

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii)

Exception

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B)

Intervention by federal trade commission

The Commission may—

(i)

intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and

(ii)

upon intervening—

(I)

be heard on all matters arising in the civil action; and

(II)

file petitions for appeal of a decision in the civil action.

(3)

Investigatory powers

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(4)

Preemptive action by Federal Trade Commission

If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5)

Venue; service of process

(A)

Venue

Any action brought under paragraph (1) may be brought in—

(i)

the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code; or

(ii)

another court of competent jurisdiction.

(B)

Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i)

is an inhabitant; or

(ii)

may be found.

(6)

Actions by other State officials

(A)

In general

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B)

Savings provision

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(f)

Education and Outreach for Businesses

Not later than 60 days after the date of the enactment of this Act, the Commission shall commence conducting education and outreach that provides businesses with non-binding best practices for compliance with this Act.

(g)

Relation to State causes of action

Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.

(h)

Effective dates

This section shall take effect on the date of the enactment of this Act, except that—

(1)

subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after the date of the enactment of this Act; and

(2)

subsections (d) and (e) shall apply with respect to contracts in effect on or after the date that is 1 year after the date of the enactment of this Act.