

Amendment No. 727

Assembly Amendment to Senate Bill No. 185 First Reprint	(BDR 52-27)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: Yes Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

ALA/WLK



Date: 5/19/2017

S.B. No. 185—Prohibits form contracts for consumer goods or services from including provisions that interfere with a consumer’s rights to provide certain information to others. (BDR 52-27)



SENATE BILL NO. 185--SENATORS PARKS;
MANENDO AND SEGERBLOM

PREFILED FEBRUARY 13, 2017

JOINT SPONSORS: ASSEMBLYMEN COHEN, NEAL,
SPIEGEL AND YEAGER

Referred to Committee on Commerce, Labor and Energy

SUMMARY—~~[Prohibits form contracts for consumer goods or services from including provisions that interfere with a consumer's rights to provide certain information to others.]~~ Makes various changes relating to trade regulations. (BDR 52-27)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade regulations; prohibiting a seller or lessor of consumer goods or services from including certain provisions in form contracts with consumers; authorizing a consumer and certain governmental entities to bring an action for the recovery of civil penalties for violating the prohibition; prohibiting a person from offering certain types of leases; requiring that certain retail installment contracts be subject to the federal Truth in Lending Act; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regulates trade practices and other commercial activities. (Title 52 of NRS) ~~[This]~~ Section 2 of this bill prohibits a seller or lessor of consumer goods or services who uses a form contract, which is a contract that has standardized terms and is imposed on a consumer without a meaningful opportunity for negotiation by the consumer concerning the standardized terms, from including in the contract a provision that: (1) limits or requires the consumer to waive his or her rights to provide a review, comment or other statement concerning the seller or lessor or the goods or services; (2) imposes a penalty on the consumer for providing such a review, comment or other statement; or (3) declares that the provision of such a review, comment or other statement by the consumer is a breach of the contract. ~~[This bill]~~ Section 2 provides that any such provision included in a form contract is unenforceable. ~~[This bill]~~ Section 2 further provides that any person who violates its provisions is guilty of a misdemeanor and, in addition to any criminal penalty, is liable for civil penalties of up to \$2,500 for the person's first violation, up to \$5,000 for each subsequent violation and an additional penalty of up to \$10,000 if the court finds that the violation is reckless, willful or

wanton. ~~The bill, Section 2~~ authorizes the consumer, the Attorney General, a district attorney or city attorney to bring an action to recover the civil penalty and to retain any money awarded by the court. ~~The bill, Section 2~~ does not prohibit a person who maintains an online forum, such as an Internet website, from removing from the forum any statement or information that the person is lawfully entitled to remove.

Section 3 of this bill prohibits a person from leasing any living animal or goods intended for personal, family or household use if the living animal or good is expected to have not more than a minimal residual financial value at the end of the term of the lease or contract. Section 3 further requires that any retail installment contract for the sale of any living animal or goods intended for personal, family or household use be subject to the federal Truth in Lending Act. Section 3 additionally sets forth that a failure to comply with or a violation of section 3 constitutes a deceptive trade practice or consumer fraud, respectively. Finally, section 3 exempts any lease or contract on furniture or household electronics from the provisions of section 3.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto ~~a new section to read as follows:~~ the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. A seller or lessor of consumer goods or services shall not:

(a) Include in any form contract or proposed form contract with a consumer for the purchase, lease or rental of consumer goods or services any provision that:

(1) Limits or requires the consumer to waive his or her rights to provide a review, comment or other statement concerning the consumer goods or services or the seller or lessor;

(2) Imposes a penalty on the consumer for providing such a review, comment or other statement; or

(3) Declares that the provision of such a review, comment or other statement by the consumer is a breach of the form contract;

(b) Enforce or threaten to enforce a provision described in paragraph (a); or

(c) Refuse or threaten to refuse to enter into a form contract with a consumer solely because the consumer does not agree to the inclusion in the form contract of a provision described in paragraph (a).

2. Any provision that is included in a form contract with a consumer for the purchase, lease or rental of consumer goods or services in violation of subsection 1, with or without consideration, is against public policy and is void and unenforceable.

3. Any person who violates subsection 1 is guilty of a misdemeanor and, in addition to any criminal penalty, is liable for:

(a) A civil penalty of not more than:

(1) For the first violation, \$2,500;

(2) For the second or subsequent violation, \$5,000 for each violation; and

(3) If the court finds that the violation is reckless, willful or wanton, \$10,000, in addition to the civil penalty set forth in subparagraph (1) or (2); and

(b) The costs incurred to recover the civil penalty, including, without limitation:

(1) The costs, if any, of conducting an investigation into the violation;

(2) Reasonable costs specified in NRS 18.005; and

(3) Reasonable attorney's fees.

4. An action to recover the civil penalty may be brought by the consumer, the Attorney General or a district attorney or city attorney, as appropriate. The action may be instituted in any court of competent jurisdiction in the city or county in which either party resides, the defendant can be found or in which the violation occurred.

5. Any money awarded by a court pursuant to this section must be awarded to the person or governmental entity that brought the action.

6. The civil remedy provided by this section is in addition to, and not exclusive of, any other available remedy or penalty.

7. This section does not prohibit a person who maintains an online forum, including, without limitation, an Internet website, from removing from the forum any statement that the person is lawfully entitled to remove.

8. Nothing in this section shall be construed as affecting:

(a) Any duty of confidentiality imposed by law; or

(b) Any civil cause of action for defamation, libel, slander or any similar cause of action.

9. As used in this section:

(a) "Consumer" means a natural person.

(b) "Consumer goods or services" has the meaning ascribed to it in NRS 598.170.

(c) "Form contract" means a contract or agreement with standardized terms that is:

(1) Used by a seller or lessor in the course of selling, leasing or renting consumer goods or services of the seller or lessor; and

(2) Imposed on a consumer without a meaningful opportunity for the consumer to negotiate the standardized terms.

(d) "Lessor" means a lessor and any agent or employee of the lessor.

(e) "Seller" means a seller and any agent or employee of the seller.

Sec. 3. 1. A person shall not offer to lease any living animal or goods intended for personal, family or household use, including, without limitation, pets, tires, batteries and hearing aids, if the living animal or good is expected to have not more than a de minimis residual financial value at the end of the term of the lease or contract.

2. Any retail installment contract for the sale of any living animal or goods intended for personal, family or household use, including, without limitation, pets, tires, batteries and hearing aids, is subject to the provisions of the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and any regulations adopted pursuant thereto.

3. The failure of a person to comply with this section constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

4. A violation of this section constitutes consumer fraud for the purposes of NRS 41.600.

5. The provisions of this section do not apply to any lease or contract on furniture or household electronics.

6. As used in this section:

(a) "Goods" has the meaning ascribed to it in NRS 104.2105.

(b) "Household electronics" means electronic devices, personal effects and property of an electronic nature used or to be used in a dwelling.

(c) "Residual financial value" means the amount the living animal or good is worth at the end of the term of the lease or contract and includes, without limitation, the salvage value of the living animal or good.

(d) "Retail installment contract" has the meaning ascribed to it in NRS 97.105.

1 (e) "Salvage value" means the amount expected to be obtained when the
2 living animal or good is disposed of at the end of its useful life.

3 ~~[Sec. 2.]~~ **Sec. 4.** This act becomes effective on July 1, 2017.