

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

PREFILED FEBRUARY 13, 2017

JOINT SPONSORS: ASSEMBLYMEN 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. (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; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law regulates trade practices and other commercial activities. (Title 52
2 of NRS) This bill prohibits a seller or lessor of consumer goods or services who
3 uses a form contract, which is a contract that has standardized terms and is imposed
4 on a consumer without a meaningful opportunity for negotiation by the consumer
5 concerning the standardized terms, from including in the contract a provision that:
6 (1) limits or requires the consumer to waive his or her rights to provide a review,
7 comment or other statement concerning the seller or lessor or the goods or services;
8 (2) imposes a penalty on the consumer for providing such a review, comment or
9 other statement; or (3) declares that the provision of such a review, comment or
10 other statement by the consumer is a breach of the contract. This bill provides that
11 any such provision included in a form contract is unenforceable. This bill 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 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 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.

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:

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.



1 **Sec. 2.** This act becomes effective on July 1, 2017.

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