

HOUSE BILL 131

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6lr1104

By: **Delegates Waldstreicher, Moon, Kramer, and C. Wilson**

Introduced and read first time: January 20, 2016

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: February 17, 2016

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Nondisparagement Clauses in Consumer Contracts**
3 **– Prohibition**

4 FOR the purpose of prohibiting a contract or a proposed contract for the sale or lease of
5 consumer goods or services from including a provision waiving the consumer’s right
6 to make a certain statement; prohibiting a person from threatening or seeking
7 enforcement of a certain contract provision; prohibiting a person from penalizing a
8 consumer for making a certain statement; providing that a waiver of certain
9 provisions of this Act is contrary to public policy and is void and unenforceable;
10 providing for the construction and application of this Act; providing that a violation
11 of this Act is an unfair or deceptive trade practice within the meaning of the
12 Maryland Consumer Protection Act and subject to certain enforcement and penalty
13 provisions; defining certain terms; and generally relating to nondisparagement
14 clauses in consumer contracts.

15 BY adding to

16 Article – Commercial Law

17 Section 14–1325

18 Annotated Code of Maryland

19 (2013 Replacement Volume and 2015 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Commercial Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 14-1325.

2 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (2) "CONSUMER" MEANS AN ACTUAL OR A PROSPECTIVE
5 PURCHASER, LESSEE, OR RECIPIENT OF CONSUMER GOODS OR SERVICES.

6 (3) "CONSUMER GOODS OR SERVICES" MEANS GOODS OR SERVICES
7 THAT ARE PRIMARILY FOR PERSONAL, HOUSEHOLD, OR FAMILY PURPOSES.

8 (B) A CONTRACT OR A PROPOSED CONTRACT FOR THE SALE OR LEASE OF
9 CONSUMER GOODS OR SERVICES MAY NOT INCLUDE A PROVISION WAIVING THE
10 CONSUMER'S RIGHT TO MAKE ANY STATEMENT CONCERNING:

11 (1) THE SELLER OR LESSOR;

12 (2) EMPLOYEES OR AGENTS OF THE SELLER OR LESSOR; OR

13 (3) THE CONSUMER GOODS OR SERVICES.

14 (C) A PERSON MAY NOT:

15 (1) THREATEN OR SEEK ENFORCEMENT OF A CONTRACT PROVISION
16 PROHIBITED UNDER SUBSECTION (B) OF THIS SECTION; OR

17 (2) PENALIZE A CONSUMER FOR MAKING ANY STATEMENT
18 PROTECTED UNDER SUBSECTION (B) OF THIS SECTION.

19 (D) A WAIVER OF ANY PROVISION OF THIS SECTION IS CONTRARY TO PUBLIC
20 POLICY AND IS VOID AND UNENFORCEABLE.

21 (E) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT OR LIMIT A
22 PERSON ~~THAT~~:

23 (1) THAT HOSTS ONLINE CONSUMER REVIEWS OR COMMENTS FROM
24 REMOVING A STATEMENT THAT IS OTHERWISE LAWFUL TO REMOVE; ~~OR~~

25 (2) FROM INCLUDING IN A CONTRACT OR A PROPOSED CONTRACT
26 FOR THE SALE OR LEASE OF CONSUMER GOODS OR SERVICES A PROVISION
27 PROHIBITING A CONSUMER FROM DISCLOSING PROPRIETARY INFORMATION,
28 TECHNIQUES, OR PROCESSES; OR

1 **(3) FROM BRINGING AN ACTION ALLEGING THAT A STATEMENT MADE**
2 **BY A CONSUMER IS DEFAMATORY.**

3 **(F) A VIOLATION OF THIS SECTION IS:**

4 **(1) AN UNFAIR AND DECEPTIVE TRADE PRACTICE WITHIN THE**
5 **MEANING OF TITLE 13 OF THIS ARTICLE; AND**

6 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
7 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
9 apply only prospectively and may not be applied or interpreted to have any effect on or
10 application to any contract entered into before the effective date of this Act.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.