



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

Consumer Review Fairness Act: What Businesses Need to Know

TAGS: [Advertising and Marketing](#) | [Advertising and Marketing Basics](#) | [Endorsements](#) | [Online Advertising and Marketing](#)

The Consumer Review Fairness Act protects consumers' ability to share their honest opinions about a business's products, services, or conduct in any forum – and that includes social media. The FTC has tips to help your company comply with the law.

The Consumer Review Fairness Act (CRFA) protects people's ability to share their honest opinions about a business's products, services, or conduct, in any forum, including social media. Is your company complying?

Contracts that prohibit honest reviews, or threaten legal action over them, harm people who rely on reviews when making their purchase decisions. But another group is also harmed when others try to squelch honest negative reviews: businesses that work hard to earn positive reviews.

The Consumer Review Fairness Act was passed in response to reports that some businesses try to prevent people from giving honest reviews about products or services they received. Some companies put contract provisions in place, including in their online terms and conditions, that allowed them to sue or penalize consumers for posting negative reviews.

Here are some basic tips for complying with the law.

What kind of reviews does the law protect?

The law protects a broad variety of honest consumer assessments, including online reviews, social media posts, uploaded photos, videos, etc. And it doesn't just cover product reviews. It also applies to consumer evaluations of a company's customer service.

What does the Consumer Review Fairness Act prohibit?

In summary, the Act makes it illegal for a company to use a contract provision that:

1. bars or restricts the ability of a person who is a party to that contract to review a company's products, services, or conduct;
2. imposes a penalty or fee against someone who gives a review; or
3. requires people to give up their intellectual property rights in the content of their reviews.

What specific conduct is prohibited by the statute?

The Consumer Review Fairness Act makes it illegal for companies to include standardized provisions that threaten or penalize people for posting honest reviews. For example, in an online transaction, it would be illegal for a company to include a provision in its terms and conditions that prohibits or punishes negative reviews by customers. (The law doesn't apply to employment contracts or agreements with independent contractors, however.)

What can a company do to protect itself from inappropriate or irrelevant content?

The law says it's OK to prohibit or remove a review that:

1. contains confidential or private information – for example, a person's financial, medical, or personnel file information or a company's trade secrets;
2. is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
3. is unrelated to the company's products or services; or
4. is clearly false or misleading.

However, it's unlikely that a consumer's assessment or opinion with which you disagree meets the "clearly false or misleading" standard.

What's the penalty for violating the Consumer Review Fairness Act?

Congress gave enforcement authority to the Federal Trade Commission and the state Attorneys General. The law specifies that a violation of the CRFA will be treated the same as violating an FTC rule defining an unfair or deceptive act or practice. This means that your company could be subject to financial penalties, as well as a federal court order.

To make sure your company is complying with the Consumer Review Fairness Act:

- Review your form contracts, including online terms and conditions; and

- Remove any provision that restricts people from sharing their honest reviews, penalizes those who do, or claims copyright over peoples' reviews (even if you've never tried to enforce it or have no intention of enforcing it).

The wisest policy: Let people speak honestly about your products and their experience with your company.

Opportunity to Comment

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

February 2017



ftc.gov

Public Law 114-258
114th Congress

An Act

To prohibit the use of certain clauses in form contracts that restrict the ability of a consumer to communicate regarding the goods or services offered in interstate commerce that were the subject of the contract, and for other purposes.

Dec. 14, 2016

[H.R. 5111]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Consumer
Review Fairness
Act of 2016.
15 USC 58 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Review Fairness Act of 2016”.

SEC. 2. CONSUMER REVIEW PROTECTION.

15 USC 45b.

(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) 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 display publicly on an Internet website or webpage owned, 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 is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;

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

(C) 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 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 paragraph (2), 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

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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.

Deadline.

(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) **SAVINGS PROVISION.**—Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act or any other provision of Federal law.

Applicability.

(i) **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.

Approved December 14, 2016.

LEGISLATIVE HISTORY—H.R. 5111:

HOUSE REPORTS: No. 114-731 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 162 (2016):

Sept. 12, considered and passed House.

Nov. 28, considered and passed Senate.



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(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.

Deadline.

(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) **SAVINGS PROVISION.**—Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act or any other provision of Federal law.

Applicability.

(i) **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.

Approved December 14, 2016.

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HOUSE REPORTS: No. 114–731 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 162 (2016):

Sept. 12, considered and passed House.

Nov. 28, considered and passed Senate.





H.R.5111 - Consumer Review Fairness Act of 2016

114th Congress (2015-2016)

Sponsor: [Rep. Lance, Leonard \[R-NJ-7\]](#) (Introduced 04/28/2016)

Committees: House - Energy and Commerce

Committee Reports: [H. Rept. 114-731](#)

Latest Action: 12/14/2016 Became Public Law No: 114-258. ([TXT](#) | [PDF](#)) ([All Actions](#))

Tracker: Introduced Passed House Passed Senate To President **Became Law**

Summary: H.R.5111 — 114th Congress (2015-2016)

[All Information](#) (Except Text)

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There are 5 summaries for H.R.5111. Public Law (12/14/2016)



[Bill summaries](#) are authored by [CRS](#).

Shown Here:

Public Law No: 114-258 (12/14/2016)

(This measure has not been amended since it was reported to the House on September 9, 2016. The summary of that version is repeated here.)

Consumer Review Fairness Act of 2016

(Sec. 2) This bill makes a provision of a form contract void from the inception if it: (1) prohibits or restricts an individual who is a party to such a contract from engaging in written, oral, or pictorial reviews, or other similar performance assessments or analyses of, including by electronic means, the goods, services, or conduct of a person that is also a party to the contract; (2) imposes penalties or fees against individuals who engage in such communications; or (3) transfers or requires the individual to transfer intellectual property rights in review or feedback content (with the exception of a nonexclusive license to use the content) in any otherwise lawful communications about such person or the goods or services provided by such person. A "form contract" is a contract with standardized terms: (1) used by a person in the course of selling or leasing the person's goods or services, and (2) imposed on an individual without a meaningful opportunity to negotiate the standardized terms. The definition excludes an employer-employee or independent contractor contract.

The standards under which provisions of a form contract are considered void under this bill shall not be construed to affect:

- legal duties of confidentiality;
- civil actions for defamation, libel, or slander; or

- a party's right to establish terms and conditions for 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 are solely intended to be used for commercial purposes by that entity.

Such standards also shall not be construed to affect any party's right to remove or refuse to display publicly on an Internet website or webpage owned, operated, or controlled by such party content that: (1) contains the personal information or likeness of another person or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic; (2) is unrelated to the goods or services offered by or available at such party's website; or (3) is clearly false or misleading.

A provision shall not be considered void under this bill to the extent that it prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove, certain: (1) trade secrets or commercial or financial information; (2) personnel and medical files; (3) law enforcement records; (4) content that is unlawful or that a party has a right to remove or refuse to display; or (5) computer viruses or other potentially damaging computer code, processes, applications, or files.

A person is prohibited from offering form contracts containing a provision that is considered void under this bill.

Enforcement authority is provided to the Federal Trade Commission (FTC) and states.

The FTC must provide businesses with nonbinding best practices for compliance.

Nothing in this bill shall be construed to limit, impair, or supersede the Federal Trade Commission Act or any other federal law.