

Publications

Consumer Review Fairness Act Signed Into Law

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President Barack Obama recently signed the Consumer Review Fairness Act into law.

The newly passed law, signed on December 14, 2016, has three main functions. First, it voids provisions in form contracts that limit a person's right to publish genuine negative reviews online. Second, it voids clauses threatening penalties or fines against the authors of such reviews. Third, it prohibits attempts by companies to make reviewers give up the intellectual property rights related to their reviews.

As stated in the text of [H.R.5111](#), the Consumer Review Fairness Act does not affect a company's right to sue for defamation or related torts.

Thus, companies can still legally pursue the authors of false and defamatory online reviews. And they can still negotiate contracts that contain non-disparagement clauses. They simply cannot preempt consumers publicizing their actual opinions (or penalizing them for unfavorable feedback) by burying non-disparagement clauses in non-negotiated form contracts.

The Consumer Review Fairness Act was a product of the growing number of companies that were trying to enforce such clauses. In other words, the supporters of the Consumer Review Fairness Act were seeking to protect consumers from potentially entering into contractual obligations limiting their First Amendment rights.

The office of Congressman Leonard Lance, the bill's sponsor, made the following statement in a Dec. 2 [press release](#) about the then-pending legislation:

In the 21st century economy it is easier than ever for consumers to make informed choices on which business or service to use by consulting websites and apps that publish crowdsourced reviews of local businesses and restaurants. Consumer reviews are a powerful informational tool because consumers place a high value on the truthful reviews of other consumers. Some businesses have become frustrated by online criticism and some have employed a questionable

legal remedy known as a non-disparagement clause to retaliate against consumers. These are often buried in fine print. The *Consumer Review Fairness Act* would void any non-disparagement clauses in consumer contracts. It also would ensure companies are still able to remove false and defamatory reviews.

We wrote about the then-pending bill in a September blog post. Click to [read more about how companies can address online criticism](#) in spite of this newly passed law.

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