H. R. 1

To prohibit contracts that prohibit consumers from making certain public comments on businesses.

IN THE HOUSE OF REPRESENTATIVES

Mr. Swalwell of California introduced the following bill; which was referred to the Committee on ____________________

A BILL

To prohibit contracts that prohibit consumers from making certain public comments on businesses.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Review Freedom Act of 2014”.

SEC. 2. PROTECTING CONSUMER SPEECH.

(a) PROHIBITION.—A provision of a form contract is void from the inception of such contract if said provision—
(1) prohibits or restricts the ability of a person who is a party to the form contract to engage in a covered communication;

(2) imposes a penalty or fee against a person who is a party to the form contract for engaging in a covered communication; or

(3) assigns or provides an exclusive license, or requires a person who is a party to the form contract to assign or provide an exclusive license, to any business, other person, or entity any intellectual property rights that such party to the adhesion contract has or may have in a covered communication.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to affect—

(1) any duty of confidentiality imposed by law (including agency guidance); or

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

(c) EXCEPTIONS.—Subsection (a) shall not apply to the extent that a provision of a form contract prohibits disclosure of the following:

(1) Trade secrets or commercial or financial information obtained from a person and privileged or confidential.
(2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(3) Records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(d) UNLAWFUL CONDUCT.—It shall be unlawful for a business to offer or enter into a form contract containing a provision described as void in subsection (a).

(e) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of subsection (d) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(2) POWERS OF COMMISSION.—The Federal Trade 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. Any per-
son who violates this section or a regulation promulgated under this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(f) STATE ENFORCEMENT.—The attorney general of a State may file an action to enforce subsection (d) seeking appropriate relief. In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to seek appropriate relief.

(g) DEFINITIONS.—

(1) The term “person” means a natural person.

(2) The term “business” means a legal entity organized to accomplish a business purpose, including either for-profit or not-for-profit.

(3) The term “form contract” means a standardized contract used by a business and imposed on a party without a meaningful opportunity for said party to negotiate the standardized terms, but does
not include a contract establishing an employer-employee or independent contractor relationship.

(4) The term “covered communication” means a person’s written, verbal, or pictorial review, performance assessment of, or other similar analysis of, the products, services, or conduct of a business which is a party to the form contract.

(5) The term “written” includes words provided by electronic means.

(6) The term “verbal” includes speech provided by electronic means.

(7) The term “pictorial” includes pictures, photographs, and video provided by electronic means.

(h) EFFECTIVE DATES.—

(1) Subsections (a), (b), (c), (d), and (g) shall apply to any contracts in effect on or after date of enactment.

(2) Subsections (e) and (f) shall apply to any contracts in effect on or after one year after date of enactment.

SEC. 3. RELATION TO STATE CAUSES OF ACTION.

Nothing in this Act shall be construed to affect any cause of action brought by a person that exists or may exist under State law.