

Non- disparagement Clauses

Goal of this Presentation:

Provide background and policy guidance

What is a non-disparagement clause?

Commonly known as “gag orders”

Prohibits consumers from making negative reviews

Are non-disparagement clauses enforceable?

No.

Non-disparagement clauses are prohibited by the Consumer Review Fairness Act (“the Act”).

The Act voids any provision in a contract that would prevent a consumer from reviewing goods, services, or performance

A court would not enforce a non-disparagement clause



Additional Legal Limitations: Non-disparagement clauses

It is unlawful for a person to offer a form contract containing a non-disparagement clause.

The existence of a non-disparagement clause does not void the entire contract – just the specific provision.



Existing State Enforcement Mechanisms

A State Attorney General or consumer protection officer may bring a civil action to protect the interests of the residents of the State.

There are no Utah state statutes that provide specific protections



Existing Federal Enforcement Mechanisms

The FTC enforces this Act

Examples include:

- fines
- informing consumers clause is unenforceable

Despite these protections,
the average consumer
likely does **not** understand
a non-disparagement
clause in their contract is
unenforceable

Policy Proposals



Create a Utah-specific statute that empowers state actors to prevent non-disparagement clauses



Create additional state-specific penalties for a person who provides form contracts containing non-disparagement clauses