# What the FTC Wants Businesses to Know About the New Law Protecting Consumers' Rights to Post Negative Online Reviews

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In a recent blog post, we introduced you to the new Consumer Review Fairness Act (CRFA), which prohibits businesses from including non-disparagement or "gag" clauses in their form contracts.

The CRFA goes into effect later this month and will be enforced by the Federal Trade Commission. Last week, the FTC issued a guide for businesses with recommendations on what they can and can't do under the CRFA. Here are a few key points from the guide:

- The CRFA covers consumer reviews, whether made as an online review, social media post, or an uploaded video or photo. The FTC's guide also makes clear that the CRFA covers consumer posts about a business' customer service.
- The CRFA makes it illegal for businesses to include provisions in their form contracts that:
  - bar or restrict the ability of a consumer to review a company's products, services, or conduct;
  - impose a penalty or fee against someone who gives a review; or
  - require people to give up their intellectual property rights in the content of their reviews.

- The FTC's guide makes clear that the CRFA does not cover provisions in employment contracts or agreements with independent contractors.
- Businesses may still remove content that:
  - contains confidential or private information;
  - is libelous, harassing, abusive, obscene, or otherwise inappropriate;
  - is unrelated to the company's products or services; or
  - is clearly false or misleading.

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- The guide also makes clear that the FTC will treat a violation of the CRFA the same was as it treats a violation of any FTC rule that defines an unfair or deceptive act or practice. This means that a business could be subject to financial penalties for violating the CRFA, as well as a federal court order.
- The FTC recommends that businesses be proactive and review their form contracts, including website terms and conditions, and remove any non-disparagement provisions, even if they have no intention of trying to enforce these provisions.

Of course, we do not yet know how businesses will respond to the CRFA, or how aggressive the FTC will be in enforcing it, although the new guide makes clear that the CRFA is front and center on the FTC's radar.