

Bill as Introduced

HB 1605-FN - AS INTRODUCED

2010 SESSION

10-2214

05/10

HOUSE BILL

1605-FN

AN ACT

requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

SPONSORS:

Rep. Wendelboe, Belk 1; Rep. Ingbretson, Graf 5; Rep. F. Holden, Hills 4

COMMITTEE:

Commerce and Consumer Affairs

ANALYSIS

This bill requires businesses to disclose the terms and conditions of any continuing or automatic obligation resulting from the initial purchase of goods or services by telephone or on the Internet.

Explanation:

Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Consumer Protection; Acts Unlawful; Failure to Disclose Terms of Continuing
2 Obligation. Amend RSA 358-A:2 by inserting after paragraph XIV the following new paragraph:

3 XV. Failing to disclose the terms and conditions of any continuing or automatic obligation
4 resulting from the purchase or order of goods or services by telephone or on the Internet. Any person
5 engaged in trade or commerce in this state shall provide notice of such terms and conditions in bold,
6 conspicuous language on the order form, bill, invoice, or other electronic or paper record used to
7 process the sale or transaction.

8 2 Effective Date. This act shall take effect July 1, 2010.

LBAO
10-2214
12/09/09

HB 1605-FN - FISCAL NOTE

AN ACT requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

FISCAL IMPACT:

The Judicial Branch, the Department of Justice, the Judicial Council, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2011 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add RSA 358-A:2, XV. By making it an unlawful act under the Consumer Protection Act to fail to disclose the terms and conditions of any continuing or automatic obligation resulting from the purchase or order of goods or services by telephone or the internet. The Branch has no information to estimate the potential volume of cases that might arise as a result of this bill. The Branch states consumer protection cases carry the potential for enforcement actions by the attorney general, criminal prosecution, and private actions with the potential of up to treble damages. A single case has the potential for the Branch to incur a fiscal impact of over \$10,000.

The Department of Justice states the authority for the Attorney General to enforce the criminal and civil penalties contained in the Consumer Protection Act will increase expenditures. Additionally, if an appeal is filed, the Department would have increased expenditures. The Department has no information to estimate how many cases would be prosecuted by the Department or appealed to the Supreme Court to estimate the fiscal impact.

The Judicial Council states to the extent an unspecified misdemeanor results in a misdemeanor offense where the right to counsel exists this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is

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filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The New Hampshire Association of Counties states to the extent an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is \$35,342 a year.

Amendments

Rep. Wendelboe, Belk. 1
January 26, 2010
2010-0297h
05/04

Amendment to HB 1605-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Consumer Protection; Acts Unlawful; Failure to Disclose Terms of Continuing
4 Obligation. Amend RSA 358-A:2 by inserting after paragraph XIV the following new paragraph:

5 XV. Failing to disclose the terms and conditions of any continuing or automatic obligation
6 resulting from the purchase or order of goods or services by a consumer for personal, family, or
7 household purposes by telephone or on the Internet. Any person engaged in trade or commerce in
8 this state shall provide notice of such terms and conditions to the consumer in 10 point bold type on
9 the order form, bill, invoice, or other electronic or paper record used to process the sale or
10 transaction.

NOT ADOPTED



2010-0297h

AMENDED ANALYSIS

This bill requires businesses to disclose the terms and conditions of a continuing or automatic obligation resulting from the initial purchase of goods or services by a consumer for personal, family, or household purposes by telephone or on the Internet.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE: 1-25-10

LOB ROOM: 302 **Time Public Hearing Called to Order:** 1013

Time Adjourned: 1030

(please circle if present)

Committee Members: Reps. Butler, DeStefano, Kopke, McEachern, Hammond, Nord, Winters, Meador, Gidge, Schlachman, Keans, D. Eaton, Hunt, Quandt, Belanger, D. Flanders, R. Holden, Dowling, Headd, Nevins and Palfrey.

Bill Sponsors: Rep. Wendelboe, Ingbretson and F. Holden

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Fran Wendelboe, prime sponsor – Will offer an amendment. Bill targeted at individual consumers; example car dealers were not her intended target. She ordered 2 products as samples, paid shipping, got cancellation notice and cancelled the one that had notice. The second product didn't tell her she had to cancel, so they sent her products and charged her without her notice. Bill would require clear notice of terms. AG's office says this happens all the time. Concerns about term "bold and conspicuous"; not intended to micromanage. Fiscal note: Probably a wash to save time with current claims.

Q: Rep. Kenneth Gidge – How conspicuous do you want it to be?

A: If you want to specify font size, that's ok; my intent is regular size type.

Q: Rep. David Palfrey – How would we enforce this against out-of-state companies?

A: The threat and frequency would alert AG's office.

Q: Rep. Paul McEachern – Is 10 pt bold ok since it' sin statute currently?

A: Yes.

James, Boffetti, AG's Office, Chief of Consumer Protection Bureau – Supports the bill. This is a common deceptive practice. Three to four per week. They mediate (\$8000-\$10,000/week) on behalf of consumers all the time. Foreign companies would be hard to enforce, but Consumer Protection Act gives them jurisdiction.

Q: Rep. McEachern - Would you agree that shipment of goods into state makes it subject to our long-arm provisions?

A: Yes.

Q: Rep. Edward Butler – Do other states offer this?

A: Will look into it.

Respectfully Submitted:

A handwritten signature in black ink that reads "SNord". The letters are cursive and somewhat stylized.

Susi Nord , Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE:

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10:13

Time Adjourned: 10:30

(please circle if present)

Committee Members: Reps. Butler, DeStefano, Kopka, McEachern, Hammond, Nord, Winters, Meader, Gidge, Schlachman, D. Eaton, Hunt, Quandt, Belanger, D. Flanders, R. Holden, Dowling, Headd, Nevins and Palfrey

Bill Sponsors: Rep. Wendelboe, Ingbretson and F. Holden

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Wendelboe - will offer an amendment

- bill targeted at individual consumers.
- example car dealers were not her intended target.
- She ordered 2 products as samples, paid shipping, got cancellation notice & cancelled the one that had notice. The second product didn't tell her she had to cancel, so they sent her products and charged her without her notice.
- Bill would require clear notice of terms
- AG's office says this happens all the time.
- Concerns about term "bold and conspicuous"
 - not intended to micromanage.
- Fiscal note: Probably a wash to save time with current claims.

? Gidge - How conspicuous do you want it to be?

FW - If you want to specify font size, that's ok my intent is regular size type

? Paffrey - How would we enforce this against out-of-state companies?

FW - The threat and frequency would alert AG's office.

? McEachern - Is 10pt bold ok since it's in statute currently?

FW - Yes

J. Boffetti - AG's Office - Chief of Consumer Protection Bureau

- this is a common deceptive practice

- 3-4/week

- they mediate (\$8,000-10,000/week) on behalf of consumer all the time

- foreign companies would be hard to enforce, but Consumer Protection Act gives them jurisdiction.

? McEachern - Would you agree that shipment of goods into state makes it subject to our long-arm provisions?

JB - Yes

? Butler - do other states offer this

JB - Will look into it

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE: 2-2-10

Subcommittee Members: Reps. Palfrey, Gidge

Comments and Recommendations:

Amendments:

Sponsor: Rep. Wendelboe OLS Document #: 2010 0297h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Palfrey

Vote: 2-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Palfrey

Vote: 2-0

Respectfully submitted,

Rep. David Palfrey
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE: 2-2-10

Subcommittee Members: Reps. PALFREY
GIDGE

Comments and Recommendations:

Amendments:

Sponsor: Rep. WENDELBOE

OLS Document #: 2010-0297h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.) AMENDMENT 2010-0297h

Moved by Rep. GIDGE

Seconded by Rep. PALFREY

Vote: 2-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. GIDGE

Seconded by Rep. PALFREY

Vote: 2-0

Respectfully submitted,


Rep. {Type NAME} DAVID PALFREY
Subcommittee Chairman/Clerk

Rep. Wendelboe, Belk. 1
January 26, 2010
2010-0297h
05/04

Amendment to HB 1605-FN

1 Amend the bill by replacing section 1 with the following:

2

3 1 New Paragraph; Consumer Protection; Acts Unlawful; Failure to Disclose Terms of Continuing
4 Obligation. Amend RSA 358-A:2 by inserting after paragraph XIV the following new paragraph:

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6 resulting from the purchase or order of goods or services by a consumer for personal, family, or
7 household purposes by telephone or on the Internet. Any person engaged in trade or commerce in
8 this state shall provide notice of such terms and conditions to the consumer in 10 point bold type on
9 the order form, bill, invoice, or other electronic or paper record used to process the sale or
10 transaction.

NOT ADOPTED



2010-0297h

AMENDED ANALYSIS

This bill requires businesses to disclose the terms and conditions of a continuing or automatic obligation resulting from the initial purchase of goods or services by a consumer for personal, family, or household purposes by telephone or on the Internet.

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE: 2-4-10

LOB ROOM: 302

Amendments:

Sponsor: Rep. Wendelboe OLS Document #: 2010 0297h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Palfrey

Vote: 5-13 (Please attach record of roll call vote.)

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gidge

Seconded by Rep. Palfrey

Vote: 7-11 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Hunt

Seconded by Rep. Winters

Vote: 12-6 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Consent or Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 1605-FN

BILL TITLE: requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.

DATE: 2-4-10

LOB ROOM: 302

Amendments: 0 297 h

Sponsor: Rep. *Ridge / PalFREg* OLS Document #: 13 No/5 new

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Ridge*

Seconded by Rep. *PalFREg* *OTP FAILS*

Vote: *7/11* (Please attach record of roll call vote.) *FAILS =*

Motions: ITL OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Head*

Seconded by Rep. *Winters*

Vote: *12-6* (Please attach record of roll call vote.) *MAJ. ITL*

CONSENT CALENDAR VOTE: Consent of Regular (Circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Rep. James F. Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 1605-FN Title: Automatic obligation of Pontycau

PH Date: 1/1/10 Exec Session Date: 2/4/10

Motion: OTP Amendment #: 0292h

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman		✓
DeStefano, Stephen T		✓
Kopka, Angeline A		✓
Meader, David R		✓
McEachern, Paul	✓	
Hammond, Jill Shaffer		✓
Nord, Susi		✓
Winters, Joel F		✓
Keans, Sandra B		
Gidge, Kenneth N	✓	
Hunt, John B		✓
Quandt, Matt J	✓	
Belanger, Ronald J		
Flanders, Donald H		✓
Holden, Rip		✓
Dowling, Patricia A		✓
Headd, James F, Clerk		✓
Nevins, Chris F		✓
Palfrey, David J	✓	
	5	13
TOTAL VOTE:		

COMMERCE AND CONSUMER AFFAIRS

Bill #: HB 1605^{FN} Title: Automatic obligation as part of sale

PH Date: / /

Exec Session Date: 214110

Motion: OTR

Amendment #:

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman		✓
DeStefano, Stephen T		✓
Kopka, Angeline A		✓
Meador, David R		✓
McEachern, Paul	✓	
Hammond, Jill Shaffer		✓
Nord, Susi	✓	
Winters, Joel F		✓
Keans, Sandra B		
Gidge, Kenneth N	✓	
Hunt, John B		✓
Quandt, Matt J		✓
Belanger, Ronald J		
Flanders, Donald H		✓
Holden, Rip	✓	
Dowling, Patricia A	✓	
Headd, James F, Clerk		✓
Nevins, Chris F		✓
Palfrey, David J	✓	
	7	11
TOTAL VOTE:		

COMMERCE AND CONSUMER AFFAIRS

Bill #: 1605 Title: _____

PH Date: _____ / _____ / _____ Exec Session Date: 2/4/10

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman		✓
Schlachman, Donna L, V Chairman	✓	
DeStefano, Stephen T	✓	
Kopka, Angeline A	✓	
Meader, David R	✓	
McEachern, Paul		✓
Hammond, Jill Shaffer	✓	
Nord, Susi		✓
Winters, Joel F	✓	
Keans, Sandra B		
Gidge, Kenneth N		✓
Hunt, John B	✓	
Quandt, Matt J	✓	
Belanger, Ronald J		
Flanders, Donald H	✓	
Holden, Rip		✓
Dowling, Patricia A	✓	
Headd, James F, Clerk	✓	
Nevins, Chris F	✓	
Palfrey, David J		✓
	12	6

McEachern will write minority report

Committee Report

REGULAR CALENDAR

February 17, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on COMMERCE AND
CONSUMER AFFAIRS to which was referred HB1605-
FN,**

**AN ACT requiring businesses to disclose the terms and
conditions of any continuing or automatic obligation as
part of the sale. Having considered the same, report the
same with the following Resolution: RESOLVED, That it
is INEXPEDIENT TO LEGISLATE.**

Rep. John B Hunt

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB1605-FN
Title:	requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.
Date:	February 9, 2010
Consent Calendar:	NO
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill requires businesses to disclose the terms and conditions of any continuing or automatic obligation resulting from the initial purchase of goods or services by telephone or on the Internet in bold, conspicuous language on the order form, bill, invoice, or other electronic or paper record used to process the sale or transaction. The bill exempts any transaction that may occur as a result of a mailing. Any banking, credit card, Insurance transactions would also be exempt. Although the committee appreciates the intent of the bill, the wording and concerns over enforceability were such that even the amendment that was offered, could not fix it.

Vote 12-6

Rep. John B Hunt
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HB1605-FN, requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale. **INEXPEDIENT TO LEGISLATE.**

Rep. John B Hunt for the **Majority** of **COMMERCE AND CONSUMER AFFAIRS**. This bill requires businesses to disclose the terms and conditions of any continuing or automatic obligation resulting from the initial purchase of goods or services by telephone or on the Internet in bold, conspicuous language on the order form, bill, invoice, or other electronic or paper record used to process the sale or transaction. The bill exempts any transaction that may occur as a result of a mailing. Any banking, credit card, Insurance transactions would also be exempt. Although the committee appreciates the intent of the bill, the wording and concerns over enforceability were such that even the amendment that was offered, could not fix it. **Vote 12-6.**

Original: House Clerk
Cc: Committee Bill File

HB 1605
Rep. John Hunt
ITL

This bill requires businesses to disclose the terms and conditions of any continuing or automatic obligation resulting from the initial purchase of goods or services by telephone or on the Internet in bold, conspicuous language on the order form, bill, invoice, or other electronic or paper record used to process the sale or transaction. The bill exempts any transaction that may occur as a result of a mailing. Any banking, credit card, Insurance transactions would also be exempt. Although the committee appreciates the intent of the bill, the wording and concerns over enforceability were such that even the amendment that was offered, could not fix it.

OK
EAD

ITL 1605

although many members of the committee appreciate ~~the~~ the intent of the Bill. The wording and enforceability were such a concern that even the amendment could not fix it.

Start Here

The purpose of the Bill was to require internet and phone sales to print in Bold face that the transaction will have recurring charges. It did not include ~~no~~ ~~just~~ mail or any industries that are exempt from the consumer protection act such as Books + Insurance products.

→ more this paragraph

John B. Hunt
Majority

Rep. Wendelboe, Belk. 1
January 26, 2010
2010-0297h
05/04

Amendment to HB 1605-FN

1 Amend the bill by replacing section 1 with the following:

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Amendment to HB 1605-FN
- Page 2 -

2010-0297h

AMENDED ANALYSIS

This bill requires businesses to disclose the terms and conditions of a continuing or automatic obligation resulting from the initial purchase of goods or services by a consumer for personal, family, or household purposes by telephone or on the Internet.

REGULAR CALENDAR

February 17, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on COMMERCE AND
CONSUMER AFFAIRS to which was referred HB1605-
FN,**

**AN ACT requiring businesses to disclose the terms and
conditions of any continuing or automatic obligation as
part of the sale. Having considered the same, and being
unable to agree with the Majority, report with the
recommendation that the bill OUGHT TO PASS.**

Rep. Paul McEachern

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	COMMERCE AND CONSUMER AFFAIRS
Bill Number:	HB1605-FN
Title:	requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale.
Date:	February 9, 2010
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill addresses a practice of offering items or services, usually at the cost of mailing, without disclosing that the consumer, by taking the goods or services, obligates himself or herself, for continuing charges on their credit card. The attorney general's office testified that this bill would give them some leverage to end this scheme.

**Rep. Paul McEachern
FOR THE MINORITY**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

COMMERCE AND CONSUMER AFFAIRS

HB1605-FN, requiring businesses to disclose the terms and conditions of any continuing or automatic obligation as part of the sale. **OUGHT TO PASS.**

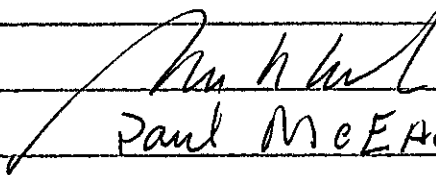
Rep. Paul McEachern for the **Minority** of COMMERCE AND CONSUMER AFFAIRS. This bill addresses a practice of offering items or services, usually at the cost of mailing, without disclosing that the consumer, by taking the goods or services, obligates himself or herself, for continuing charges on their credit card. The attorney general's office testified that this bill would give them some leverage to end this scheme.

Original: House Clerk
Cc: Committee Bill File

Minority Report H B 1605-FN

This bill addresses a practice of offering items or services, usually at the cost of mailing, without disclosing that the consumer, by taking the goods or services, obligates himself or herself, for continuing charges on their credit card. The attorney general's office testified that this bill would give them some ~~leverage~~ leverage to end this scheme.

OTR


Paul McEachern

2-4-10

OK
