

# Bill as Introduced

SB 368 - AS INTRODUCED

2010 SESSION

10-2753

05/09

SENATE BILL           **368**

AN ACT               relative to notice required under the retail selling statute.

SPONSORS:           Sen. Cilley, Dist 6; Sen. Reynolds, Dist 2; Sen. Lasky, Dist 13; Sen. Letourneau,  
Dist 19; Rep. Nixon, Hills 17; Rep. DiFruscia, Rock 4

COMMITTEE:          Commerce, Labor and Consumer Protection

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ANALYSIS

This bill requires the seller engaged in a home solicitation sale to provide written notice of the buyer's rights under the contract. The bill also permits the buyer to obtain a refund from the seller if the buyer cancels the transaction in accordance with the statute, notwithstanding the fact that the seller has performed services under the contract within that period.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 relative to notice required under the retail selling statute.

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

1       1 Retail Selling; Home Solicitation Contract; Notice Required. Amend RSA 361-B:2, I(a) to read  
2 as follows:

3           (a) A home solicitation sale shall be deemed to be in compliance with the requirements of  
4 RSA 361-B:2, I, if the seller guarantees *in writing* that (1) The buyer may at any time: (i) cancel the  
5 order, or (ii) refuse to accept the goods when delivered without incurring any obligation to pay for  
6 them, or (iii) return the goods to the seller and receive a full refund for any amount the buyer has  
7 paid, and (2) the buyer's right to cancel the order, refuse delivery or return the goods without  
8 obligation or charge at any time is clearly and unmistakably set forth on the face or reverse side of  
9 the sales ticket, receipt or contract.

10       2 New Subparagraph; Notice; Refund Following Cancellation. Amend RSA 361-B:2, I by  
11 inserting after subparagraph (b) the following new subparagraph:

12           (b-1) If the buyer cancels the transaction in accordance with this chapter, and within the  
13 cancellation period the seller has performed services or has performed work that has physically  
14 altered the property of the buyer, the buyer shall be entitled to a refund of all funds transferred to  
15 the seller, and the seller shall not be entitled to deduct the value of such services or work from the  
16 refund. If the seller has performed work that has physically altered the property of the buyer, the  
17 buyer may elect to demand full restoration of the property to its original condition.

18       3 Effective Date. This act shall take effect January 1, 2011.

# Amendments

Rep. Winters, Hills. 17  
April 12, 2010  
2010-1318h  
05/10

Amendment to SB 368

- 1 Amend the bill by deleting section 2 and renumbering the original section 3 to read as 2.

*Not Adopted*



2010-1318h

AMENDED ANALYSIS

This bill requires the seller engaged in a home solicitation sale to provide written notice of the buyer's rights under the contract.

Rep. Winters, Hills. 17  
April 21, 2010  
2010-1517h  
05/10

Amendment to SB 368

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

2

3 2 New Subparagraph; Notice; Refund Following Cancellation. Amend RSA 361-B:2, I by  
4 inserting after subparagraph (b) the following new subparagraph:

5 (b-1) If the buyer cancels the transaction in accordance with this chapter, and within the  
6 cancellation period the seller has performed services or has performed work that has physically  
7 altered the property of the buyer, the buyer shall be entitled to a refund of all funds transferred to  
8 the seller, and the seller shall not be entitled to deduct the value of such services or work from the  
9 refund. In the alternative, if the seller has performed work that has physically altered the property  
10 of the buyer and it can be reasonably restored to its original condition, the buyer may demand, in  
11 lieu of a refund, full restoration of the property to its original condition.

12 3 Definition of Home Solicitation Sale; Amount. Amend RSA 361-B:1 to read as follows:

13 361-B:1 Definition. "Home solicitation sale" means a sale of goods or services, priced at \$[25]  
14 **150** or more, in which a seller, a seller's representative, or a person acting for a seller engages in a  
15 solicitation and sale at any place other than a permanent place of business of the seller. A cash or  
16 credit sale so consummated shall be deemed to be a home solicitation sale.

17 4 Effective Date. This act shall take effect January 1, 2011.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.  
**DATE:** 3-23-10  
**LOB ROOM:** 302      **Time Public Hearing Called to Order:** 1106  
**Time Adjourned:** 1128

(please circle if present)

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

**Bill Sponsors:** Sens. Cilley, Reynolds, Lasky, Nixon and DeFruscia

TESTIMONY

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

**Michael Palleo, assistant to Sen. Jacalyn Cilley, prime sponsor** – Introduced the bill for Sen. Cilley. Read from prepared statement. Bill was filed at the request of the attorney general.

**Richard Head, Attorney General's Office** – Addressed the home solicitation statute concerned with paving scam; original intent of bill dealt with vacuum cleaner salesmen and encyclopedia sales men. Scam pavers- they do incredibly poor job and demand considerable sums of money. There is a 3-day right of rescission. By the time the home owners asks for rescission, pavers usually retract demand for rescission and argues service provided. New section of bill addresses rescission rights and the paving industry contract must be in writing.

**Q: Rep. Stephen DeStefano** – Does this mean I now have to get the contract in writing?

**A:** Customers have to have a written agreement from the pavers; we are trying to make it easier for homeowners.

**Q:** What is penalty?

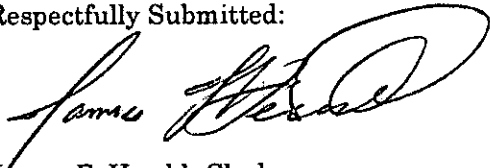
**A:** It is a violation now; may go to a misdemeanor or felony.

**Q: Rep. Rip Holden** – How many claims do you get?

**A:** 30-40 every spring.

**Attorney Headd** – Current law is not affected by anything in this bill.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "James F. Headd". The signature is written in a cursive style with a large, prominent loop at the end of the last name.

James F. Headd, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 368

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

Bill Sponsors: Sens. Cilley, Reynolds, Lasky, Letourneau, Nixon and DeFruscia

TESTIMONY

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

#1 Michael Pallas - introduced the Bill for Sen  
Cilley - Read from prepared statement  
Bill was filed at the request of Atty. Gen

#2 Atty Richard Head - addressed  
the Home Solicitation statute -  
concerned with PAVING SCAM - original  
intent of Bill dealt with vacuum cleaner  
salesmen + encyclopedia salesmen  
Scam Powers - they do incredibly poor  
job of demand considerable sums of  
money. There is a 3 day right of  
REVISION -

By the time the home ~~owner~~ owner asks for rescission - Powers usually ~~reject~~ REJECT demand for rescission and argue service provided  
New section of Bill addresses rescission rights and the party indicating contract must be in WRITING

Q. Ostigian - Does this mean if now have to get the contract in writ.  
A. customer has to have a written agreement from the power - we are trying to make it easier for homeowners

Q. What is penalty -  
it is a violation now - may go to a misdemeanor or felony

Q. Helden - how many claim days get.

A. 30-40 every spring -

Att. Houl. current law is not affected by anything in the Bill

# Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-22-10

**Subcommittee Members:** Reps. Winters, Palfrey, McEachern

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. Winters	OLS Document #:	2010	1517h
Sponsor: Rep.	OLS Document #:		
Sponsor: Rep.	OLS Document #:		

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

Moved by Rep. McEachern

Seconded by Rep. Palfrey

Vote: 3-0

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

Moved by Rep. McEachern

Seconded by Rep. Palfrey

Vote: 3-0

Respectfully submitted,

Rep. Joel Winters  
Subcommittee Chairman/Clerk



HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-22-10

**Subcommittee Members:** Reps. WINTERS, McEachern, Palfrey

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. WINTERS

OLS Document #: 2010-LS 71h

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

**Motions:** OTP, OTPA, ITL, Retained (Please circle one.)

Moved by Rep. McEachern

Seconded by Rep. Palfrey

Vote: 3-0

**Motions:** OTP, OTPA, ITL, Retained (Please circle one.)

Moved by Rep. McEachern

Seconded by Rep. Palfrey

Vote: 3-0

Respectfully submitted,

Rep. {Type NAME}  
Subcommittee Chairman/Clerk

John Winters

Amendment to SB 368

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

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3 2 New Subparagraph; Notice; Refund Following Cancellation. Amend RSA 361-B:2, I by  
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14 150 or more, in which a seller, a seller's representative, or a person acting for a seller engages in a  
15 solicitation and sale at any place other than a permanent place of business of the seller. A cash or  
16 credit sale so consummated shall be deemed to be a home solicitation sale.

17 4 Effective Date. This act shall take effect January 1, 2011.

# Sub-Committee Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-14-10

**Subcommittee Members:** Reps. Winters, Palfrey, McEachern

**Comments and Recommendations:** Took additional testimony from AG's office (Richard Head). Will meet again to vote on proposed amendment.

**Amendments:**

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Joel Winters  
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION ON SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-14-16

**Subcommittee Members:** Reps.

Winters, Palfrey, McEACHERN

**Comments and Recommendations:**

TOOK ADDITIONAL TESTIMONY FROM AG'S OFFICE (RICHARD HEAD)  
will meet AGAIN to vote ON PROPOSED AMENDMENT

**Amendments:**

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

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

Moved by Rep.

Seconded by Rep.

Vote:

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

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. {Type NAME}  
Subcommittee Chairman/Clerk



# Testimony

## SB 368 Testimony

Thank you Mr. Chairman, members of the Committee.

My name is Michael Palleo, Senate Intern in Senator Cilley's office. Senator Cilley regrets she can not be here as she is introducing another bill of hers that was scheduled at the same time. That being the case, Senator Cilley has asked that I introduce Senate Bill 368, relative to notice required under the retail selling statute.

Senate Bill 368 requires the seller engaged in a home solicitation sale to provide written notice of the buyer's rights under the contract. The bill also permits the buyer to obtain a refund from the seller if the buyer cancels the transaction in accordance with the statute, notwithstanding the fact that the seller has performed service under the contract within that period.

This legislation was filed at the request of the Attorney General's Office so I would like to mention that Attorney Head is here to offer his explanation of Senate Bill 368. Attorney Head will also be able to answer any questions you may have. If you have any questions for Senator Cilley specifically, I will be happy to pass them on to her and follow up with the Committee.

Thank you Mr. Chairman.



STATE OF NEW HAMPSHIRE  
HOUSE OF REPRESENTATIVES  
CONCORD, NH 03301

ATTY. ANTHONY R. DiFRUSCIA  
State Representative  
(603) 271-3369 State House  
(603) 898-8198  
E-mail: adifruscia@aol.com

P.O. Box 574  
Windham, NH 03087  
Home: 603-898-8158  
Fax: 978-687-6289

March 12, 2010

ATTN; CAROL STAPLER  
Commerce and Consumer Affairs Committee  
State House  
107 North Main Street  
Concord, NH 03301

Re: SB368

Dear Sir or Madam:

Please be advised that I am in favor of SB368. However, I will not be attending the March 23, 2010 hearing as I am previously scheduled to appear in Court that day.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony R. DiFruscia", written over a horizontal line.

Rep. Anthony R. DiFruscia

/bib



# Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 368

BILL TITLE: relative to notice required under the retail selling statute.

DATE: 4-13-10

LOB ROOM: 302

Amendments: 1318h  
Sponsor: Rep. Winter  
Sponsor: Rep. Hunt  
Sponsor: Rep.

OLS Document #:  
OLS Document #:  
OLS Document #:

Motions: ~~OTP~~, OTP/A, ITL, Interim Study (Please circle one.)  
Moved by Rep. NORD  
Seconded by Rep. Hammond  
Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)  
Moved by Rep.  
Seconded by Rep.  
Vote: (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

SubC established -  
no vote  
taken -  
see pg. 2

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 368 Title: Relative to notice under Retail Selling STPS

PH Date: 1/1/10

Exec Session Date: 4.13.10

Motion: OTY

Amendment #: 1318 h

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		
<p><i>Dinkens MERSHEN Palfrey</i></p>	<p><i>SUB Committee established no- vote TAKEN</i></p>	

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 367 <sup>369</sup> Title: Relative to Pottery Under Reten

PH Date: 1/1 Exec Session Date: 4/13/10

Motion: OTR/A Amendment #: 1318h

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		

TOTAL VOTE:  
Printed: 12/18/2009

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-22-10

**LOB ROOM:** 302

**Amendments:**

Sponsor: Rep. Winters OLS Document #: 2010 1517h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Winters

Seconded by Rep. McEachern

Vote: 14-2 (Please attach record of roll call vote.)

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

Moved by Rep. Winters

Seconded by Rep. McEachern

Vote: 15-1 (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 SB 368

**BILL TITLE:** relative to notice required under the retail selling statute.

**DATE:** 4-22-10

**LOB ROOM:** 302

**Amendments:**

1517h

Sponsor: Rep. *Winters* OLS Document #:

Sponsor: Rep. *McRachem* OLS Document #:

Sponsor: Rep. *14-2* OLS Document #:

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

Moved by Rep. *Winters*

Seconded by Rep. *McRachem*

Vote: *15-1* (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

**CONSENT CALENDAR VOTE:** Consent or Regular (Circle One)

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

*15-1*

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. James F. Headd, Clerk

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 368 Title: Retail selling Statute

PH Date: 1/1/10 Exec Session Date: 4/22/10

Motion: ~~1517h~~ OTR Amendment #: 1517h

MEMBER	YEAS	NAYS
Butler, Edward A, Chairman	✓	
Schlachman, Donna L, V Chairman	✓	
DeStefano, Stephen T	<del>✓</del>	✓
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	✓	
	14	2

COMMERCE AND CONSUMER AFFAIRS

Bill #: SB 368 Title: Retail Selling Statute

PH Date: 1/1/10

Exec Session Date: 4/22/10

Motion: OTP/A

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	/	
	15	1



# Committee Report

**CONSENT CALENDAR**

**May 12, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on COMMERCE AND CONSUMER  
AFFAIRS to which was referred SB368,**

**AN ACT relative to notice required under the retail  
selling statute. Having considered the same, report the  
same with the following amendment, and the  
recommendation that the bill OUGHT TO PASS WITH  
AMENDMENT.**

**Rep. Joel F Winters**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>COMMERCE AND CONSUMER AFFAIRS</b>
Bill Number:	<b>SB368</b>
Title:	<b>relative to notice required under the retail selling statute.</b>
Date:	<b>May 4, 2010</b>
Consent Calendar:	<b>YES</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT</b>

### STATEMENT OF INTENT

Laws governing the three day right of rescission for home solicitation sales have been around for many decades. In exchange for returning the product to the seller, the buyer is entitled to a full refund. Buyers who exercise their right of rescission will now have an option to demand (in lieu of a refund) that any alterations to their home or property be restored to their original condition, if they can be reasonably restored. Exceptions to this right of rescission have been given to sales under \$25 since 1973, the amendment updates that to \$150.

Vote 15-1.

Rep. Joel F Winters  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## **CONSENT CALENDAR**

### **COMMERCE AND CONSUMER AFFAIRS**

**SB368**, relative to notice required under the retail selling statute. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Joel F Winters for **COMMERCE AND CONSUMER AFFAIRS**. Laws governing the three day right of rescission for home solicitation sales have been around for many decades. In exchange for returning the product to the seller, the buyer is entitled to a full refund. Buyers who exercise their right of rescission will now have an option to demand (in lieu of a refund) that any alterations to their home or property be restored to their original condition, if they can be reasonably restored. Exceptions to this right of rescission have been given to sales under \$25 since 1973, the amendment updates that to \$150.

**Vote 15-1.**

SB368

Laws governing the three day right of rescission for home solicitation sales have been around for many decades. In exchange for returning the product to the seller, the buyer can get a full refund. Buyers who exercise their right of recession will now have an option to demand (in lieu of a refund) that any alterations to their property be restored to their original condition, if they can be reasonably restored. Exceptions to this right of rescission have been given to sales under \$25 since 1973, the amendment updates that to \$150.

Home or

AK (Signature)