

Bill as Introduced

SB 388-FN - AS INTRODUCED

2010 SESSION

10-2754

05/01

SENATE BILL **388-FN**

AN ACT relative to remedies for violations of the retail selling statute.

SPONSORS: Sen. Cilley, Dist 6; Sen. Lasky, Dist 13; Rep. Nixon, Hills 17

COMMITTEE: Judiciary

ANALYSIS

This bill increases the penalty for violations of the retail selling statute if the value of the goods or services are in excess of a specified amount.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struckthrough.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 remedies for violations of the retail selling statute.

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

1 1 New Paragraph; Retail Selling; Remedies. Amend RSA 361-B:3 by inserting after paragraph I
2 the following new paragraph:

3 I-a. In addition to any remedy available under paragraph I, any person convicted of violating
4 this chapter with a value of the goods or services offered or sold in violation of this chapter exceeding
5 \$1000, shall be guilty of a felony. "Value" as used in this section shall have the same meaning as in
6 RSA 637:2.

7 2 Effective Date. This act shall take effect January 1, 2011.

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SB 388-FN - FISCAL NOTE

AN ACT relative to remedies for violations of the retail selling statute.

FISCAL IMPACT:

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

METHODOLOGY:

The Judicial Branch states this bill will add RSA 361-B:3, I-a to make any violation of the retail selling statute (RSA 361-B) a felony if the value of the goods and services offered or sold exceeds \$1,000. Under current law the remedy for deceptive practice is contained in the Consumer Protection statute (RSA 358-A:6) as a misdemeanor if natural person or felony if any other person. Misdemeanor charges can be either a class A or class B with the presumption they will be class B in accordance with RSA 625:9,IV, however the Branch has no information to determine if the misdemeanors would be class A or class B misdemeanors. The Branch has no information on how many misdemeanor charges would become felonies under this bill but is able to provide information on the costs associated with each type of case and the potential increase in expenditures resulting for each charge type. The Branch states the cost of a class A misdemeanor case is \$51.14 and the cost of a class B misdemeanor case is \$36.89 in FY 2011 and each year thereafter. The cost of a routine felony case is \$335.98 in FY 2011 and each year thereafter. If a charge changes from a class A misdemeanor to a routine felony the cost would increase by \$284.84 and if a charge changes from a class B misdemeanor to a routine felony the cost would increase by \$299.09. Appeals increase the likelihood that this bill will have a fiscal impact in excess of \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures by changing the penalty from a misdemeanor to a felony. The Council states if an individual is found to be indigent, a public defender or contract attorney will charge the flat fee of \$756.25 instead of the flat fee of \$275 per misdemeanor, an increase of \$481.25 per case. If an assigned counsel attorney is used the fee is \$60 per hour but the cap of \$1,400 for a

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misdemeanor charge will change to the \$4,100 for a felony charge, an increase of \$2,700. The Council states there would continue to be potential for increased costs if an appeal is filed or if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. 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.

The Department of Corrections states it is unable to determine the fiscal impact of this bill as it does not have information on the number of individuals that would avoid incarceration in the state prisons and be added to the county jails or if this bill would result in additional individuals being incarcerated in the state prisons. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was \$33,110. The average annual cost to supervise an offender through the Department's division of field services for the fiscal year ending June 30, 2009 was \$744.

The New Hampshire Association of Counties states it is unable to determine if this bill will increase or decrease the number of individuals that may be convicted and detained in a county correctional facility, thus is not able to determine the fiscal impact on county expenditures. The average cost to incarcerate an individual in a county facility is \$35,342 a year.

The Department of Justice states this bill will increase the penalty from a misdemeanor to a felony; however increasing the penalty will not have a fiscal impact on the Department.

Amendments

Sen. Cilley, Dist. 6
January 25, 2010
2010-0272s
05/04

Amendment to SB 388-FN

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

2

3 1 New Paragraph; Retail Selling Statute; Remedies. Amend RSA 361-B:3 by inserting after
4 paragraph I the following new paragraph:

5 I-a In addition to any remedy available under paragraph I, any person convicted of a
6 knowing violation of the provisions of this chapter, where the value of the goods or services sold is
7 more than \$500 but not more than \$1,000, shall be guilty of a class B felony, or a class A felony if the
8 value of the goods or services sold exceeds \$1,000.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's
Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: January 14, 2010

HEARINGS

Tuesday

1/19/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

| | |
|---|---|
| <p>2:00 PM SB377</p> <p>2:15 PM SB387-FN</p> <p>2:30 PM SB388-FN</p> <p>2:45 PM SB394-FN</p> <p>3:00 PM SB424</p> | <p>relative to landlord remedies when tenants abandon property.</p> <p>relative to penalties for violations of the consumer protection act.</p> <p>relative to remedies for violations of the retail selling statute.</p> <p>relative to dealing in counterfeit goods.</p> <p>relative to the consumer advocate's access to confidential information provided to the public utilities commission.</p> |
|---|---|

Sponsors:

SB377

Sen. John Gallus

SB387-FN

Sen. Jacalyn Cilley

Sen. Bette Lasky

Rep. Anthony DiFruscia

SB388-FN

Sen. Jacalyn Cilley

Sen. Bette Lasky

Rep. David Nixon

SB394-FN

Sen. Robert Letourneau

Sen. Deborah Reynolds

Rep. Sherman Packard

Rep. Laura Pantelakos

Sen. Jeb Bradley

Rep. David Welch

Rep. James Rausch

Rep. Stephen Shurtleff

SB424

Sen. Jacalyn Cilley

Sen. Deborah Reynolds

Rep. Jacqueline Cali-Pitts

Rep. Sandra Keans

Gail Brown 271-3076

Sen. Deborah Reynolds

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **SB 388-FN** – *AN ACT relative to remedies for violations of the retail selling statute.*

HEARING DATE: January 19, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Senator Cilley with Senator Lasky and Representative Nixon

What the bill does: This bill increases the penalty for violations of the retail selling statute if the value of the goods or services are in excess of a specified amount.

Who supports the bill: Senator Cilley; Attorney James Boffetti of the Attorney General's Office

Who opposes the bill: No one

Summary of testimony received:

- Senator Houde introduced the legislation on behalf of Senator Cilley who was in another hearing.
- Attorney Boffetti, head of the Consumer Protection Division of the Attorney General's Office, testified in support. He explained that this legislation is very similar to the last bill (SB 387-FN) and deals with the retail installment sales section.
- He explained that this section would affect "traveling salesmen," such as those who come around doing paving jobs.
- He said that the legislation does the same as the prior bill and presented language for a proposed amendment for consideration.
- Senator Letourneau asked how does his agency deal with complaints about things purchased over the internet. Attorney Boffetti explained that they refer the individuals to the FCC. He

said that they receive a lot of these every week but that it proves to be very difficult to "get to these perpetrators."

- He said that he continues to be amazed at the creativity of these scam artists.

Fiscal Impact: See Fiscal Note

Future Action: The Committee took the bill under advisement.

sfd

[file: SB 388-FN]

Date: January 22, 2010

DWB

Date: January 19, 2010
Time: 2:35 p.m.
Room: State House Room 103

The Senate Committee on Judiciary held a hearing on the following:

SB 388-FN relative to remedies for violations of the retail selling statute.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on SB 388-FN and invited Senator Houde, to introduce the legislation.

Senator Matthew Houde, D. 5: Thank you very much, Madam Chair, members of the Committee. My name is Matthew Houde, representing Senate District 5. I am introducing SB 388-FN, an act relative to remedies for violations of the retail selling statute for Senator Cilley.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Houde. Any questions?

Senator Matthew Houde, D. 5: If you do have them, perhaps you will defer them to our next speaker. I would ask your consideration.

Senator Deborah R. Reynolds, D. 2: We will do that, Senator. Thank you very much.

Senator Matthew Houde, D. 5: Thank you very much.

Senator Deborah R. Reynolds, D. 2: I will note that Senator Lasky has signed in in support and Attorney Boffetti if you could please come forward and I will just note that you are speaking in support of the bill.

Attorney James Boffetti: Thank you. Again, James Boffetti from the AG's Office. This bill is very similar and my arguments and my statement are very similar to what I just said in the prior bill. This bill would change the penalties for the retail installment sales section, which basically is traveling sales people or people that sell in places other than their primary place of business. When I think about it and the things that we deal with, I think that, for instance, of the people that go around paving and soliciting paving jobs. We have had a significant problem with paving scams. So, this does essentially the same thing.

Again, Madam Chair, I have a slight redraft of the bill which I could submit.

Please see Attachment #1.

Senator Deborah R. Reynolds, D. 2: An amendment?

Attorney Boffetti: An amendment. And, again it is the same reason, the same rationale that I said before.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions? I want to give the Committee members a moment to take a look at the proposed amendment. It is pretty similar to what we just saw with the other bill. I just want to make sure if people have questions, feel free to ask them. Senator Letourneau?

Senator Robert J. Letourneau, D. 19: How do we... I'm assuming the person has to be in the state for this to occur.

Attorney Boffetti: Yes.

Senator Robert J. Letourneau, D. 19: How do we deal with this over internet sales, for example, or people doing this sort of crime through either the telephone or on the computer?

Attorney Boffetti: Well, it is not easily dealt with, frankly. There is no limit to the creativity of people to try and do a scam. The FCC oftentimes is an agency we refer to with internet. Some of these are offshore and it is a very difficult thing to track down and to find out who is sending the solicitation. I can tell you we get a lot of these complaints on a weekly basis. So, we refer them to the FCC. If it comes through the post office, we refer to the post office. But, frankly, it is very difficult to get to the root of some of these.

Senator Robert J. Letourneau, D. 19: They are actually pretty smart, aren't they? Rather than use the mail, they will use a carrier service.

JRB

Attorney Boffetti: Yes. I am amazed. I have only been at this job for about eight weeks. I'm amazed at the creativity of scam artists.

Senator Robert J. Letourneau, D. 19: Thank you.

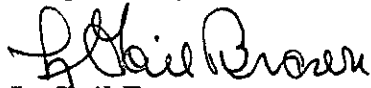
Senator Deborah R. Reynolds, D. 2: Any other questions? Seeing none, thank you very much for your testimony and for being here with us today and congratulations on your new job.

Attorney Boffetti: Thank you, Madam Chair.

Senator Deborah R. Reynolds, D. 2: Is there anyone else, members of the public who would like to testify relative to SB 388-FN? Seeing none, I am going to close the hearing on SB 388.

Hearing concluded at 2:40 p.m.

Respectfully submitted,



L. Gail Brown
Senate Secretarial Supervisor
1/28/10

1 Attachment

Attachment #1
Anthony Rafferty

Amend RSA 358-A:6 to read as follows:

358-A:6 Penalties. –

I. Any person convicted of violating RSA 358-A:2 hereof shall be guilty of a *Class A* misdemeanor if a natural person, or guilty of a felony if any other person.

I-a. Any natural person convicted of a knowing violation of RSA 358-A:2, where the value of the goods or services offered or sold is more than \$500 but not more than \$1000, shall be guilty of a class B felony or a Class A felony if the value of the goods or services offered or sold exceeds \$1000.

II. Any person who violates the terms of an injunction issued under RSA 358-A:4, III, shall be guilty of a *Class A* misdemeanor if a natural person, or guilty of a felony if any other person. For the purposes of this section, the court issuing said injunction shall retain jurisdiction.

Speakers

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # SB 388-FV

Hearing date: 1/19/10

Executive session date: 2/16/10

Motion of: LS

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: _____

VOTE: _____

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

| <u>Committee Member</u> | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Reported out by</u> |
|----------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Senator Reynolds, Chairman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Lasky, Vice-Chair | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Houde | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Letourneau | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Senator Roberge | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: February 17, 2010

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 388-FN

AN ACT relative to remedies for violations of the retail selling
statute.

Having considered the same, the committee recommends that the Bill:

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

AMENDMENT # s

Senator Sheila Roberge
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of SB388

Docket Abbreviations

Bill Title: relative to remedies for violations of the retail selling statute.*Official Docket of SB388:*

| Date | Body | Description |
|-------------|-------------|---|
| 01/06/2010 | S | Introduced and Referred to Judiciary; SJ 1 , Pg.13 |
| 01/14/2010 | S | Hearing; January 19, 2010, Room 103, State House, 2:30 p.m.; SC3 |
| 02/17/2010 | S | Committee Report: Referred to Interim Study 3/3/10; SC8 |
| 03/03/2010 | S | Refer to Interim Study, MA, VV; SJ 8 , Pg.110 |

NH House

NH Senate

Contact Us

*New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301*

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB328 ORIGINAL REFERRAL

_____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 0272 _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
_____ FINAL VERSION _____ AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

7/13/10

Debra Brown
COMMITTEE SECRETARY