



NATIONAL CREDIT UNION ADMINISTRATION

WASHINGTON, D.C. 20456

April 2, 1991

S. Johnson
ALPA Federal Credit union
825 Midway Drive
Willowbrook, IL 60521-5576

Re: Applicability of New Hampshire Law (Your
February 12, 1991, Letter)

Dear S. Johnson:

You have received a letter from an attorney who represents a member of the Air Line Pilots Association Federal Credit Union (the FCU). The letter stated that pursuant to New Hampshire R.S.A. 358-C:3, the FCU was prohibited from making any further contact with Mr. and Mrs. Kirby and that any attempt to do so could result in fines from the attorney general. You have asked whether the FCU, located in Illinois, is bound by the laws of other states. Although we do not have expertise or authority to issue binding opinions on New Hampshire law, a general analysis follows. You may wish to seek the advice of legal counsel familiar with New Hampshire law.

Analysis

New Hampshire R.S.A. (Revised Statutes Annotated) 358-C:3 (attached) prohibits a debt collector from collecting a debt in an unfair, deceptive or unreasonable manner. It is similar to the federal Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. Your letter is not specific, but we assume that Mr. or Mrs. Kirby is a member of the FCU, that he or she is delinquent on a loan from the FCU, and that the FCU has been attempting to collect the loan. We also assume from your letter that the Kirbys live in New Hampshire. If the FCU has gone into New Hampshire (via phone calls, letters,

FOIA - VOL. V, K, 2
VOL. II, C, 12

S. Johnson
April 2, 1991
Page 2

etc.) to attempt to collect the debt, the FCU appears to be subject to the New Hampshire law.

The New Hampshire law states that anyone who violates its provisions is liable to the debtor for damages. It also states that violations of the law constitute "unfair and deceptive acts or practices" within the meaning of RSA 358-A, (attached) and may be enforced by the New Hampshire attorney general. (See New Hampshire RSA 358-C:4.) RSA 358-A:2 states that it is unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within the state. RSA 358-A:4 provides that the New Hampshire attorney general may bring an action in the name of the state to restrain the use of such trade or commerce and may petition the court for an order of restitution to any person injured by the unlawful act or practice. The court also may award the state civil penalties up to \$10,000 for each violation.

We recommend that the FCU review its loan collection practices to ensure compliance with the Fair Debt Collection Practices Act and with the laws of states in which it is attempting to collect loans.

Sincerely,



Hattie M. Ulan
Associate General Counsel

Attachments

GC/LH:sg
SSIC 3320
91-0225

CHAPTER 358-C

UNFAIR, DECEPTIVE OR UNREASONABLE COLLECTION PRACTICES

- 358-C: 1 Definitions.
358-C: 2 General Prohibition.
358-C: 3 Prohibited Acts.
358-C: 4 Remedies.

CROSS REFERENCES

Attorney's fees, see RSA 361-C.
Consumer credit reporting generally, see RSA 359-B.
Debt adjusters, see RSA 399-D.
Disclosure of consumer credit records, see RSA 359-C.
Disclosure of finance charges, see RSA 399-B.
Fair Debt Collection Practices Act, see 15 U.S.C. § 1692 et seq.
Regulation of consumer credit transactions generally, see RSA 358-K.

LIBRARY REFERENCES

West Key Number

Consumer Credit ⇨ 14.
Consumer Protection ⇨ 10.
Extortion and Threats ⇨ 34.

CJS

Interest and Usury; Consumer Credit
§§ 298-300.
Threats and Unlawful Communications
§§ 9, 27.
Trade-Marks, Trade-Names and Unfair
Competition § 237.

ALR

Recovery by debtor, under tort of intentional or reckless infliction of emotional distress, for damages resulting from debt collection methods. 87 ALR3d 201.
Use of criminal process to collect debt as abuse of process. 27 ALR3d 1202.
Validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices. 87 ALR3d 786.

358-C: 1 Definitions. In this chapter:

- I. "Consumer" means a natural person who seeks or acquires, or is offered property, services or credit for personal, family or household purposes.
- II. "Consumer credit transaction" means a transaction between a creditor and a consumer in which real or personal property, services, money or a form of money is acquired on credit and the consumer's obligation is payable in 4 or more installments or for which credit a finance charge is or may be imposed. The term includes consumer credit sales, consumer loans, consumer leases of personal property and transactions pursuant to a seller or lender credit card, but shall not include leases of real property.
- III. "Consumer transaction" means a transaction between a consumer and a person who sells, leases or provides property, services or credit to consumers. The term shall not include leases of real property.
- IV. "Creditor" means a person who in the ordinary course of business engages in consumer credit transactions with consumers.
- V. "Credit" means the right granted by a person to a consumer to defer payment of a debt, to incur debt and defer its payment, or purchase property or services and defer payment therefor.
- VI. "Debt" means any obligation or alleged obligation arising out of a consumer transaction.
- VII. "Debtor" means a person who owes or allegedly owes an obligation arising out of a consumer transaction.

VIII. "Debt collector" means:

(a) any person who by any direct or indirect action, conduct or practice enforces or attempts to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer credit transaction; or

(b) any person who, for any fee, commission or charge other than wages or salary, engages in any direct or indirect action, conduct or practice to enforce or attempt to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer transaction; or

(c) any person who, pursuant to an assignment, sale or transfer of a claim against a consumer, engages in any direct or indirect action, conduct or practice to enforce an obligation that is owed or due, or alleged to be owed or due, by a consumer as a result of a consumer transaction.

IX. "Finance charge" means a charge such as interest, fees, service charges, discounts and other charges associated with the extension of credit.

X. "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

HISTORY

Source. 1975, 437: 1, eff. Aug. 18, 1975.

358-C: 2 General Prohibition. No debt collector shall collect or attempt to collect a debt in an unfair, deceptive or unreasonable manner as defined in this chapter.

HISTORY

Source. 1975, 437: 1, eff. Aug. 18, 1975.

358-C: 3 Prohibited Acts. For the purposes of this chapter, any debt collection or attempt to collect a debt shall be deemed unfair, deceptive or unreasonable if the debt collector:

I. Communicates or attempts to communicate with the debtor, orally or in writing:

(a) by causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously or at unusual times or at times known to be inconvenient with the intent to abuse, oppress or harass any person at the called number; or

(b) by use of profane, obscene or vulgar language that is intended to abuse the hearer or reader; or

(c) at the debtor's place of employment if said place is other than the debtor's residence, provided that:

(1) a debt collector may send a single letter to the debtor at his place of employment if he has otherwise been unable to locate the debtor; and

(2) a debt collector may phone the debtor at his place of employ-

ment if he is unable to contact the debtor at his residence, provided that:

A. the debtor does not inform the debt collector that he does not wish the debt collector to communicate or attempt to communicate with him at his place of employment; and

B. the debt collector shall not inform the employer of the nature of the call unless asked by the employer; and

C. in no event shall the debt collector make more than one phone call per month to the debtor at his place of employment unless the debtor affirmatively indicates in writing that he desires the debt collector to call him at his place of employment. (For the purposes of this subparagraph, any language in any instrument creating the debt which purports to authorize phone calls at the debtor's place of employment shall not be considered an affirmative indication that the debtor desires the debt collector to call him at his place of employment.); or

(d) using any written communication which fails to clearly identify the name of the debt collector, the name of the person (as defined in RSA 358-C: 1, X) for whom the debt collector is attempting to collect the debt, and the debt collector's business address (the foregoing shall not require the name or address of the debt collector or the person for whom the debt collector is attempting to collect the debt to be printed on any envelope containing a communication); or

(e) by placement of phone calls without disclosure of the name of the individual making the call and the name of the person (as defined in RSA 358-C: 1, X) for whom the debt collector is attempting to collect the debt, or by using a fictitious name while engaging in the collection of debts; or

(f) by causing any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; or

II. Uses or threatens the use of force or violence; or

III. Threatens to take any unlawful action or action which the debt collector in the regular course of business does not take; or

IV. Communicates or threatens to communicate, except by proper judicial process, the fact of such debt to a person other than the person who might reasonably be expected to be liable therefor; provided that the provisions of this paragraph shall not prohibit a debt collector from:

(a) communicating information relating to a debt to a person residing with the debtor and reasonably believed to be a relative or family member over the age of 18, or to an attorney, financial counseling organization or other person who has notified the debt collector that he is representing the debtor; or

(b) from leaving a message at the residence of the debtor containing no information other than a request that the debtor contact the debt collector about the debt; or

(c) communicating information relating to the debt to the debtor's spouse or, if the debtor is a minor, to the parents or guardians of the debtor where the purpose of the communication is solely to locate the debtor; provided that:

(1) the debt collector has been unable to locate the debtor by other means for a period of 30 days; and

(2) the debt collector, having once communicated with any of said persons, shall not again attempt to locate the debtor by communicating with said person; or

(d) reporting, or notifying a debtor that the debt collector may report a debt to:

(1) a consumer reporting agency defined in RSA 359-B: 3, VI, or any lending institution, provided that if the debt collector knows the debt to be disputed he shall notify the consumer reporting agency or lending institution that the debt is disputed; or

(2) to an agent or attorney engaged for the purpose of collecting the debt. (For the purposes of RSA 358-C: 3, IV, the use of language on envelopes other than the debt collector's name, address or telephone number, indicating that the communication relates to the collection of a debt shall be deemed a communication of the debt.); or

V. Communicates directly with the debtor, except through proper legal action, after notification from an attorney, financial counseling organization or other person representing the debtor that all further communication relative to the debt should be addressed to the attorney, organization or other person unless the attorney, organization or other person fails to answer correspondence, return phone calls or discuss the debt within 10 days or prior approval is obtained from the attorney, organization or other person or the communication is a response in the ordinary course of business to the debtor's inquiry; or

VI. Communicates with the debtor through the use of forms or instruments which simulate the form and appearance of judicial process or which give the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when they are not; or

VII. Makes any material false representation or implication of the character, extent or amount of the debt, or of its status in any legal proceeding; or

VIII. Makes any representation that an existing obligation may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not be legally added to the existing obligation; or

IX. Makes any representation that an existing obligation will definitely be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when the award of such fee or charge is discretionary by a court of law; or

X. Collects or attempts to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or inci-

dental fee, charge or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the debtor; provided that the foregoing shall not prohibit a debt collector from attempting to collect court costs in a judicial proceeding; or

XI. Threatens that nonpayment of a debt will result in the arrest of any person or the seizure, garnishment, attachment or sale of any property or wages without indicating, when a court order is a legal prerequisite to any such action; that

(a) there must be a court order in effect permitting such action; and, where applicable,

(b) that the debtor will have an opportunity to appear in court to contest such action prior to any such court order being effective; or

XII. Threatens to assign or sell to another the account of or claim against the debtor with an attending representation or implication that the result of any such sale or assignment would be that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection attempts.

HISTORY

Source. 1975, 437: 1, eff. Aug. 18, 1975.

CROSS REFERENCES

Harassment, see RSA 644: 4.

358-C: 4 Remedies.

I. Any debt collector who violates the provisions of this chapter shall be liable in any court of competent jurisdiction to the debtor for one of the following, whichever is greater:

(a) in an action brought by and on behalf of an individual debtor only, the sum of \$200 plus costs and reasonable attorney's fees for each violation, or

(b) for all damages proximately caused by the violation.

II. Notwithstanding the foregoing, a debt collector shall not be held liable in any action brought under this chapter for a violation if the debt collector shows by a preponderance of the evidence that:

(a) the violation was a result of a computation error in billing and within 15 days of notification or discovery of said error the debt collector notified the debtor of such error and corrected such error; or

(b) the violation was not intentional and resulted from a bona fide error or mistake notwithstanding the maintenance of procedures reasonably adapted to avoid any such error or mistake.

III. In any suit to collect a debt, the debtor may raise, by way of counterclaim, set-off or recoupment, a violation of this chapter, and upon proof of a violation by a preponderance of the evidence, the court shall award damages to the defendant pursuant to this section and shall set such damages off against any recovery by the plaintiff.

IV. Any debtor aggrieved by a debt collector's practices in violation of this chapter may bring an action individually and/or on behalf of others

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authorized by the agreement to the debtor; provided that the debtor from attempting to collect

will result in the arrest of judgment or sale of any property; or an order is a legal prerequisite

not permitting such action; and

opportunity to appear in court before the order being effective; or

to the account of or claim of the debtor; or the implication that the debtor would lose his property to harsh, vindictive or abusive

provisions of this chapter shall not apply to the debtor for one of the

of an individual debtor only, the attorney's fees for each violation

by the violation. The debt collector shall not be held liable for a violation if the debtor consents that:

an arithmetical error in billing and the debt collector corrected such error; or the violation resulted from a bona fide reliance on procedures reasonably

the debtor may raise, by way of defense, any provision of this chapter, and upon the evidence, the court shall apply this section and shall set aside the judgment in favor of the plaintiff.

the debtor's practices in violation of this chapter and/or on behalf of others

UNFAIR COLLECTION PRACTICES

358-C: 4

similarly situated in the superior court of the county in which he resides to restrain such practices by temporary or permanent injunction. If the debtor prevails in an action authorized by this paragraph, he shall be entitled to his costs and reasonable attorney's fees.

V. If the court finds that an action initiated under this chapter was frivolous and brought to harass the debt collector, the debtor shall pay to the debt collector the costs of said action plus reasonable attorney fees.

VI. Any violation of the provisions of this chapter shall also constitute an unfair and deceptive act or practice within the meaning of RSA 358-A: 2 and may be enforced by the attorney general pursuant to RSA 358-A.

HISTORY

Source. 1975, 437: 1. 1977, 308: 1, eff. Aug. 26, 1977. Amendments—1977. Paragraph VI: Added.

CROSS REFERENCES

Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

CHAPTER 358-A

REGULATION OF BUSINESS PRACTICES FOR CONSUMER PROTECTION

358-A: 1	Definitions.	358-A: 9	Habitual Violation of Injunction.
358-A: 2	Acts Unlawful.	358-A: 10	Private Actions.
358-A: 3	Exempt Transactions; etc.	358-A: 10-a	Class Actions.
358-A: 4	Administration; Enforcement.	358-A: 11	Proof Required.
358-A: 5	Notice.	358-A: 12	Other Actions Saved.
358-A: 6	Penalties.	358-A: 13	Interpretation and Construction of Act.
358-A: 7	Assurance of Discontinuance.		
358-A: 8	Subpoena; Production of Books, Examination of Persons, etc.		

CROSS REFERENCES

Attorney general, see RSA 7.
Deceptive business practices, see RSA 638: 6.
Unfair acts or practices by manufacturers or distributors of motor vehicles, see RSA 357-C: 3.
Unfair, deceptive or unreasonable collection practices generally, see RSA 358-C.

LIBRARY REFERENCES

West Key Number

Consumer Protection \Leftrightarrow 1 et seq.
Trade Regulation \Leftrightarrow 401 et seq., 521 et seq., 540 et seq., 613, 644, 646.

CJS

Trade-Marks, Trade-Names, and Unfair Competition §§ 87 et seq., 104 et seq., 187 et seq.

ALR

Reasonableness of offer of settlement

under state deceptive trade practice and consumer protection acts. 90 ALR3d 1350.

Right to private action under state consumer protection act. 62 ALR3d 169.

Scope and exemptions of state deceptive trade practice and consumer protection acts. 89 ALR3d 399.

When statute of limitations commences to run on action under state deceptive trade practice or consumer protection acts. 18 ALR4th 1340.

358-A: 1 Definitions. As used in this chapter, the following terms shall have the following meaning:

I. "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

II. "Trade" and "commerce" shall include the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

III. "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

IV. "Examination of documentary material" shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgement in respect of any such documentary material or copy thereof.

HISTORY

Source. 1970, 19: 1, eff. April 30, 1970.

, 529: 84, and related to

2d 763; New Hampshire Association v. State Tax 3) 113 NH 511, 309 A2d

1
e justified by existing within this state" was finiteness. McIntire v. 95 NH 174, 59 A2d 471.

2
ption of guilt and, there- lid. McIntire v. Borofsky 59 A2d 471.

avor in good faith to ces of his competitors not invalid. McIntire v. 5 NH 174, 59 A2d 471.

ANNOTATIONS

1. Construction

This chapter is not applicable to transactions which are strictly private in nature, and in no way undertaken in the ordinary course of a trade or business. *Chase v. Dorais* (1982) 122 NH 600, 448 A2d 390.

The proscription against unfair or deceptive acts or practices in the conduct of any trade or commerce must be read to apply only to those acts or practices which are perpetrated in a business context. *Chase v. Dorais* (1982) 122 NH 600, 448 A2d 390.

This chapter cannot be read as including any sale or advertising for sale of any real or personal property; such a reading would remove even isolated, nonbusiness sales or contracts from the realm of contract and sales law and subject them to the chapter.

Chase v. Dorais (1982) 122 NH 600, 448 A2d 390.

Where seller of used car advertised car in newspaper as being in "good condition" but stated that she had no knowledge of automobile mechanics and no skill in evaluating the worth or condition of a used car and had never sold one before, the buyer drove and inspected the car prior to purchase, and the defects listed in his complaint were either known by him or easily discoverable by inspection at the time of the sale, the trial court properly dismissed an action by the buyer which was based in part on a violation of this chapter since the transaction at issue did not take place in a trade or business context as defined by this section. *Chase v. Dorais* (1982) 122 NH 600, 448 A2d 390.

358-A: 2 Acts Unlawful. It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state. Such unfair method of competition or unfair or deceptive act or practice shall include, but is not limited to, the following:

- I. Passing off goods or services as those of another;
- II. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- III. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- IV. Using deceptive representations or designations of geographic origin in connection with goods or services;
- V. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- VI. Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
- VII. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- VIII. Disparaging the goods, services, or business of another by false or misleading representation of fact;
- IX. Advertising goods or services with intent not to sell them as advertised;
- X. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

XI. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or

XII. Conducting going out of business sales other than the name implies, or which last more than 60 days, or which are held more than once every 2 years by the same owner of the business.

HISTORY

Source. 1970, 19: 1. 1973, 383: 2, eff. at the beginning of the section and redesignated subpars. I(a)-(l) as pars. I-XII.
 Aug. 29, 1973. For grammatical purposes, revised endings of beginning word in each paragraph.
 Amendments—1973. Paragraph I(l): For purposes of clarity, deleted "or" following "quantity" in par. X and inserted "or" following "reductions" in par. XI.
 Added.
 Revision note. For purposes of clarity and style, deleted paragraph designation

CROSS REFERENCES

Designation of promotion, etc., of chain distributor schemes as an unfair trade practice, see RSA 358-B: 5.
 Designation of violations of assurances of discontinuance of unlawful acts or practices as unlawful acts or practices, see RSA 358-A: 7.
 Designation of violations of provisions regulating buying clubs as unfair or deceptive acts or practices, see RSA 358-J: 5.
 Designation of violations of provisions regulating conduct of auctions as unfair or deceptive acts or practices, see RSA 358-G: 3.
 Designation of violations of provisions regulating health clubs as unfair or deceptive acts or practices, see RSA 358-I: 8.
 Designation of violations of provisions regulating home solicitation sales as unfair trade practices, see RSA 361-B: 3.
 Designation of violations of provisions regulating motor vehicle repair facilities as unfair or deceptive acts or practices, see RSA 358-D: 12.
 Designation of violations of provisions regulating rental referral agencies as unfair or deceptive acts or practices, see RSA 358-H: 5.
 Designation of violations of provisions regulating sale of unsafe used motor vehicles as unfair or deceptive acts or practices, see RSA 358-F: 4.
 Designation of violations of provisions relating to distributorship disclosure requirements as unfair or deceptive acts or practices, see RSA 358-E: 6.
 Designation of violations of rules of attorney general as unlawful acts or practices, see RSA 358-A: 4.
 Enforcement of chapter by attorney general, see RSA 358-A: 4.
 Penalties generally, see RSA 358-A: 6.
 Private enforcement of chapter, see RSA 358-A: 10, 10-a.
 Unfair methods of competition and unfair or deceptive acts or practices in interstate commerce, see 15 U.S.C. § 45.

ANNOTATIONS

1. Cited A2d 336; Welch v. Fitzgerald-Hicks Dodge, Inc. (1981) 121 NH 358, 430 A2d 144; Chase v. Dorais (1982) 122 NH 600, 448 A2d 390.
 Cited in State v. Credit Bureau of Nashua, Inc. (1975) 115 NH 455, 342 A2d 640; State v. Kay (1975) 115 NH 696, 350

LIBRARY REFERENCES

ALR Unfair competition by direct reproduction of literary, artistic, or musical property. 40 ALR3d 566.
 Unfair competition: geographical extent of protection of word or symbol under doctrine of secondary meaning. 41 ALR3d 434.
 Failure to deliver ordered merchandise to customer on date promised as unfair or deceptive trade practice. 7 ALR4th 1257.
 Finance company's liability in connection with consumer fraud practices of party selling goods or services. 1S ALR4th 824.

(1982) 122 NH 600, 448

of used car advertised car being in "good condition" she had no knowledge of mechanics and no skill in evaluation of condition of a used car sold one before, the buyer inspected the car prior to purchase. Defects listed in his complaint known by him or easily ascertainable by a court properly dismissed. Buyer which was based in opinion of this chapter since issue did not take place in business context as defined in Chase v. Dorais (1982) 122 NH 390.

for any person to use deceptive act or practice in this state. Such unfair practice shall include,

understanding as to the goods or services; understanding as to affiliation, another;

of geographic origin

endorsement, approval, character that they do not have, affiliation, or connection

they are deteriorated,

a particular standard, style or model, if they

of another by false or

to sell them as advertised

to supply reasonably and discloses a limitation

358-A: 3 Exempt Transactions; etc. The following transactions shall be exempt from the provisions of this chapter:

I. Trade or commerce otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of this state or of the United States;

II. Trade or commerce of any person whose gross revenue at least 20 percent of which is derived from transactions in interstate commerce, excepting, however, transactions and actions which (a) occur primarily and substantially within this state, and (b) the Federal Trade Commission or its designated representative has failed to assert in writing within 14 days of notice to it and to said person by the attorney general its objection to action proposed by him and set forth in said notice;

III. Trade or commerce of any person who shows that he has had served upon him by the Federal Trade Commission a complaint pursuant to 15 U.S.C. 45(b) relating to said trade or commerce until the Federal Trade Commission has either dismissed said complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating to said complaint pursuant to 15 U.S.C. 45(b);

IV. Publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast, or reproduce material without knowledge of its deceptive character;

IV-a. Transactions entered into more than 2 years prior to the complaint; provided, however, that this section shall not ban the introduction of evidence of unfair trade practices and deceptive acts prior to the 2 year period in any action under this chapter;

V. The burden of proving exemptions from the provisions of this chapter by reason of paragraphs I, II, III, IV and IV-a of this section shall be upon the person claiming the exemption.

HISTORY

Source. 1970, 19: 1. 1973, 383: 3, 4, eff. Aug. 29, 1973. Paragraph V: Inserted "and IV-a" following "IV".

Amendments—1973. Paragraph IV-a: Added.

358-A: 4 Administration; Enforcement.

I. There is hereby established in the office of attorney general a consumer protection and antitrust division. Said division shall be directed by an assistant attorney general who shall be appointed by the attorney general in accordance with the provisions of RSA 7: 16, who shall carry out the provisions of this chapter under the supervision of the attorney general and do such other work as the attorney general may assign. The attorney general shall also appoint an investigator and such other staff as may be necessary to carry out the provisions hereof within the limits of the appropriation therefor.

II. The attorney general may establish such rules as may be necessary or

desirable for the proper administration of this chapter. Evidence of a violation of a rule made by the attorney general shall constitute prima facie evidence of an act or practice declared to be unlawful by this chapter in any action brought under this chapter.

III. (a) Whenever the attorney general has reason to believe that trade or commerce declared unlawful by this chapter has been, is being or is about to be conducted by any person, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such trade or commerce and may petition the court for an order of restitution of money or property to any person or class of persons injured thereby. The action may be brought in the superior court of the county in which the person allegedly in violation of this chapter resides or has his principal place of business, or, with the consent of the parties or if the person is a nonresident and has no place of business within the state, in the superior court of Merrimack county.

(b) Upon a finding that any person has engaged or is engaging in any act or practice declared unlawful by this chapter, the court may make any necessary order or judgment and may award to the state civil penalties up to \$10,000 for each violation of this chapter. No such order shall require the payment of civil penalties until the process of appeal has been exhausted. Any such order or judgment shall be prima facie evidence in any action brought under RSA 358-A: 10 that the respondent has engaged in an act or practice declared unlawful by this chapter. For the purpose of this section, the court shall determine the number of unlawful acts or practices which have occurred without regard to the number of persons affected thereby. It shall be an affirmative defense to the assessment of civil penalties that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

III-a. In connection with any action brought under paragraph III, the attorney general may also petition the court to appoint a receiver to take charge of the business of any person during the course of litigation when the attorney general has reason to believe that such an appointment is necessary to prevent such person from continuing to engage in any act or practice declared unlawful by this chapter and of preserving the assets of said person to restore to any other person any money or property acquired by any unlawful act or practice. The receiver shall have the authority to sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, including property with which such property has been mingled if it cannot be identified in kind because of such commingling derived by means of any unlawful act or practice, and to sell, convey and assign the same and hold, dispose and distribute the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of any unlawful act or practice and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general

creditors in the distribution of the assets to the extent that he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required. In lieu of the foregoing procedure, the court may permit any person alleged to have violated this chapter to post a bond in a manner and in an amount to be fixed by the court. Said bond shall be made payable to the state and may be distributed by the court only after a decision on the merits and the process of appeals has been exhausted.

IV. Any county attorney or law enforcement officer receiving notice of any alleged violation of this chapter shall immediately forward written notice of the same with any other information that he may have to the office of the attorney general.

HISTORY

Source. 1970, 19:1. 1975, 417:1-3.
1979, 171:1, eff. Aug. 5, 1979.

Amendments—1979. Paragraph I: Substituted "consumer protection and anti-trust division" for "consumer protection division" in the first sentence.

—1975. Paragraph II: Added the second sentence.

Paragraph III: Amended generally.
Paragraph III-a: Added.

CROSS REFERENCES

Acceptance of assurance of discontinuance of act or practice by attorney general, see RSA 358-A: 7.

Administrative Procedure Act, see RSA 541-A.

Class actions, see RSA 358-A: 10-a.

Dissolution of corporation, etc., for repeated violations of injunctions, see RSA 358-A: 9.
Injunctions generally, see Rules 161-163, Rules of the Superior Court, New Hampshire Court Rules Annotated.

Private enforcement actions generally, see RSA 358-A: 10.

Proof required in prosecutions under chapter, see RSA 358-A: 11.

ANNOTATIONS

1. Cited

Cited in *State v. Credit Bureau of Nashua, Inc.* (1975) 115 NH 455, 342 A2d 640.

LIBRARY REFERENCES

ALR

Right of state, public official, or governmental entity to seek, or power of court to allow, restitution of fruits of consumer fraud, without specific statutory authorization. 55 ALR3d 198.

Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud. 59 ALR3d 1222.

358-A: 5 Notice. At least 10 days prior to commencement of any action under RSA 358-A: 4, the attorney general shall notify the person of his intended action, and give the person an opportunity to confer with the attorney general, or his agent, in person or by counsel or other representative as to the proposed action. Said notice shall be given by mail, postage prepaid, sent to his usual place of business, or, if none, to his last known

to the extent that he has sus-
a partnership or business entity
tribute the assets under the direc-
jurisdiction of all questions arising
orders and judgments therein as
g procedure, the court may permit
chapter to post a bond in a manner
t. Said bond shall be made payable
e court only after a decision on the
exhausted.

ement officer receiving notice of
immediately forward written no-
on that he may have to the office

—1975. Paragraph II: Added the second
entence.
Paragraph III: Amended generally.
Paragraph III-a: Added.

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practice by attorney general, see

ations of injunctions, see RSA 358-A: 9.
of the Superior Court, New Hampshire

358-A: 10.
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shall be given by mail, postage
s, or, if none, to his last known

address. Such notice need not be given if the attorney general has reason
to believe that any potential recipient of such notice may after receipt
thereof destroy or move or cause to be destroyed or cause to be moved any
assets which might otherwise be available to claims of restitution, leave
the state or cause material witnesses to leave the state, or take other action
or omit to perform other duties to the immediate and irreparable harm of
the public.

HISTORY

Source. 1970, 19: 1. 1975, 417: 4, eff. Aug. 15, 1975. Amendments—1975. Added the third sentence.

358-A: 6 Penalties.

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

II. Any person who violates the terms of an injunction issued under RSA
358-A: 4, III, shall be guilty of 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.

III. Any person who subverts the intent and purposes of this chapter by
filing false, misleading, or substantially inaccurate statements with the at-
torney general for the purposes of effecting prosecution under this chapter
shall be guilty of a violation.

IV. If any person is found to have engaged in any act or practice de-
clared unlawful by this chapter, the court may award to the state in any ac-
tion brought under this chapter all legal costs and expenses. RSA 525: 12
shall apply to civil actions commenced under this chapter.

HISTORY

Source. 1970, 19: 1. 1973, 529: 85. 1975, 417: 5, eff. Aug. 15, 1975. Amendments—1975. Paragraph I: Amended gener-
ally. Paragraph II: Amended generally. Paragraph III: Amended generally.
Paragraph IV: Added.

CROSS REFERENCES

Classification of crimes, see RSA 625: 9.
Sentences, see RSA 651.

358-A: 7 Assurance of Discontinuance. Nothing herein contained shall
be construed as preventing the attorney general, in cases in which he is au-
thorized to bring an action, from accepting in lieu thereof an assurance of
discontinuance of any act or practice which violates this chapter. Such as-
surance may include a stipulation for the voluntary payment by the alleged
violator of the costs of investigation by the attorney general, or of an
amount to be held in escrow pending the outcome of an action, or of an
amount to restore to any person any money or real or personal property
which may have been acquired by such alleged violator, or all 3. Any such
assurance of discontinuance shall be in writing and be filed with the supe-

358-A:1

TRADE AND COMMERCE

358-A:1 Definitions.

ANNOTATIONS

2. Cited

Cited in WVG v. Pacific Insurance Co., 707 F. Supp. 70 (D.N.H. 1986); Rousseau v. Eshleman (1986) 128 NH 564, 519 A2d 243.

358-A:2 Acts Unlawful. It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state. Such unfair method of competition or unfair or deceptive act or practice shall include, but is not limited to, the following:

[No changes in paragraphs I-X.]

X-a. Failing to disclose the legal name or street address of the business under RSA 361-B:2-a; [Added 1986, 137:1, eff. July 1, 1986.]

[No changes in paragraphs XI and XII.]

Amendments—1986. Paragraph X-a. Added.

692 F. Supp. 1443 (D.N.H. 1988); Gelinas v. Metropolitan Property & Liability Insurance Co. (1988) 131 NH 154, 551 A2d 962.

ANNOTATIONS

1. Cited

Cited in New Hampshire Automobile Dealers Association, Inc. v. General Motors Corp., 620 F. Supp. 1150 (D.N.H. 1985), modified, 801 F.2d 528 (1st Cir. 1986); WVG v. Pacific Insurance Co., 707 F. Supp. 70 (D.N.H. 1986); 1986 Op Atty Gen 102; Rousseau v. Eshleman (1986) 128 NH 564, 519 A2d 243; Rousseau v. Eshleman (1987) 129 NH 306, 529 A2d 862; Velcro Group Corporation v. Billarant,

LIBRARY REFERENCES

ALR

Actionable nature of advertising impugning quality or worth of merchandise or products. 42 ALR4th 318.

What goods or property are "used," "second hand," or the like for purposes of state consumer laws prohibiting claims that such items are new. 59 ALR4th 1192.

358-A:3 Exempt Transactions; etc. The following transactions shall be exempt from the provisions of this chapter:

[No change in paragraph I.]

II. [Repealed 1985, 172:1, eff. July 26, 1985.]

[No changes in paragraphs III-V.]

Amendments—1985. Paragraph II: Repealed.

graph I of this section. WVG v. Pacific Insurance Co., 707 F. Supp. 70 (D.N.H. 1986).

ANNOTATIONS

½. Applicability

Where insurer's alleged unfair and deceptive conduct was expressly forbidden under RSA 417, the Unfair Insurance Trade Practices statute, it was not exempt from the provisions of this chapter pursuant to para-

1. Cited

Cited in Rousseau v. Eshleman (1986) 128 NH 564, 519 A2d 243; Rousseau v. Eshleman (1987) 129 NH 306, 529 A2d 862; Gelinas v. Metropolitan Property & Liability Insurance Co. (1988) 131 NH 154, 551 A2d 962; Therrien v. Resource Financial Group, Inc., 704 F. Supp. 322 (D.N.H. 1989).

358-A:4 Administration; Enforcement.

I. The provisions of this chapter shall be administered and enforced by

It is unlawful for any person to use any unfair or deceptive act or practice in commerce within this state. Such unfair or deceptive act or practice shall include,

the name or street address of the business [37:1, eff. July 1, 1986.]

XII.]

92 F. Supp. 1443 (D.N.H. 1988); *Gelinas v. Metropolitan Property & Liability Insurance Co.* (1988) 131 NH 154, 551 A2d 962.

LIBRARY REFERENCES

...able nature of advertising impugns the quality or worth of merchandise or products. 42 ALR4th 318.
...that goods or property are "used," "second hand," or the like for purposes of state consumer laws prohibiting claims that such items are new. 59 ALR4th 1192.

The following transactions shall be reported to the chapter:

1985.]

...I of this section. *WVG v. Pacific Insurance Co.*, 707 F. Supp. 70 (D.N.H. 1986).

...ted
...ed in *Rousseau v. Eshleman* (1986) 128 NH 64, 519 A2d 243; *Rousseau v. Eshleman* 129 NH 306, 529 A2d 862; *Gelinas v. Metropolitan Property & Liability Insurance Co.* (1988) 131 NH 154, 551 A2d 962; *Thermon Resource Financial Group, Inc.*, 704 F. Supp. 322 (D.N.H. 1989).

...t.
...administered and enforced by

the consumer protection and antitrust bureau, department of justice established by RSA 21-M:8. [Amended 1985, 300:23; 410:8, eff. July 3, 1985.]

II. [Repealed 1985, 300:30, eff. July 1, 1987.]

[No changes in paragraphs III and III-a.]

IV. Any county attorney or law enforcement officer receiving notice of any alleged violation of this chapter shall immediately forward written notice of the same with any other information that he may have to the department of justice. [Amended 1985, 300:7, I.]

Amendments—1985. Paragraph I: Amended generally by ch. 410.

Amended generally by ch. 300:23.

Paragraph II: Amended generally by ch. 300:23.

Repealed by ch. 300:30.

Paragraph IV: Chapter 300:7, I, substituted "department of justice" for "office of the attorney general" at the end of the paragraph.

Effective date of 1985, 300 amendments. 1985, 300:33, IV, provided that 1985, 300:7, I, 300:23 were to take effect on the date the department of justice became operational on the date set according to 1983, 372:5, II. Pursuant to 1983, 372:5, II, the joint commit-

tee on implementation of reorganization and the governor determined the effective date upon which the department became operational to be Jan. 1, 1986.

Former paragraph II. Prior to repeal, former par. II was amended by 1985, 300:23.

Revision note. In par. I, for purposes of conformity with RSA 21-M:9, substituted "consumer protection and antitrust bureau" for "consumer protection bureau" pursuant to 1985, 300:7, II.

In par. I, substituted "RSA 21-M:8" for "RSA 21-J:8" to conform reference to the redesignation of that section pursuant to 1985, 300:7, II.

358-A:8 Subpoena; Production of Books, Examination of Persons, etc.

[No changes in paragraphs I-V.]

VI. USE OF INFORMATION. Any information, testimony, or documentary material obtained under the authority of this section shall be used only for one or more of the following purposes:

(a) In connection with investigations instituted under this chapter or for the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA; and

(b) In connection with any formal or informal program of or request for information exchange between the department of justice and any other local, state or federal law enforcement agency. However, no information or material obtained or used pursuant to the authority of this section shall be released publicly by any governmental agency except in connection with the prosecution of legal proceedings instituted under this chapter or other provisions of the RSA. In addition, any information, testimony or documentary material obtained or used pursuant to a protective order shall not be exchanged or released, as provided herein, publicly except in compliance with such protective order. [Amended 1985, 300:7, I(a).]

[No change in paragraph VII.]

Amendments—1985. Paragraph VI(b): "attorney general's office" in the first sentence. Substituted "department of justice" for