

SB 186-FN – AS INTRODUCED

2011 SESSION

11-0421

05/04

SENATE BILL **186-FN**

AN ACT repealing the exemption from the consumer protection act for certain regulated trade and commerce.

SPONSORS: Sen. Carson, Dist 14; Rep. Goley, Hills 8; Rep. Marshall Quandt, Rock 13; Rep. Jennifer Coffey, Merr 6

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill:

I. Removes the exemption from the consumer protection act for trade or commerce under the jurisdiction of the bank commissioner, the director of securities regulation, the insurance commissioner, the public utilities commission, the financial and insurance regulators from other states, and federal banking or securities regulators with authority to regulate unfair or deceptive trade practices.

II. Permits the banking department to investigate unfair or deceptive banking practices in conjunction with the attorney general.

III. Removes the exclusive authority of the securities division to investigate unfair or deceptive trade practices under the jurisdiction of the director of securities regulation.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT repealing the exemption from the consumer protection act for certain regulated trade and commerce.

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

1 1 Bank Commissioner; Consumer Complaint and Restitution. Amend RSA 383:10-d to read as
2 follows:

3 383:10-d Consumer Complaints and Restitution. The commissioner shall have [~~exclusive~~]
4 authority and jurisdiction to investigate conduct that is or may be an unfair or deceptive act or practice
5 under RSA 358-A [~~and exempt under RSA 358-A:3, I~~] or that may violate any of the provisions of Titles
6 XXXV and XXXVI and administrative rules adopted thereunder. The commissioner may hold hearings
7 relative to such conduct and may order restitution for a person or persons adversely affected by such
8 conduct. The commissioner may request the assistance and services of the consumer protection and
9 antitrust bureau of the department of justice. In the instance of conduct involving an alleged criminal
10 offense, the commissioner shall refer to the department of justice all aspects relevant to the criminal
11 investigation and prosecution of such matter.

12 2 Notice of Security Breach. Amend RSA 359-C:20, I(b) to read as follows:

13 (b) [~~Any person engaged in trade or commerce that is subject to RSA 358-A:3, I shall also~~
14 ~~notify the regulator which has primary regulatory authority over such trade or commerce. All other~~
15 ~~persons]~~ ***Upon determining that a breach has or may have occurred, the person*** shall notify
16 the New Hampshire attorney general's office. The notice shall include the anticipated date of the
17 notice to the individuals and the approximate number of individuals in this state who will be
18 notified. Nothing in this section shall be construed to require the person to provide to [~~any regulator~~
19 ~~or~~] the New Hampshire attorney general's office the names of the individuals entitled to receive the
20 notice or any personal information relating to them. The disclosure shall be made to affected
21 individuals as quickly as possible, after the determination required under this section.

22 3 Regulation of Small Loans, Title Loans, and Payday Loans. Amend RSA 399-A:12, VIII to
23 read as follows:

24 VIII. The commissioner shall have [~~exclusive~~] authority and jurisdiction to investigate
25 charges, whether for interest, compensation, brokerage, endorsement fees, consideration, expense, or
26 otherwise, and fees, whether for application, participation, insurance, debt cancellation, late
27 payment, or otherwise, on small loans, payday loans, and title loans that are or may be unreasonable
28 or an unfair or deceptive act or practice under RSA 358-A [~~and exempt under RSA 358-A:3, I~~] or a
29 violation of rules adopted by the commissioner. The commissioner may hold hearings relative to
30 such conduct and may order restitution for any person adversely affected by such conduct.

1 4 Securities; Administration. Amend RSA 421-B:21, I-a to read as follows:

2 I-a. Notwithstanding any other provision of law, the secretary of state shall have exclusive
3 authority and jurisdiction:

4 (a) To register securities.

5 (b)(1) To license the following:

6 (A) Broker-dealers.

7 (B) Investment advisers.

8 (C) Issuer-dealers.

9 (D) Agents.

10 (E) Investment adviser representatives.

11 (2) The exclusive authority and jurisdiction to issue licenses pursuant to RSA 421-
12 B:21, I-a(b) shall not be read to limit the authority of the department of insurance to license sellers of
13 products where licensure is required both by RSA 421-B and Title XXXVII.

14 (c) Pursuant to RSA 421-B:28, III, together with the attorney general, to issue, amend,
15 or rescind such orders as are reasonably necessary to carry out the provisions of this chapter.

16 (d) To bring administrative actions to enforce the securities law.

17 (e) To investigate and impose penalties for violations of the securities laws, including but
18 not limited to:

19 (1) Revoking, suspending, or denying licenses and registrations.

20 (2) Fines.

21 (3) Rescission, restitution, or disgorgement.

22 (f) Together with the attorney general, to bring actions pursuant to RSA 421-B:23, I(b)
23 and (c).

24 (g) ~~[To investigate conduct that would be an unfair or deceptive act or practice under~~
25 ~~RSA 358-A and that is subject to the jurisdiction of the director of securities regulation pursuant to~~
26 ~~RSA 358-A:3, I.~~

27 ~~(h)~~ To issue letters of censure, caution, warning, or admonition pursuant to audits or
28 inspections under RSA 421-B:9, investigations under RSA 421-B:22, or hearings under RSA 421-B:26-a.

29 ***I-b. Nothing in RSA 358-A shall preempt the exclusive authority and jurisdiction of***
30 ***the secretary of state to investigate conduct subject to RSA 421-B.***

31 5 Securities; Civil Liabilities. Amend RSA 421-B:25, XI to read as follows:

32 XI. The rights and remedies promulgated by this chapter are in addition to any other right
33 or remedy that may exist at law or in equity, ***including a private right of action pursuant to***
34 ***RSA 358-A:10***, but this chapter does not create any cause of action not specified in this section or
35 RSA 421-B:8, V. No civil cause of action may be based solely upon the failure of a broker-dealer or
36 agent to comply with the requirements of RSA 421-B:6, I or III, except a cause of action arising under
37 RSA 421-B:23.

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1 6 Repeal. RSA 358-A:3, I, relative to exemption from the consumer protection act for trade and
2 commerce under the jurisdiction of the bank commissioner, the director of securities regulation, the
3 insurance commissioner, the public utilities commission, the financial institutions and insurance
4 regulators of other states, or federal banking or securities regulators with authority to regulate
5 unfair or deceptive trade practices, is repealed.

6 7 Effective Date. This act shall take effect January 1, 2012.

LBAO
11-0421
Revised 02/22/11

SB 186 FISCAL NOTE

AN ACT repealing the exemption from the consumer protection act for certain regulated trade and commerce.

FISCAL IMPACT:

The Insurance Department and Department of Justice state this bill may increase state expenditures by an indeterminable amount in FY 2012 and each year thereafter. There is no fiscal impact on county and local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Insurance Department states this bill makes changes to the consumer protection act for certain regulated trade and commerce. Specific to the Department, this bill repeals the Department's exemption from the Consumer Protection Act contained in RSA 358-A:3,I. The Department has an insurance specific Consumer Protection Act that addresses unfair insurance trade practices and provides consumers with redress including the availability of a private right of action against insurers and other licensed individuals and entities regulated by the Department. This bill does not eliminate or change the insurance consumer protections contained in law or the Department's role in the investigation and enforcement of unfair insurance trade practices. The Department does not anticipate a fiscal impact as a result of this bill. However, the Department assumes this bill will expand the consumer protection function within the Department of Justice which may require additional staffing and resources resulting in an increase in state expenditures.

The Department of Justice states the repeal of Consumer Protection Act exemptions will likely lead to a greater enforcement role for the Department, however the Department is not able to determine the increase in expenditures. The Department states the fiscal impact would be determined by the level of institutional communication and coordination between state agencies and the extent to which investigations could be conducted utilizing existing resources in the various agencies. The Department also anticipates that conduct currently exempt from the Consumer Protection Act becomes prohibited under the Act the Department will have an increase in prosecutions that may require additional resources.

The Banking Department states the bill removes the Department's exclusive jurisdiction for investigating complaints, however the bill maintains the concurrent jurisdiction to investigate with the Department of Justice. Additionally the bill repeals the exemption from RSA 358-A for trade or commerce under the jurisdiction of the Department. The Department assumes it will continue its level of coordination and collaboration with the Department of Justice regarding the type and number of complaints. Lastly, the Department anticipates NH state chartered institutions will continue to notify the Department, which in some instances is the primary regulator, of security breach instances even with the removal of the requirement for financial institutions to notify their primary regulator of a security breach. The Department does not anticipate this bill will have a fiscal impact on the Department.

The Department of State states the bureau of securities regulation will maintain jurisdiction under RSA 421-B, therefore this bill will have no fiscal impact on the bureau's revenues or expenditures.

The Public Utilities Commission states this bill will have no fiscal impact on the Commission.