

HB 459-FN - AS INTRODUCED

2023 SESSION

23-0460

09/10

HOUSE BILL

***459-FN***

AN ACT                    relative to transactions exempt from the regulation of business practices for consumer protection.

SPONSORS:            Rep. Caplan, Merr. 8

COMMITTEE:          Commerce and Consumer Affairs

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ANALYSIS

This bill creates a private cause of action for consumers who are harmed under the provisions of the consumer protection act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    relative to transactions exempt from the regulation of business practices for consumer protection.

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

1            1 Private Cause of Action. Amend RSA 358-A:3 to read as follows:

2            358-A:3 ~~[Exempt Transactions; Etc.]~~ **Private Cause of Action.** The following transactions  
3 shall **not** be exempt from the provisions of this chapter, **but shall be enforceable by the consumer** :

4            I. Trade or commerce that is subject to the jurisdiction of the bank commissioner, the  
5 director of securities regulation, the insurance commissioner, the public utilities commission, the  
6 financial institutions and insurance regulators of other states, or federal banking or securities  
7 regulators who possess the authority to regulate unfair or deceptive trade practices. This paragraph  
8 includes trade or commerce under the jurisdiction of, and regulated by, the bank commissioner  
9 pursuant to RSA 361-A, relative to retail installment sales of motor vehicles.

10           II. [Repealed.]

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

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

19           IV-a. Transactions entered into more than 3 years prior to the time the plaintiff knew, or  
20 reasonably should have known, of the conduct alleged to be in violation of this chapter; provided,  
21 however, that this section shall not ban the introduction of evidence of unfair trade practices and  
22 deceptive acts prior to the 3-year period in any action under this chapter.

23           IV-b. Violations of RSA 205-A which have occurred more than 3 years prior to the complaint  
24 alleged to be in violation of this chapter.

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

27           **Any action by a person as defined in RSA 358-A:1, I, which violates RSA 358-A:2, shall vest a**  
28 **private cause of action in the consumer harmed by the person.**

29           VI. **When a consumer alleges a violation of RSA 358-A:2 by an agency or entity**  
30 **identified in this section, the appropriate government agency, as determined by the**

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1     *attorney general, may issue a "right to sue" letter to the harmed consumer, if the complaint*  
2     *in question is deemed to have merit by the appropriate agency.*

3             2 Effective Date. This act shall take effect 60 days after its passage.

**HB 459-FN- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT relative to transactions exempt from the regulation of business practices for consumer protection.

**FISCAL IMPACT:**    ☒ State                    ☐ County                    ☐ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	In excess of \$288,000	In excess of \$287,000	In excess of \$291,000
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill creates a private cause of action for consumers who are harmed under the provisions of the consumer protection act.

The Department of Justice (DOJ) states this bill expands a private cause of action for consumers under the State’s Consumer Protection Act (CPA) by removing the exemption clause in 358-A:3 for private citizens, but not for the Attorney General. The existing exemption clause prohibits any CPA complaints of unfair or deceptive trade practices against banks, auto dealers engaged in retail installment sale contracts, securities or investment firms, insurance companies or agents, and public utilities companies that could be filed by the Attorney General or by private citizens bringing private actions under 358-A:10. This bill would remove that exemption, but only for private actions. The Attorney General would still be prohibited from bringing CPA complaints against those industries. Under the proposed bill, “When a consumer alleges a violation of RSA 358-A:2 by an agency or entity identified in this section, the appropriate government agency, as determined by the attorney general, may issue a "right to sue" letter to the harmed consumer.” These litigation decisions are properly left to the exclusive jurisdiction of the Attorney General. The Consumer Protection Bureau receives approximately 1,600 individual complaints each year. Under this bill, each complaint against a bank, an auto dealer engaged in retail installment sale contracts, a securities or investment firm, an insurance company or insurance agent, or a public utility company would need to be analyzed by DOJ staff to determine whether or not to issue a “right to sue” letter to the consumer. In addition, the Department receives notice of approximately 300 CPA private rights of action filed each year. Each of those would have to be

analyzed in like fashion to the complaints. That additional work will require significant additional resources in the Consumer Protection Bureau to consist of one additional attorney, one additional investigative paralegal and one legal assistant. The Department provided the following cost information for these positions which includes benefits, equipment, hardware and software, office space and other operating expenses:

	FY 2024	FY 2025	FY 2026
Attorney (Unclassified)	\$122,000	\$122,000	\$122,000
Investigative Paralegal (Classified LG 22)	\$86,000	\$86,000	\$88,000
Legal Assistant (Classified LG 19)	\$80,000	\$79,000	\$81,000
Total:	\$288,000	\$287,000	\$291,000

The Judicial Branch assumes that, by expanding the types of claims that can be brought under the Consumer Protection Act, and by eliminating the statute of limitations by which any Consumer Protection Act claim must be brought, more lawsuits will be filed in the courts. The Judicial Branch is unable to determine how many such additional lawsuits would be filed.

This bill does not provide an appropriation for positions.

**AGENCIES CONTACTED:**

Department of Justice and the Judicial Branch