

Consumer Protection in New Hampshire

This pamphlet is based in NH law in effect at the time of publication. It is issued as a public service for general information only. It is not a substitute for specific legal advice.

This pamphlet gives you basic information about New Hampshire's consumer protection laws, the rights those laws create, and the legal remedies they provide to those injured by unfair or deceptive trade practices and unfair methods of competition. This pamphlet also provides suggestions on preventive measures consumers can take to avoid problems before they start.

APRIL 2006

The Consumer Protection Act

New Hampshire's primary consumer protection law is entitled "Regulation of Business Practices for Consumer Protection" and is commonly known as the Consumer Protection Act. (See RSA 358-A, which should be available at your local public library or at <http://www.gencourt.state.nh.us>) The New Hampshire Consumer Protection Act and the Federal Trade Commission Act, which served as the model for our state law, prohibit the use of any unfair or deceptive act or practice or any unfair method of competition in trade or commerce in New Hampshire.

Although there are many business practices which may be unfair or deceptive, our state law specifically identifies the following practices as unfair or deceptive:

- Claiming that goods are new or original when they are used, secondhand, deteriorated, reconditioned or altered.
- Claiming that goods or services have certain characteristics, ingredients, uses, benefits or qualities, or certain sponsorship or approval when they really do not have such, or that a person has a certain sponsorship, approval, status, affiliation or connection that he or she really does not have.
- Falsifying the place of origin of goods or services.
- Passing off goods or services as someone else's.
- Disparaging another business' goods or services by false or misleading statements.
- Advertising goods or services with the intent not to sell them as advertised or failing to have a reasonable supply of goods or services provided on hand (unless the advertisement specifically says that quantities are limited).
- Making false or misleading statements about the existence of, reasons for, or amount of price reductions.
- Conducting "going out of business sales" which last more than 60 days or which are held more than once every two years by the same owners of the business.
- Selling gift certificates for \$100.00 or less that have expiration dates. (This does not apply to gift certificates or coupons that are given away.)
- Dormancy fees, latency fees, or any other administrative fees or service charges that have the effect of reducing the total amount for which the holder may redeem a gift certificate are prohibited. (Does not apply to season passes.)

The terms "unfair" or "deceptive acts or practice" and "unfair methods of competition" have developed specialized meanings. For example, many consumers may regard a retail store's policy of limiting returns to receiving store credits to be unfair practice. However, this policy and other return policies that do not involve cash refunds generally do not violate the Consumer Protection Act's prohibition against unfair or deceptive acts or practices.

Preventive Measures

Be careful when you purchase goods or services. To avoid being misled or taken advantage of, follow a few simple steps:

- Before you purchase a product or service, compare it with other brands or services found in other stores or areas.
- Carefully read and compare the warranties provided.
- Read contracts carefully before you sign; know what you are signing and what obligations you are undertaking.
- Investigate the store's return policy before buying, and keep all receipts and canceled checks.
- Keep all copies of any warranties that you are given and keep a copy of any contract or agreement you sign.

- Never give out personal information such as your social security numbers or account numbers to anyone unless you are absolutely certain it is a legitimate business and someone you're sure you want to do business with.
- Remember: companies you already do business with are not likely to contact you to "verify" this information.
- Be suspicious of all unsolicited telephone calls, mail and emails. Remember, no bank, insurance company, or other financial institution will ever ask you for personal information or information about your account via email.
- When buying online, when you check out, be sure that any Web site where you enter any credit card information is a secure site. Also, do not allow the merchant to record your credit card information.

If an item needs repairs:

- Keep an accurate record of those repairs, save receipts and make notes of important dates.
- Keep copies of any correspondence you send and document phone calls or any other attempts to correct the problem.

When you sign a contract for a service, make sure the contract includes, in writing, all the services you expect for the price you are paying. Do not accept the seller's oral assurances that he or she will "take care of" any problem. Remember, if a contract sounds too good to be true, it generally is. Do not sign a contract under pressure. Any reputable seller will give you the chance to review a contract carefully and think about the obligations and responsibilities imposed by the contract. Generally speaking, once you sign a contract, you are obligated.

A common misconception among New Hampshire consumers is that there is a general 3-day right of rescission (or cancellation) for all retail sales contracts and that there is a right to the return of a deposit. No such general "cooling off" period exists in New Hampshire. With a few exceptions, there is no 3-day cooling off period in New Hampshire. Under state law, you have no right to rescind a contract unless the contract provides for a cancellation period, or you are dealing with a health club, home solicitation sale, credit repair organization, subdivision or condominium or some other area in which there exists a specific statutory right of cancellation. Similarly, you have no right to the return of a deposit unless the contract or a specific law permits a refund. For example, there is no statutory right to cancel the purchase of a motor vehicle and any deposit placed on a motor vehicle is not automatically refundable.

Other Consumer Protection Laws

New Hampshire consumers are also protected by other consumer protection laws which, if violated, constitute "unfair trade practices" under the Consumer Protection Act. Some of these other laws are as follows:

Mail and Phone Solicitation - Anyone with a phone can be victimized by telemarketing scam artists. These calls usually originate in a "boiler room," a rented space with desks, telephones and experienced sales people who talk to hundreds of people across the country every day. You can be reached in a variety of ways such as: "cold calls" directly to your home; direct mail where you get a card or letter advising that you have won a contest or prize and need to call to claim it; or through television, newspaper or magazine ads. The Federal Trade Commission (FTC) Telemarketing Sales Rule prohibits misrepresentations, requires certain disclosures be made, and also establishes rules for telemarketers. The Rule covers most types of telemarketing calls to consumers, including calls consumers make in response to postcards or other materials received in the mail. This rule provides that it is illegal for a telemarketer to call you if you have asked not to be called or if you have registered with the Federal Do Not Call List. Calling times are restricted to the hours between 8:00 a.m. and 9:00 p.m. Telemarketers must tell you they are making a sales call and the name of the company doing the selling before they make their pitch. They are not allowed to misrepresent any information. Telemarketers must tell you the total cost of the products or services offered and any restrictions on getting or using them. It is illegal for a telemarketer to withdraw money from your bank account without your express authorization. If you have the slightest doubt about a telephone offer, insist that the seller provide information in writing and check it out.

On-line Scams - With the dramatic growth of Internet use by millions of users, many con artists who used to use telemarketing, infomercials, newspapers, magazines and the mail to attract consumers are now going on-line to promote their scams. Beware of promotions for bogus stock offerings, credit repair services, and exotic or high-tech investment opportunities. Approach such offerings with the same skepticism you would use if such offers were presented through any other medium. Never make an investment or major purchase decision based on information from one source. Some of the characteristics of such fraudulent schemes include overstated claims of product effectiveness such as a "hot" investment

opportunity, exaggerated claims of potential earnings or profit, claims of "inside" information, and "pump and dump" promotions of cheap stocks promising high returns and promotions for exotic investments. You also should beware of "disguised advertising" where seemingly harmless comments on bulletin boards or in chat rooms about the quality or performance of products or services may be ads in disguise. What may appear to be an open discussion could be a sales pitch in disguise. Read all ads and "conversations" with a healthy dose of skepticism.

Credit Card Orders - The FTC's Mail or Telephone Merchandise Rule covers goods you order by mail, telephone, computer and fax machine. By law, a company must ship your order within the time stated in its ads, or, if no time is promised, within 30 days after receiving and accepting your order. If the company cannot ship within the promised time, you must be given an "option notice." This gives you the choice of agreeing to the delay or canceling your order and receiving a prompt refund. If, however, the company doesn't promise a shipping time and you are applying for credit to pay for your purchase, the company has 50 days after receiving your order to ship if they decide to extend the credit. The Federal Fair Credit Billing Act also protects you when you use your credit card to pay for purchases, whether by phone, mail or in the store. If you find a billing error on your monthly credit or charge card statement, you may dispute the charge and withhold payment of the disputed amount during the dispute period. Such an error might be a charge for the wrong amount, or for something you did not accept or which was not delivered. To dispute a billing error, you should: first, make a good faith effort to resolve the dispute with the seller, then write to the credit card company at the special address for "billing inquiries" indicated on its monthly statement. Include your name, address, and credit card number and describe the billing error. **Don't wait to send this letter.** It must reach the credit card company within 60 days after the first bill containing the error was mailed to you. Keep copies of any letters you send.

In your negotiations with the seller, you should be aware that it is a crime under New Hampshire law for a person to listen in on or record the contents of any telecommunication or oral communication through use of any electronic, mechanical or other device without the permission of both parties to the call. Just as creditors are not allowed to record telephone calls to you without your permission, you may not record phone calls to creditors without their permission.

The credit card company must acknowledge your complaint in writing within 30 days after receiving it, unless the problem has been resolved. The dispute must be resolved within two billing cycles (but not more than 90 days) after receiving your letter. If you bought an unsatisfactory product, you may also dispute the charge for that product and withhold payment on the disputed amount during the dispute period. You must pay for any part of the bill which is not disputed. Unless you bought the product from the credit card company, this protection applies only if you bought the item in your home state or within 100 miles of your current billing address and the amount charged is more than \$50.00.

If your credit card is lost or stolen, report this to the credit card company immediately. Your maximum liability is the amount of the unauthorized loss or \$50.00, whichever is less.

Chain Letters and Pyramid Schemes - Chain letters and other pyramid schemes are illegal chain distribution schemes. A chain distribution scheme is any scheme where a person, after making an investment of cash or property, is compensated by soliciting or recruiting others to make similar investments. The early entrants earn the "return" on their investment from the payments made by the later entrants. It is a felony under New Hampshire law, (RSA 358-B), to operate a chain distribution scheme.

Credit Reports - Credit reports contain information on where you work and live, how you pay your bills and whether you have been sued, arrested, or have ever filed for bankruptcy. This information is gathered by companies ("credit bureaus" or "credit reporting agencies") which then sell this information to others when you apply for credit, insurance, employment or to rent an apartment.

If you are denied credit by someone because of a bad negative credit report, they must tell you of this fact and give you the name and address of the credit reporting agency making the bad negative report. You have a right to review your files, to obtain a free copy of your report from that credit reporting agency and to dispute any information you think is inaccurate, obsolete or incomplete. When you dispute information in your credit report, both the credit reporting agency and the person or company that provided the disputed information are responsible for correcting the inaccurate or incomplete information in your report. You should tell the credit reporting agency in writing what information you believe is inaccurate. The credit reporting agency then must notify the provider of the disputed information. That information provider must investigate and report the results to the credit reporting agency within 30 days of receiving your written request. If

the disputed information is inaccurate, the information provider must notify all nationwide credit reporting agencies to correct this information in your credit report. If the credit reporting agency or the information provider will not change the disputed information, then you may ask to have your statement of the dispute included in your credit report and in future reports.

With certain exceptions, a credit reporting agency can report negative information for 7 years before it is considered obsolete. Bankruptcy information may be reported for 10 years, suits and judgments for 7 years or until the statute of limitations on the associated debt runs out, (whichever is longer), and records of arrest, indictment or conviction of a crime for the 7-year period pre-dating the report.

Only people with a legitimate business need can get a copy of your credit report. An employer or prospective employer cannot get a copy of your credit report without your written consent. A credit report that contains medical information about you cannot be given to creditors, employers, or insurers without your consent. Creditors and insurers may use credit reporting agency information as a basis for sending you unsolicited offers. These offers must include a toll-free number for you to call if you want to remove your name and address from lists for two years; completing a form that the credit reporting agency provides for this purpose will keep your name off the lists permanently.

If you do have negative information on your credit report, beware of so-called "credit repair companies." These companies often can do nothing that you cannot do for yourself. You can obtain a free credit report annually from each of the three major credit reporting agencies by visiting www.annualcreditreport.com or calling 1-877-322-8228.

Health Clubs - Every person owning or operating a health club in New Hampshire must register that club with the Consumer Protection and Antitrust Bureau of the New Hampshire Department of Justice. A copy of the club's registration statement must be kept on file at the club for inspection by club members or members of the general public. The registration statement contains information on the club, its owners, the types of memberships offered, the type of equipment available to members and the number of members in the club. Most clubs must also post a surety bond or other financial security with the Bureau.

Every prepaid contract for health club service must be in writing and must be delivered to you at the time the contract is signed. Certain notices must be made a part of the contract, including a notice that you may cancel the transaction in writing any time before midnight of the third business day after the date of the transaction. If a health club closes or moves more than eight miles from its original location or if you die or become disabled, the club must give a pro-rated refund within 15 days of a request for the refund.

If you are interested in joining a health club, ask the owner to provide a copy of the registration statement and contact the Consumer Protection and Antitrust Bureau at 1-888-468-4454 (toll free) or (603) 271-3641 to determine if the club is bonded.

Home Solicitation Sales - Home solicitation sales are governed by NH RSA 361-B. A home solicitation sale is defined as the sale of goods or services priced at \$25.00 or more in which a seller operates from some place other than a permanent place of business. This includes a door-to-door salesperson and a business renting a hotel room for a one-day sale. Unlike a retail sale, you may cancel a home solicitation sale up to 3 days after the sale is made if you send written notice, preferably by certified or registered letter or by returning the merchandise in person within the 3-day cancellation period. At the time of the home solicitation sale, the seller must give you a fully completed receipt and a copy of any contract or agreement about the sale. This must have the name and address of the seller, the date of the transaction and have a statement giving you notice that you can cancel the transaction. Upon cancellation, the seller must return any payments you have made.

Home Repair Fraud - Many homeowners become victims of over-charging, shoddy workmanship, or deposits paid but work not completed or never started, because they are taken in by smooth-talking sales pitches delivered by phone or by salesmen who call at the home. One way to protect yourself from such disreputable practices is to obtain several written estimates from companies that are well established or recommended by people you know. Consider obtaining references of five people the contractor has previously worked for (and who are not related to him/her) and call each of them. Ask the contractor how long they've been in business and whether they have ever done business under a different name. You may also call the Consumer Protection and Antitrust Bureau and ask whether any complaints have been filed against

them. The Better Business Bureau is also a resource for inquiring about previous complaints against a company. Anyone doing business in the State of New Hampshire must be registered with the Secretary of State's office. You can check their Web site at www.sos.nh.gov or call them at 1-603-271-3242. When hiring a company, you should be permitted to review and sign a written contract with a description of the work to be done, the quality of materials, starting and completion dates, and a clear statement of the total cost and terms of payment. Read any contract carefully to see if you are signing up for any kind of financing. You are usually better off borrowing from a bank or reputable lender rather than the contractor. If you do sign up for financing, you may be asked to give a security interest in your home. A security interest, like a mortgage, allows the lender to foreclose on your property usually without a court order, if you fail to make agreed upon payments. If you do give such a security interest, you have 3 days after signing the papers to change your mind and cancel the contract. As described above under "Home Solicitation Sales," if you are sold home repair services at a place other than the salesperson's regular place of business (such as at your house, at a temporary location at a shopping mall or hotel) you also have the right to cancel the contract within 3 days if you change your mind, by notifying the seller in writing of your decision.

What To Do If You Have A Complaint

If you think you have been victimized by an "unfair or deceptive act" or an unfair method of competition, first address your complaint to the seller, individual, or business who sold you the item or service. Address your complaint to the manager or president of the company. This will often get the results you want. If you are still unable to obtain satisfaction, you may sue the business directly and/or file a written complaint with the Consumer Protection and Antitrust Bureau of the New Hampshire Attorney General's Office. The Bureau will evaluate your complaint and advise you of what action, if any, it will take.

Private Suits

You have a right to sue for violations of the Consumer Protection Act. If you win your lawsuit, the court will award you your actual damages or \$1,000.00, whichever is greater. The court must also award court costs and attorney's fees. If it finds the violator acted willfully or knowingly, the court may also award two to three times your actual damages.

If the dispute involves less than \$5,000, you can bring a small claims action directly against the business in a district court. Go to your local court and pick up a copy of "How to File a Small Claim" which describes small claims procedures. You do not need to hire a lawyer for a small claims action, though you may do so if you wish.

In addition, any private party or business can bring an action under the State Antitrust Act (RSA 356). This act, based on the Federal Antitrust Statutes, prohibits every "contract, combination or conspiracy in restraint of trade." In general, these laws prohibit price-fixing, bid-rigging, group boycotts or monopolization. A successful party is entitled to three times actual damages plus all costs and attorneys' fees.

The Consumer Protection and Antitrust Bureau

The Consumer Protection and Antitrust Bureau of the New Hampshire Department of Justice enforces the state's consumer protection and antitrust laws. Many investigations by the Bureau are triggered by written complaints received from consumers. A written complaint should contain the name and address of the business involved and explain in detail the facts of the transaction at issue. Also, copies of any contracts, checks, bills of sale and any other document relating to the case must be included with the complaint.

The Bureau can only take enforcement action on matters which fall within its jurisdiction under state laws. There are also many federal consumer protection laws which the appropriate federal authorities enforce. Because the Bureau receives thousands of complaints each year, it cannot investigate every complaint it receives.

The Bureau can:

- Mediate complaints within its jurisdiction by contacting the business involved and asking that it either remedy the problem or satisfactorily explain its side of the story;
- Investigate complaints which appear to indicate repeated violations by a business and, in certain circumstances, take legal action seeking injunction, civil penalties and restitution to consumers;
- Refer complaints to other appropriate state, federal or private agencies that handle consumer problems not within

the Bureau's jurisdiction.

The Bureau cannot:

- Pursue complaints unless they involve violations of the Consumer Protection Act;
- Represent a person in court, enforce judgments, or give legal advice or a legal opinion to private individuals;
- Resolve every complaint to the satisfaction of all parties;
- Take action when an alleged violation occurred more than three years before the complaint is filed or three years before the complaining party learned of the alleged violation;
- Handle complaints involving transactions that occurred out-of-state. Out-of-state transactions are usually referred to the Consumer Protection agencies in that state.

Complaints should be addressed to: Office of the Attorney General, Consumer Protection and Antitrust Bureau, 33 Capitol Street, Concord, New Hampshire 03301. You may also download a complaint form from <http://doj.nh.gov/consumer/complaints.html>.

For More Information

This pamphlet covers only a few of the many issues facing consumers. The following is a partial list of other sources of information:

Legal Advice & Referral Center (LARC) pamphlets online at <http://www.larcnh.org/Home/PublicWeb/GetAssistance/Consumer/Pubs>

NH Legal Assistance pamphlets at <http://www.nhla.org/nhlapamphlets.htm>

The New Hampshire Attorney General's Office has published a comprehensive New Hampshire Consumer's Sourcebook which covers all the above issues and more. Call the Consumer Protection and Antitrust Bureau at 1-603-271-3641 or 1-888-468-4454 (toll free) or visit their Web site at <http://doj.nh.gov/consumer/sourcebook/index/html> for a free copy.