Bill as Introduced

HB 654-FN – AS AMENDED BY THE HOUSE

25mar03... 0654h

2003 SESSION

03-0820
04/09

HOUSE BILL ***654-FN***

AN ACT relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

SPONSORS: Rep. Akins, Graf 18; Rep. Dudley, Graf 18

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 654-FN – AS AMENDED BY THE HOUSE

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04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

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

1 New Paragraph; Criminal Mischief; Destruction or Disconnection of a Smoke Detector. Amend RSA 634:2 by inserting after paragraph VIII the following new paragraph:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor.

2 Effective Date. This act shall take effect January 1, 2004.

LBAO
03-0820
1/27/03

HB 654-FN - FISCAL NOTE

AN ACT relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

FISCAL IMPACT:

The Judicial Branch, Judicial Council and the Association of Counties have determined this bill may increase state and county expenditures by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenues.

METHODOLOGY:

The Judicial Branch stated this bill would add restitution to the landlord to the criminal penalties for criminal mischief when a tenant in a rental dwelling destroys, disconnects, or otherwise renders inoperable a smoke detector in the dwelling. Adding restitution to the criminal penalties is unlikely to increase the number of prosecutions for criminal mischief, therefor, this bill should have minimal fiscal impact on the Judicial Branch. In fact, even without the legislation, restitution is often a common sentencing tool for certain offenses.

The Judicial Council states this bill makes a tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant shall be liable for full restitution to the landlord. The criminal mischief offenses currently carry a class B felony penalty provision. This bill creates a new felony B charge that creates a new crime for which indigent defense representation and related services may be required. Since this is a new charge there is no historical data upon which to draw on to assist in determining the exact cost of this bill. It is assumed that the court will appoint in the first instance either a public defender or a contract attorney, either of whom will be paid at the fixed contract rate of $687.50 per felony charged. If an assigned counsel attorney must be used either due to conflict of interest or for reasons of caseload limitations, the $60 per hour rate will apply to the case, with a fee cap of $3,000. The fee cap may be waived upon motion filed in advance with the court. If any "services other than counsel" are filed as a necessary part of the defense of the case, they would also be payable from Indigent Defense funds. Since it is not possible to accurately predict the number of cases that may result from this bill, it is likewise not possible to place and exact dollar figure on the potential cost associated with this bill.

The Department of Justice states the Department seldom becomes involved in the prosecution of the offense of criminal mischief and it is assumed that the Department would continue to not be involved. If the Department were, the number of instances would be negligible and the cost of prosecution would not increase as a direct result of this bill.

The Association of Counties states this bill creates a new misdemeanor. Such a penalty creates a cost for the county correctional facilities. The direct impact on county expenditures will depend on the number of individuals sentenced, as well as those who are incarcerated pre-trial in a county facility. The average annual cost for the counties to incarcerate inmates is $21,634.

PA

LBAO
03-0820
Amended 5/6/03

HB 654 FISCAL NOTE

AN ACT relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

FISCAL IMPACT:

The Judicial Council, Association of Counties, and Department of Justice state this bill, as amended by the House (**House Amendment #2003-0654h**), may increase state and county expenditures by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenues.

METHODOLOGY:

The Judicial Council assumes that any cases arising from the enactment of this law for which the Indigent Defense Fund may be liable, will, in the first instance, be handled by the public defender or contract attorneys who accept these cases on a fixed fee basis of $250 for each misdemeanor charge. If an assigned counsel attorney must be used, the hourly rate of $60 with a fee cap of $1,000 for misdemeanor cases will apply. If a motion to exceed the fee cap is approved and/or "services other than counsel" are approved, these will also be chargeable to the Indigent Defense Fund. The Council is unable to predict the number of cases that may result from the passage of this legislation, therefore, they are unable to estimate the dollar amount of the anticipated costs of such representation.

The Association of Counties states the fiscal impact of this bill depends on the number of individuals who are sentenced to a county house of corrections as a result of this bill. The Association has estimated the average annual cost to incarcerate an individual in a county house of corrections to be $21,634.

The Department of Justice states they seldom become involved in criminal mischief cases, and they assume they would continue not to be involved. As a result, changes proposed in this bill would have a negligible effect on the Department.

The Judicial Branch states this bill will have no fiscal impact on the Branch.

Amendments

Sen. Larsen, Dist. 15
May 9, 2003
2003-1565s
04/01

Amendment to HB 654-FN

Amend RSA 634:2, IX as inserted by section 1 of the bill by replacing it with the following:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor. It shall be an affirmative defense under this paragraph if a tenant notifies a landlord that the tenant, for reasonable cause, has disconnected a smoke detector in the rental dwelling, and such notice is given to the landlord within 3 business days of the disconnection.

2003-1565s

AMENDED ANALYSIS

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor. The bill also provides an affirmative defense for the tenant under certain circumstances.

Public Affairs
May 14, 2003
2003-1632s
04/05

Amendment to HB 654-FN

Amend RSA 634:2, IX as inserted by section 1 of the bill by replacing it with the following:

IX. Any person who is found guilty of criminal mischief under this section because such person is a tenant, or a guest of such tenant, in a rental dwelling who has destroyed, disconnected, or otherwise rendered inoperable any smoke detector in the rental dwelling, or who has attempted the same in a rental dwelling, shall be guilty of a misdemeanor. It shall be an affirmative defense under this paragraph if a tenant notifies a landlord that the tenant, for reasonable cause, has disconnected a smoke detector in the rental dwelling, and such notice is given to the landlord within 3 business days of the disconnection.

2003-1632s

AMENDED ANALYSIS

This bill makes a tenant or a guest of such tenant criminally liable for destroying, disconnecting, or rendering inoperable a smoke detector in a rental dwelling and provides that the tenant or guest of such tenant shall be guilty of a misdemeanor. The bill also provides an affirmative defense for the tenant under certain circumstances.

Committee Minutes

Date: May 7, 2003
Time: 9:50 AM
Room: 105-A, State House

COPY

The Senate Committee on Public Affairs held a hearing on the following:

HB 654-FN relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

Members of Committee present:
Senator Roberge
Senator Larsen
Senator Barnes
Senator Green
Senator Morse

The Chair, Senator Sheila Roberge, opened the hearing.

Senator Sheila Roberge, D. 9: I call upon Malcolm Beaulieu.

Malcolm Beaulieu, New Hampshire Property Owners Association: I am in support of this bill, I have some pictures here that I would like to give to the committee, These are four pictures of smoke detectors in my units. I am a landlord, I belong to the NH Property Owners Association, and the issue is tenants disabling or disconnecting or removing smoke detectors and there is currently nothing that can be done or any law that would stop tenants from doing such. Those pictures are just for myself only, in my units.

An issue with landlords is that if a smoke detector is disconnected, I live in Manchester. Manchester has a Certificate of Compliance where the building department comes around and inspects the apartments. If they find the disconnected smoke detector, they site the landlord; they don't site a tenant. The landlord is responsible for making sure that it's either re-connected or operational. If it's not found either by the city or a landlord themselves, God forbid if there is a fire. There is nonfunctioning smoke detectors, then the landlord is liable to other tenants who have been injured or suffered death due to the fire and then you have a Wrongful Death situation.

If the law was passed, which I am in favor of, would allow landlords to have a little bit of fight and force tenants to regard what the safety features are in apartments.

Senator Sheila Roberge, D. 9: Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Thank you. You as a landlord responsible every six months to go to every one of your units and make sure that new batteries are in the smoke detectors?

Mr. Beaulieu: I don't know of any such thing. I have it in my lease where if a smoke detector starts to choke because the battery is running low, they have to notify me immediately and the battery will be replaced. I don't know of a law every six months.

Senator Sheila Roberge, D. 9: Thank you very much.

Mr. Beaulieu: Thank you.

Senator Sheila Roberge, D. 9: Larry Guaraldi

Larry Guaraldi, New Hampshire Property Owners Association: I am here representing myself as a landlord and the New Hampshire Property Owners. Senator, Representative Akins, put this bill in on our behalf in the original intent. We support the bill as it is now as a compromise with legal aide. The original intent did we have was in the building codes, I believe it was Mr. Bliss, who is head of State Fire Marshall's Office, he testified in the Building Codes in New Hampshire, the code says that the landlord is 100% responsible for maintaining the smoke detector under all circumstances whether he has access or not.

The issue was brought out at those hearing in the House that if a tenant disconnected a smoke detector, a fire occurred, he was injured, he could sue the landlord under Wrongful Death, or whatever the injuries were. We couldn't get the transfer of the obligation of once a tenant was in the unit to the tenants, so the compromise was this bill here which we can accept.

We Would eventually like to see something that says my leases and my properties and I know most landlords, we go in, we do a review of the apartment before they more in, we test the smoke detector, and they make an initial that says its in proper working order. There is a clause in my leases that say we will let us know if it is not working properly, if the batteries are dead, in my case, I both battery operated and hard-wired in the same unit.

The problems we run into is there is a lot of illegal trade where they smoke marijuana and don't want the smoke detectors going off to attract people and this endangers elderly tenants in the building and other people if a fire occurs.

The other issue is just one, I don't know how you would categorize this as laziness, or whatever, the battery starts beeping, we get annoyed, it's a Friday evening we can't get a hold of the landlord, so they take it and hit it with a broom. They unscrew it and disconnect it and never get around to telling us. This compromise says that the tenant and his guest is responsible for any disconnecting, it doesn't totally relieve liability but it goes a long way to helping it.

Senator Sheila Roberge, D. 9: Thank you, Senator Larsen.

Senator Sylvia B. Larsen, D. 15: I am trying to figure out who the temporary disconnection that people do when they are cooking and they need to disconnect it, some with battery you can do that, with hard-wire probably not. I am wondering for the temporary disconnection what liability is there, is there guilt particularly if you make an effort to reconnect it.

Mr. Guaraldi Right, well, I don't know, if it's a high price lawyer and a fire has occurred and starts in the building, a lawyer will always say the landlord is in the wrong. We want to meet some middle ground here, there are reasons to disconnect them, but we need to be told and tell me in a normal fashion.

I had one little old lady, the battery went off and she hit it with a broom and she destroyed it. She was nervous about calling me and she took a week to call me, when she called me, what are we going to do, we replaced it, she need's one and she was also afraid because it wasn't working. You know there is a practical economic side to it but the issue is we need to know when something is going on. The people who tell us the least are the ones that are smoking marijuana or doing something like that. If it's too close to the stove and its going off then I feel I have the obligation that it should be moved, it shouldn't be too close to the stove because there is obviously steam and smoke is going to set it off. Thank you.

Senator Sheila Roberge, D. 9: Sir, you wanted to speak.

(Person from audience) I just wanted to answer this gentleman's question, but he left.

Christine Cunningham, New Hampshire Property Owner's Association: My name is Christine Cunningham, I represent the New Hampshire Property Owner's Association, I also represent Century 21 in Highview and Claremont, New Hampshire, I am the Director of Property Management there, and I manage for several different investors for their properties. I am in favor of the bill as it is written, as Larry had said, we really would have preferred there be some more liability in this for the tenant who disables any type of safety devise, and in this particular case the smoke detectors.

One of the problems that we have, I have an exact example of this. I have a building that has eight units in it, all of them, I know are all hardwired and battery backup smoke detectors. I know that the landlord put them in before putting tenants all in the apartments. I went through this past Friday, with the fire inspector, which we are, suppose to do and go through certain codes that are adhered to. The day before we went through, I knew the smoke detectors were supposes to be there. I knocked on everyone's door, they allowed me in, I looked there are no smoke detectors. They are gone, they are missing, and when I asked the tenant why, they said, "I did not like it, when it chirped, or I was cooking and it came off, so I just took the whole thing off, I don't know. I asked, where is it, --- well, I threw it away, ---were you going to replace it, or tell me--- well, no.

Well, if there is a fire, and there is no warning system in place because the tenants have disabled it, we are going to have huge liabilities and loss of life. The way I can invasion this law being passed, is as I am sitting down with the new tenant and going through the lease, and where they check off and see that the smoke detector is there, is in place, and functional. I also tell them at that time that there is a law that says that if you disable in any why, shape or form the smoke detector, you will be liable for the damages, or as this bill reads.

So if I can have some law in there with a little bit of teeth, and I will tell every single tenant that comes in that there is a law about this, its not just, you can do what you want to do. This is really for the safety of all the tenants; this isn't just because the landlords are tired of putting smoke detectors in. We want smoke detectors in, we want to protect our investment, and we want to protect the lives of our tenants in there. This is really about safety for the lives of other tenants.

Senator Sheila Roberge, D. 9: Thank you.

Mrs. Cunningham: Thank you.

Senator Sheila Roberge, D. 9: Betty Bretschneider.

Betty Bretschneider, New Hampshire Property Owners Association:

Good morning Senator, my name is Betty Bretschneider, I represent myself as a landlord and I am in favor of this bill. My experience with my tenants is that they have disconnected all the smoke detectors. When the inspector in Manchester came he noticed that some of them were disconnected and he had to come back and inspect the place and it cost me another $25.00 for this, because it wasn't ready. I'm a new landlord, so I don't know what's going on and in Manchester it's required that we have a COC, and I also have a building in Derry.

This tenant in Derry kept disconnecting out of spite, always disconnecting it and I have to keep fixing it all the time and he was intentionally disconnecting it out of spite because he wasn't paying his rent and he refused to pay his rent. If we have a law saying we will be protected. After he disconnected he turned on the stove and he tried to light the hallway, which was endangering the lives of the other tenants. That's all I can say.

Senator Sheila Roberge, D. 9: Just for the record would you like to answer the question that Senator Barnes asked?

Mark Lutter, Landlord: My name is Mark Lutter, and I am a landlord and he asked the question about batteries? Do landlords go in there and check the batteries? In July of 2000, a law was passed that mandated all smoke detectors be hardwired in rental dwellings. So the legislature has already taken care of that issue.

I choose to put battery backups in with the hardwired for my smoke detectors but they must be hardwired. In answer to your question previously about does the landlord check batteries? In July of 2000 there was a law passed that required all smoke detectors in rental dwellings to be hardwired. So if there is not a hardwired smoke detector in the rental dwelling, the landlord is liable for something that may occur.

Senator Sheila Roberge, D. 9: Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Thank you. If a fire started in the electrical system, could be that smoke detector hardwire wouldn't work. Correct, that's why I have battery backups along with the hardwire.

Senator John S. Barnes, Jr., D. 17: That's not in the law.

Mr. Lutter: I do not believe the battery backup is in the law, I'm not positive on that aspect.

Senator John S. Barnes, Jr., D. 17: That's kind of interesting, the hard wired the fire starts there you have no (inaudible).Thank you very much.

Mr. Lutter: You're welcome.

Senator Sheila Roberge, D. 9: Has everybody that signed up to speak, has spoken. Yes...

Could I clarify a little bit on the question that Senator Larsen asked, and that was in regard to disconnecting temporarily?

Senator Sheila Roberge, D. 9: Go ahead.

Mr. Guaraldi: The smoke detectors that are on the market if they go off due to cooking, smoke all you have to do is press the button and it silences it and there is no reason whatsoever to disconnect a smoke detector. If you silence it for ten minutes, it beeps a short little beep, every so many seconds to let a person know that. Open the windows air the place out and it will quiet down, there is no need for a smoke detector to continuously roar. Not unless there is an actual fire and then you will have to get out, and it will continuously beep.

If there is a temporary situation like cooking, or smoking the button is pushed and it silences it.

Senator Sheila Roberge, D. 9: Thank you very much.
We will end the hearing on House Bill 654, thank you for coming.

The hearing on House bill 654 closed at 10.00 AM

Respectfully submitted,

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Livia Acdan
Senate Public Affairs Secretary

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 15, 2003

THE COMMITTEE ON Public Affairs

to which was referred House Bill 654-FN

AN ACT relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

VOTE: 5-0

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Sylvia B. Larsen
For the Committee

HB654 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: relative to criminal liability for the destruction or disconnection of a smoke detector by a tenant in a rental dwelling.

Date	Body	Description
1/9/2003	H	Introduced and ref. to Crim Just & Psfty; HJ 12, p203
2/3/2003	H	Hearing Feb 19 10:00 RM204,LOB
3/4/2003	H	Subcom Work Session Mar 12 9:00 RM204,LOB
3/18/2003	H	Maj Report OTP/AM for Mar 25 (Vote 12-0;CC)
3/18/2003	H	Prop Comm Am{0654}; HC26, p726
3/25/2003	H	Passed with Am; HJ 29-pt 1, p861 + pt 2, p966
4/10/2003	S	Introduced and Ref. to Public Affairs; SJ 12, Pg.318
4/16/2003	S	Hearing; May 7, 2003, Room 105-A, SH, 9:10 a.m.; SC19
5/16/2003	S	Committee Report; Ought to Pass with Amendment{1632}, [05/22/03]; SC23, Pg.32
5/22/2003	S	Committee Amendment{1632}, AA, VV; SJ 17, Pg.473
5/22/2003	S	Ought to Pass with Amendment{1632}, MA, VV; OT3rdg; SJ 17, Pg.473
5/22/2003	S	Passed by 3rd Reading Resolution; SJ 17, Pg.479-480
5/29/2003	H	House Nonc with Sen Am req Conf Comm, Rep Welch MA VV; HJ 45, p1447
5/29/2003	H	(Spkr appts: Reps Weare, Bicknell, Welch & Pantelakos)
6/5/2003	S	Sen. Roberge Accede to Request for Committee of Conference, MA, VV
6/5/2003	S	President Appoints Senators; Roberge, Barnes, Larsen
6/10/2003	H	Conf Comm Meeting June 12 2:30 RM204,LOB
6/19/2003	S	Committee of Conference Report; House Am{2096}, Filed;
6/24/2003	S	Conference Committee Report{2096}

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations