

HB 510 - AS INTRODUCED

2021 SESSION

21-0721

10/05

HOUSE BILL **510**

AN ACT relative to limiting robocalls by automatic dialing devices.

SPONSORS: Rep. Chretien, Hills. 42; Rep. Stapleton, Sull. 5; Rep. Wazir, Merr. 17; Rep. M. Murray, Hills. 22; Rep. Piedra, Hills. 9; Rep. Gallagher, Merr. 15; Rep. Labranche, Hills. 22

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill establishes prohibitions and exceptions for the use of robocalls by automatic dialing devices. The bill gives the department of justice authority to seek injunctions and assess penalties for violations of the provisions of the act. The bill also requires an annual report on robocall violations.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to limiting robocalls by automatic dialing devices.

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

1 1 Findings; Intent.

2 I. The citizens of this state are being negatively affected by robocalls from telemarketers and
3 from others seeking to perpetrate scams, leading to frustration at best and loss of peace and property
4 for many.

5 II. Many such calls originate from scammers using automatic telephone dialing systems to
6 send out thousands of phone calls per minute with fictitious or misleading display names or
7 telephone numbers.

8 III. Scammers often targeting seniors and other vulnerable groups by soliciting personal
9 information such as credit or debit card information and Social Security numbers.

10 IV. Displaying fictitious or misleading names or telephone numbers, or "spoofing," is a
11 predominant means by which a robocaller hides their identity and entices consumers to answer the
12 telephone.

13 V. It is the intent of the legislature:

14 (a) To protect the citizens of this state from receiving illegal robocalls from
15 telemarketers and from others seeking to perpetrate scams on unsuspecting or vulnerable citizens.

16 (b) To provide the citizens of this state who use a caller identification service with
17 accurate information about the identities and locations of callers.

18 (c) To require telecommunications providers to swiftly implement technologies that will
19 allow telecommunications providers to identify and stop illegal calling practices.

20 (d) That this act be construed as broadly as possible to ensure that the citizens of this
21 state are protected from the negative impact of illegal robocalls and to ensure that scammers and
22 complicit telecommunications providers are held criminally accountable.

23 2 Telemarketing and Automatic Dialing Devices; Definitions RSA 359-E:1 is repealed and
24 reenacted to read as follows:

25 359-E:1 Definitions. In this chapter:

26 I. "Automatic dialing device" means equipment that makes a series of calls to stored
27 telephone numbers, including numbers stored on a list, except for equipment that requires a human
28 to dial or place each individual call one call at a time, and requires such human to then remain on
29 each call.

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1 II. "Automatic telephone dialing system" means any automatic terminal equipment which
2 stores or produces numbers to be called randomly or sequentially and which delivers a prerecorded
3 message to the number called without assistance of a live operator.

4 III. "Caller identification information" means:

5 (a) The telephone listing number and/or name of the customer from whose telephone
6 instrument a telephone number is dialed; or

7 (b) Other information that may be used to identify the specific originating number or
8 originating location of a wire or electronic communication transmitted by a telephone instrument.

9 IV. "Consumer" means a natural person who is solicited to purchase, lease or receive a good
10 or service for personal, family or household use.

11 V. "Consumer telephone call" means a call made to a telephone number by a telephone
12 solicitor, whether by device, live operator, or any combination thereof, for the purpose of soliciting a
13 sale of any consumer goods or services for personal, family or household purposes to the consumer
14 called, or for the purpose of soliciting an extension of credit for consumer goods or services to the
15 consumer called, or for the purpose of obtaining information that will or may be used for the direct
16 solicitation of a sale of consumer goods or services to the consumer called or an extension of credit for
17 such purposes; provided, however, that "consumer telephone call" shall not include a call made by a
18 telephone corporation, as defined by subdivision seventeen of section two of the public service law, in
19 response to a specific inquiry initiated by a consumer regarding that consumer's existing or
20 requested telephone service.

21 VI. "Call mitigation technology" means technology that identifies an incoming call or text
22 message as being, or as probably being, an unwanted robocall, and, on that basis, blocks the call or
23 message, diverts it to the called person's answering system, or otherwise prevents it from being
24 completed to the called person, except that it permits a call or text so identified to be completed
25 when it is identified as being made by a law enforcement or public safety entity;

26 VII. "Department" means the department of justice.

27 VIII. "Labor organization" means any organization of any kind which exists for the purpose,
28 in whole or in part, of representing employees employed within the state of New Hampshire in
29 dealing with employers or employer organizations or with a state government, or any political or
30 civil subdivision or other agency thereof, concerning terms and conditions of employment,
31 grievances, labor disputes, or other matters incidental to the employment relationship. For the
32 purposes of this section, each local, parent national or parent international organization of a
33 statewide labor organization, and each statewide federation receiving dues from subsidiary labor
34 organizations, shall be considered a separate labor organization.

35 IX. "Per-call blocking" means a telecommunications service that prevents the transmission
36 of caller identification information to a called party on an individual call if the calling party acts
37 affirmatively to prevent the transmission of the caller identification information.

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1 X. "Per-line blocking" means a telecommunications service that prevents the transmission of
2 caller identification information to a called party on every call unless the calling party acts
3 affirmatively to release the caller identification information.

4 XI. "Person" means any natural person, firm, organization, partnership, association or
5 corporation, or other entity, whether for-profit or not-for-profit;

6 XII. "Prior express consent" for a call means that the purpose of the call must be closely
7 related to the purpose for which the telephone number was originally provided by the called party.
8 A call by a non-profit organization which is federally tax exempt pursuant to 26 U.S.C. 501(c), to a
9 member who had joined such organization or to the household of such a member, is presumed to be
10 closely related. A customer's prior express consent can be revoked by the customer at any time in
11 any reasonable manner, regardless of the context in which the owner or user of the telephone
12 provided consent;

13 XIII. "Robocall" means a call made, including a text message sent, to any telephone number
14 owned by a person or entity in the state:

15 (a) Using an automatic dialing device; or

16 (b) Using an artificial or prerecorded voice.

17 XIV. "Solicitation" means the unrequested initiation of a telephone call to a residential
18 telephone subscriber for the purposes of giving, selling, or leasing services or goods, whether real or
19 personal, tangible or intangible; or to gain a pledge, promise or contribution in circumstances where
20 there is no pre-existing relationship between the caller and the person called; or to obtain
21 information, data or opinions.

22 XV. "Telephone service provider" means any company that provides voice service utilizing
23 any technology, regardless of whether such provider is regulated pursuant to the public service law.

24 XVI. "Telephone solicitor" means a person who makes or causes to be made a consumer
25 telephone call.

26 3 Automatic Dialing. RSA 359-E:4 and 359-E:5 are repealed and reenacted to read as follows:

27 359-E:4 Automatic Dialing Devices; Robocalls; Service Providers.

28 I. No person shall make any robocall, nor place any consumer telephone call, except in
29 accordance with the provisions of this section. The making of a robocall by any person, either
30 individually or acting as an officer, agent, or employee of a person making a robocall, is subject to the
31 provisions of this section.

32 II. A person shall be permitted to make a robocall only when such robocall is:

33 (a) Made for emergency purposes, pursuant to paragraph IX.

34 (b) Made with the prior express consent of the called party.

35 (c) Made by a labor organization to such organization's members or to the household of
36 such members.

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1 (d) Authorized by rules adopted by the department which may permit robocalls to be
2 made to a residential telephone line without prior express consent if such calls are not made for a
3 commercial purpose.

4 II.(a) If a robocall or consumer telephone call permitted by this section uses a prerecorded
5 voice, such call shall state at the beginning of the call the nature of the call and the name of the
6 person or entity on whose behalf the message is being transmitted and at the end of such message
7 the address, and telephone number of the person on whose behalf the message is transmitted,
8 provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law;
9 and

10 (b) If a robocall permitted by this section is made using an automatic dialing device,
11 such device shall disconnect from the telephone line upon the termination of the call by either the
12 person calling or the person called.

13 III. No person shall operate an automatic dialing device which uses a random or sequential
14 number generator to produce a number to be called.

15 IV. No person making a robocall shall knowingly cause any caller identification service to
16 transmit misleading, inaccurate, or false caller identification information with the intent to defraud,
17 cause harm, or wrongfully obtain anything of value.

18 V. This section does not prohibit: (a) Any authorized activity of a law enforcement agency; or
19 (b) Any activity pursuant to a court order that specifically authorizes the use of caller identification
20 manipulation.

21 VI. No robocall or consumer telephone call shall be placed to an emergency telephone line
22 including but not limited to any 911 or E-911 line, or any emergency line of any volunteer fire
23 company or fire department; any emergency medical service, ambulance service, voluntary
24 ambulance service or hospital ambulance service; any hospital, nursing home, or residential health
25 care facility; any adult care facility, or any law enforcement agency or to the telephone line of any
26 guest room or patient room of any hospital, nursing home, or residential health care facility, or any
27 adult care facility. It shall not constitute a violation of this section if the person who places such a
28 call can affirmatively establish that the call was placed inadvertently despite good faith efforts on
29 the part of such person to comply with the provisions of this section and such person has
30 implemented a procedure to prevent subsequent calls from being placed to a particular prohibited
31 telephone number.

32 VII. A telephone solicitor shall not make a consumer telephone call to a consumer unless the
33 telephone solicitor conforms with this chapter.

34 VIII. No telephone solicitor or person who places any consumer telephone call or robocall
35 and no employer of any such telephone solicitor or person shall intentionally cause to be installed, or
36 shall intentionally utilize, any blocking device or service to prevent the name and/or telephone
37 number of such solicitor or person, or the name and/or telephone number of his or her employer,

1 from being displayed on a caller identification device of the recipient of any such consumer telephone
2 call.

3 IX. Federal, state, or political subdivision authorities making a robocall for emergency
4 purposes or through the operation of a telephone warning or alert system shall be exempted from the
5 provisions of this section.

6 X.(a) A telephone service provider that provides telephone service to customers residing in
7 the state shall make call mitigation technology available to any such customer, upon request, and at
8 no additional charge. Such provider shall also offer to any such customer the ability to have the
9 provider prevent calls and text messages identified as originating from a particular person from
10 being completed to the called person, upon request, and at no additional charge.

11 (b) The department shall adopt rules under RSA 541-A to implement the requirements
12 of this section, including, if appropriate, a reasonable delay in the requiring implementation and
13 offering of call mitigation technology if for good cause, taking into account the consumer protection
14 purposes of this section, and including procedures for addressing incidents in which a call wanted by
15 the customer is prevented from reaching the customer. The department may also promulgate
16 regulations allowing for the requirements of this section to be waived for existing network facilities
17 in instances where the telephone service provider can demonstrate that call mitigation technology
18 cannot feasibly be implemented on such facilities due to technological limitations, until such time as
19 it can be feasibly implemented.

20 359-E:5 Reporting.

21 I. The department shall report on issues related to illegal robocalls made to telephone
22 numbers owned by a person or entity in this state, and on the status of the implementation and
23 offering of call mitigation technology by telephone service providers that provide telephone service to
24 customers residing in the state. Such report shall be delivered no later than December 1, and
25 annually thereafter, to the governor, the president of the senate, speaker of the house of
26 representatives, and the state library.

27 II. Such report shall include:

28 (a) A list of telephone service providers operating in this state, and the status of their
29 implementation and offering of call mitigation technology.

30 (b) Information regarding delays in the implementation and offering of call mitigation
31 technology, and the reasons for such delays.

32 (c) Recommendations for additional measures to protect customers from illegal robocalls.

33 (d) The number of illegal robocalls made to telephone numbers owned by a person or
34 entity in this state, to the extent that such information is known.

35 (e) Any other information or recommendations relating to the issue of robocalls that the
36 department judges to be pertinent or necessary.

37 4 Violations; Penalty. Amend RSA 359-E:6 to read as follows:

359-E:6 Violations; ***Penalty; Injunction; Enforcement.***

I. Any violation of the provisions of this subdivision shall constitute an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A, including those set forth in RSA 358-A:4, may be used to enforce the provisions of this chapter. Such remedies shall be in addition to any other remedies provided by law or equity.

II. Whenever there shall be a violation of any of the provisions of RSA 359-E:4, an application may be made by the attorney general in the name of the people of the state of New Hampshire to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than 5 days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section, an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general and direct restitution. Whenever the court shall determine that a violation of RSA 359-E:4 has occurred, the court may impose a civil penalty of not more than \$2,000 per call, up to a total of not more than \$100,000, for calls placed in violation within a continuous 72-hour period. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas.

5 Reference Corrected; Campaign Calls. Amend RSA 664:14-b, I to read as follows:

I. No person shall knowingly misrepresent the origin of a telephone call which expressly or implicitly advocates the success or defeat of any party, measure, or person at any election, or contains any information about any candidate or party. Such knowing misrepresentation shall include, but shall not be limited to, causing the displayed caller identification information, as defined in RSA 359-E:1, [I-a] ***III***, to indicate that a telephone call originates from a number, person, or organization other than the number, person, or organization originating the call, or making a call knowing that some other person has caused said misrepresentation, except if the displayed caller identification number is a number at which the person or organization responsible for sponsoring or making the call may directly receive a return call.

6 Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

7 Effective Date. This act shall take effect January 1, 2022.