

NEW HAMPSHIRE

Does your state have its own version of the TCPA?

New Hampshire has its own version of the Federal Telephone Consumer Protection Act ("TCPA") which is found under RSA 359-E Telemarketing.

Like the TCPA, New Hampshire's version places restrictions on telemarketers and the use of automatic telephone dialing systems. More specifically, RSA 359-E and the TCPA share the following similarities:

- Calls to numbers on the national do-not-call registry are prohibited.ⁱ
- Companies who violate telemarketing laws can be held liable for civil penalties, along with damages in civil lawsuits by the individuals they've contacted illegally.ⁱⁱ
- Telemarketers are prohibited from blocking caller identification information used by the receiving party. The caller identification information must include the telemarketer's telephone number and cannot display any missing, inaccurate, or deceptive information.ⁱⁱⁱ

If so, please explain the distinction between the state's iteration of the TCPA.

New Hampshire's Telemarketing law mirrors the TCPA in many respects; however, there are some differences:

- Telemarketers are obligated to obtain quarterly listings of New Hampshire customers on the do-not-call-registry.
- Telemarketers seeking to use an automatic telephone dialing system in New Hampshire must register with the consumer protection and antitrust bureau of the department of justice ten (10) days prior to any telemarketing solicitation.
- Unlike the TCPA, New Hampshire's law is silent on solicitation by other forms of communication such as text messages or transmissions from facsimile machines.
- The TCPA and New Hampshire's Telemarketing law both provide a private right of action; however, New Hampshire's law doubles the minimum amount recoverable for a violation. For example, the TCPA has a minimum of \$500 per violation but RSA 359-E provides \$1,000, or the actual damage sustained, whichever is greater. Both laws multiply the damage recoverable if the defendant knowingly or willfully violated the law.^{iv}

Please address state specific consumer protection statutes that are often paired with TCPA or its state iterations and the additional element and penalties.

Any violation of New Hampshire's Telemarketing law will constitute an *unfair or deceptive act or practice* as defined under New Hampshire's Consumer Protection Act - RSA 358-A. Any right, remedy, or power set forth in New Hampshire's Consumer Protection Act may be used to enforce the provisions of New Hampshire's Telemarketing law.

- New Hampshire's consumer protection and antitrust bureau of the office of the attorney general is responsible for enforcing the state and federal telemarketing laws, including other laws that make unfair and deceptive business practices unlawful.
- Under New Hampshire's Consumer Protection Act, companies that engage in an unfair or deceptive act or practice can face civil penalties up to \$10,000 for each violation.^v
- In any action brought by the New Hampshire attorney general against a business for violation of RSA 358-A, a petition can be made to the court to appoint a receiver and take charge of the business if the attorney general has reason to believe that such an appointment is necessary to prevent such person from continuing to engage in any act or practice declared unlawful and to preserve the assets of the company which will be used to restore any money or property acquired by any unlawful act or practice.^{vi}

What are the current best practices to comply with the State's iteration of the TCPA?

An entity seeking to engage in telemarketing should consider the following best practices:

- If a telemarketer intends to use an automatic telephone dialing system, the telemarketer must register with the consumer protection and antitrust bureau of the office of the New Hampshire attorney general at least 10 days prior to using the automatic telephone dialing system.^{vii} Registration requires the disclosure of the name and address of the registrant, including the name under which the registrant is doing business or intends to do business, and the complete street addresses of all locations from which the registrant will be conducting business.^{viii} Registrants are required to pay an administrative fee of \$20.00 per year.
- Any telemarketer in the state must obtain a copy of the do-not-call list from the Federal Trade Commission for the quarterly listings of customers in the state who have registered with the Federal Trade Commission for inclusion in its do-not-call list.^{ix}
- Telemarketers should be careful not to use any technology which blocks caller identification information or use information that may be considered misleading.
- Once telephone contact has been made with a recipient, the telemarketer must disclose (a) the name of the organization making the call, and (b) the purpose of the call and the goods being offered.^x

New Hampshire's Telemarketing statute offers a safe harbor for telemarketers who have certain business practices in place focused on compliance, but have inadvertently violate the law.

Telemarketers doing business in the state can escape liability for inadvertent violations of New Hampshire's Telemarketing law if they can demonstrate, by clear and convincing evidence, the following:

- That the telemarketer has implemented written procedures to comply with the law.
- The telemarketer trained his or her personnel in the requirements of the law.
- The telemarketer uses a process to prevent telemarketing to any telephone number on any do-not-call list or registry; maintains the current, quarterly version of the list; and maintains records

- documenting this process.
- The telemarketer monitors and enforces compliance with the procedures established under the state's telemarketing law.
 - The telemarketer uses a version of the do-not-call list obtained no more than 3 months prior to the date that any call is made.
 - Any subsequent call otherwise violating the state's telemarketing law is not part of a pattern of calls made in violation of the law and is the result of a good faith error.^{xi}

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- ⁱ RSA 359-E:8.
 - ⁱⁱ RSA 359-E:11.
 - ⁱⁱⁱ RSA 359-E:5-a.
 - ^{iv} RSA 359-E:11, II.
 - ^v RSA 358-A:4, III, (b).
 - ^{vi} RSA 358-A:4, III-a .
 - ^{vii} RSA 359-E:2, I.
 - ^{viii} RSA 359-E:3, I, II.
 - ^{ix} RSA 359-E:9.
 - ^x RSA 359-E:5.
 - ^{xi} RSA 359-E:9, III.