

Arkansas

Does Arkansas have its own version of the TCPA?

Yes, Arkansas's version of the TCPA is known as the Arkansas Consumer Telephone Privacy Act of 1999 ("ACTPA").ⁱ

- The ACTPA sets forth the State's statutory program governing telemarketing to those Arkansans objecting to unsolicited telephone solicitations.
- The law is silent on whether there is a private right of action, but provides that the Attorney General may prosecute and seek any remedy available under the state Deceptive Trade Practices Act ("ADTPA").ⁱⁱ
- It is a violation of the ACTPA to make or transmit a telephone solicitation to the telephone number of any consumer included in the Do-Not-Call database maintained by the Attorney General.ⁱⁱⁱ
- Similarly, the TCPA deems it "unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement" ^{iv}
- Any person who violates the provisions of the ADTPA may be assessed a civil penalty of up to \$10,000.00 per violation.^v
- Although the ACTPA does not exactly mirror the TCPA, the ACTPA deems similar behavior unlawful.

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

While the ADTPA is the enforcement mechanism for levying penalties against actors who violate the provisions of the ACTPA, the ADTPA enumerates certain unlawful practices that are similar to the provisions of the TCPA, and violations of both are generally brought in the same action.^{vi}

- For instance, the ADTPA defines, "[d]isplaying or causing to be displayed a fictitious or misleading name or telephone number on an Arkansas resident's telephone caller identification service" as a deceptive and unconscionable trade practice.^{vii}
- Similarly, the TCPA deems it, "unlawful for any person within the United

States, or any person outside the United States if the recipient is within the United States, in connection with any voice service or text messaging service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value”^{viii}

- However, unlike the ACTPA, the TCPA includes a private right of action for persons and entities.^{ix}
- Ultimately, the TCPA enumerates a vast array of practices that constitute unlawful behavior, while the ACTPA—enforced through the ADTPA—does not.
- After the Federal Do Not Call List was established, the Arkansas Do Not Call list was merged with the federal list. If a citizen is registered on the federal list you enjoy the protections of both ACTPA and the TCPA.^x
- It is also worth noting that “[i]t is unlawful for any person to use a telephone for the purpose of offering any goods or services for sale, or for conveying information regarding any goods or services for the purpose of soliciting the sale or purchase of the goods or services when the use involves an automated system for the selection and dialing of telephone numbers and the playing of recorded messages when a message is completed to the called number.”^{xi}
- Violations of this code section are a Class D Felony, and have also been brought in conjunction with ACTPA and TCPA.^{xii}

What are the current best practices to comply with Arkansas’ iteration of the TCPA?

- Telemarketers and sellers should search the Federal and State Do Not Call Registries at least once every 31 days and drop registered numbers from their call lists.^{xiii}
- Do not call before 8 a.m. or after 9 p.m.^{xiv}
- Honor requests to place consumers on an internal do not call list.^{xv}
- Do not misrepresent any information, including facts about the goods or services.^{xvi}
- Do not use an automated dialer to leave a recorded commercial message.^{xvii}
- Do not send unsolicited faxes.^{xviii}
- Do not call numbers registered on the Do Not Call Registry to sell goods or services.^{xix}

ⁱ Ark. Code Ann. § 4-99-401, *et seq.*

ⁱⁱ Ark. Code Ann. § 4-99-407(b); *see also* Ark. Code Ann. § 4-88-101, *et seq.*

ⁱⁱⁱ Ark. Code Ann. § 4-99-405(1).

^{iv} 47 U.S.C.A. § 227(b)(1)(C).

^v Ark. Code Ann. § 4-88-113(a)(3).

^{vi} *See Arkansas ex rel. McDaniel v. US Fidelis, Inc.*, CASE NO. 4:10-CV-00378-SWW (E.D. Ark. Oct. 1, 2012).

^{vii} Ark. Code Ann. § 4-88-107(11)(A).

^{viii} 47 U.S.C.A. § 227(e)(1).

^{ix} *Compare* 47 U.S.C.A. § 227(b)(3) *with* Ark. Code Ann. § 4-99-407.

^x *Do Not Call/Telemarketing*, ARK. ATT'Y GEN. <https://arkansasag.gov/divisions/public-protection/technology/do-not-call-telemarketing/> (last accessed February 27, 2025).

^{xi} Ark. Code Ann. § 5-63-204(a).

^{xii} Ark. Code Ann. § 5-63-204(d); *see also supra*, note vi.

^{xiii} *Supra*, note x.

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.*

^{xvii} *Id.*

^{xviii} *Id.*

^{xix} *Id.*