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Does your state have its own version of the TCPA?

No.

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

Typically, Hawaii references its Revised Statutes Division 5. Crimes and Criminal Proceedings § 708-835.6 when discussing similar issues to those addressed by the TCPA.

However, it varies from the TCPA in that the Hawaii Statute, titled “Telemarketing Fraud” deals with instances in which any person attempts to obtain the transfer of possession of property via telephone and using direct or implied claims that the person contacted will or is about to receive anything of value, or may be able to recover any losses suffered by the person contacted in connection with a prize promotion.ⁱ

The Hawaii Telemarketing Fraud statute defines telemarketing as “a plan, program, or campaign, including a prize promotion or investment opportunity, that: (a) is conducted to include the purchase of goods or services or to solicit funds or contributions by use of one or more telephones; and (b) involves more than one telephone call.”ⁱⁱ

The Hawaii statute classifies telemarketing fraud as a class B felony and requires forfeiture of any property used or intended to be used to commit telemarketing fraud.

The scope of this statute is much narrower than the TCPA, which deals with automatic dialing systems and the method of obtaining an individual’s contact information. Moreover, the TCPA provides for a private right of action for individuals who believe someone contacted them in violation of the TCPA. The Telemarketing Fraud statute of Hawaii is a criminal statute.

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

Because Hawaii does not have its own unique version of the TCPA, the best practice is to abide by the TCPA in a broad sense, while also ensuring that any practices are in line with Hawaii’s Telemarketing Fraud statute. Being in line with the TCPA would naturally mean that an action also will not fall within Hawaii’s Telemarketing Fraud statute, but it is best to always ensure any calls made do not violate the specific requirements of the Telemarketing Fraud rule.

Because Hawaii’s applicable law here prevents obtaining possession of property

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through fraudulent means via telemarketing, it is unlikely that any standard consumer contact practices would fall within the statute's scope. Actions that violate the TCPA will not necessarily violate the Telemarketing Fraud statute, as the latter deals with fraudulent actions to divest someone of their possessions.

For example, a violation of the TCPA in the form of placing debt collection calls to individuals cell phones, without the individual's consent, using an "autodialer" or prerecorded voiceⁱⁱⁱ would not necessarily violate the Telemarketing Fraud statute of Hawaii. The definition of telemarketing under the Hawaii statute makes no reference to autodialers and/or prerecorded voices.^{iv} Moreover, to be in violation of the Hawaii statute, an individual would need to obtain the transfer of possession or ownership of property by claiming that the person they contacted will or is about to receive anything of value, or may be able to recover any losses suffered by the person contacted in connection with a prize promotion.^v Making debt collection calls would not fall into this scope.

ⁱ Hawaii Revised Statute section 708-835.6: Telemarketing Fraud.

ⁱⁱ Hawaii Revised Statute section 708-835.6(3).

ⁱⁱⁱ In re: Convergent Telephone Consumer Protection Act Litigation (U.S. Jud. Pan. Mult. Lit. 2013) 981 F.Supp.2d 1385, 1385-86.

^{iv} Hawaii Revised Statute section 708-835.6(3) (“For purposes of this section, ‘telemarketing’ means a plan, program, or campaign, including a prize promotion or investment opportunity, that: (a) Is conducted to include the purchase of goods or services or to solicit funds or contributions by use of one or more telephones; and (b) Involves more than one telephone call.”)

^v Hawaii Revised Statute section 708-835.6(1).