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Iowa

Does your state have its own version of the TCPA?

In addition to the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), Iowa has several consumer protection statutes that provide similar restrictions and potential penalties.

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

Iowa's consumer fraud laws, Iowa Code § 714.16, prohibit "the act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise or misrepresentation . . . in connection with the lease, sale, or advertisement of any merchandise . . . " *See* Iowa Code § 714.16(2)(a).

Some lawsuits involving alleged violations of the TCPA have also alleged violations of the Iowa Debt Collection Practices Act, Iowa Code § 537.7103.

Iowa previously had a statute, Iowa Code § 476.57, enacted in 1991, that limited the use of automatic dialing device equipment (ADAD) without live operators to disseminate prerecorded messages. However, the statute was repealed in 2018.

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

While Iowa has not adopted its own version of the TCPA, litigation involving alleged violations of the TCPA has become more common in Iowa in recent years, including several attempts to certify class actions. Plaintiffs in TCPA lawsuits sometimes include alternate claims based on Iowa's consumer fraud laws, which are very broad and also protect against some practices prohibited by the TCPA.

Therefore, best practices in Iowa are consistent with best practices for complying with the TCPA, including: Develop internal compliance policies and checklists, including consultations with legal counsel as needed and regular internal audits, and review and update them regularly; provide training to employees regarding TCPA compliance; obtain and document consent to receive communications; monitor for revocations and opt-outs, including Do Not Call Registry; review insurance coverage to determine if claims involved alleged violations of TCPA are subject to coverage and any additional requirements of your insurance company; record and document communications with consumers; implement effective data retention policies; and consider utilizing third party vendors.

In *Thompson-Harbach v. USAA Federal Savings Bank*, 359 F.Supp.3d 606 (N.D. Iowa), a dispute regarding alleged violations of the TCPA involving collection efforts on a credit card balance using an "Aspect dialer" contact system, the district court granted summary judgment for the defendant, concluding that the equipment used by the defendant "does not qualify as an ATDS" (automatic telephone dialing system) because it lacked "[t]he critical missing feature that would have brought the device within the scope of the TCPA," "the capacity to randomly or sequentially produce or store a number and then call that number." *Id*., at 626-27. The district court "disagree[d] with the Ninth Circuit Court of Appeals' interpretation that a device, to be considered an ATDS, must be capable of 'dial[ing] [numbers generated using a random or sequential number generator] automatically." *Id*., at 625 (citing, and rejecting the holding of, *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1053 (9th Cir. 2018)). Although its conclusion that the Aspect dialer did not qualify as an ATDS was fully dispositive, the district court also examined whether and under what circumstances a consumer may revoke their consent to telephone contacts, finding that "as a matter of law, parties may, by mutual agreement, limit the means by which a consumer can withdraw consent to be called on the telephone," as long as the limitations are "reasonable." *Id*., at 628. Although the district court stated that the Second Circuit "went too far" in *Reyes v. Lincoln Auto. Fin. Serv.*, 861 F.3d 51, 56-58 (2nd Cir. 2017), "when it concluded that a company could effectively defeat the TCPA by including a contractual provision barring a consumer from ever withdrawing consent" to telephone contact, the online agreement signed by the plaintiff provided "a reasonable means" to withdraw her consent: removing her telephone number from her online account. *Id*., at 629.