

## Indiana TCPA Overview

### Does the Indiana Telephone Consumer Protection Act (TCPA) apply to my company?

The Indiana Telephone Consumer Protection Act (TCPA) applies to any company that is "doing business in Indiana," which includes making or causing others to make telephone sales calls to consumers located in Indiana, regardless of whether the calls are made from within or outside Indiana. IC 24-4.7-2-5. Additionally, the term "caller" under the Act encompasses a wide range of entities, including individuals, corporations, limited liability companies, partnerships, and unincorporated associations that attempt to contact or contact subscribers in Indiana using a telephone or telephone line. IC 24-5-14-2.

Exemptions apply to individuals licensed under certain insurance codes when soliciting insurance applications or negotiating policies, calls soliciting newspaper sales by volunteers or employees, and calls made by communications service providers offering broadband Internet service with an established business relationship with the consumer. Financial institutions and persons licensed by the department of financial institutions with an established business relationship with the consumer are also exempt from the Act. 24-4.7-1-1.

### *What types of telephone calls and texts are prohibited by the TCPA?*

It is unlawful to make any non-emergency, non-consensual calls using an automatic telephone dialing system (ATDS) or an artificial or prerecorded voice to any telephone number assigned to a paging service, cellular telephone service, or any other service for which the called party is charged for the call. Additionally, the TCPA prohibits making telephone solicitation calls to any residential telephone number that is registered on the National Do-Not-Call Registry Privacy, Cybersecurity, and Data Breach Litigation: Key Laws and Considerations.

The TCPA also restricts the use of autodialers and prerecorded calls, requiring businesses to obtain express written consent before calling an individual at a wireless number. The statute also bars autodialers from engaging multiple lines of a business or using autodialers to determine if a line is a telephone or voice line. Prerecorded calls must have express consent from the individual unless the call is for emergency purposes, made on behalf of a nonprofit entity, or delivers a healthcare message

Indiana law also includes the transmission of text messages, graphic messages, images, photographs, or multimedia messages to a telephone number through various messaging services as part of the prohibited activities

There are specific exemptions under Indiana law, such as messages from school districts to students, parents, or employees, messages to subscribers with whom the caller has a current business or personal relationship, and messages advising employees of work. Additionally, commercial telephone solicitations are defined as unsolicited calls to subscribers without a prior business or personal relationship, aimed at soliciting the purchase of goods or services.

### ***What are the exceptions or defenses to a claim for violation of the TCPA?***

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### ***What are the penalties and damages resulting from a violation of the TCPA?***

A caller who violates the Indiana TCPA commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4 and is subject to the remedies and penalties outlined in IC 24-5-0.5-4(c), IC 24-5-0.5-4(d), and IC 24-5-0.5-4(f). Additionally, the violator is subject to a civil penalty of up to \$10,000 for the first violation and up to \$25,000 for each subsequent violation. IC 24-5-14-13.

The attorney general may also seek civil penalties to be deposited into the consumer protection division telephone solicitation fund for the administration and enforcement of the chapter. Penalties and remedies under IC 24-5-0.5-4 include the possibility of injunctions, recovery of money obtained through the violation, reasonable costs of investigation, attorney's fees, and costs of the action. 24-4.7-5-2. For knowing or intentional violations, additional penalties may apply, such as a civil penalty of \$1,500 for each knowing or intentional violation and \$500 for other violations. 24-5-0.5-4.

### ***What is the relationship between the TCPA and the federal Do Not Call Regulations?***

There is no relationship between the Indiana Telephone Solicitation of Consumers Act and federal Do Not Call regulations. Indiana has its own Do Not Call list that does not incorporate the federal Do Not Call list.

### ***What are the Current Best Practices to Comply with the TCPA?***

- No-Call List Compliance: Ensure that your organization does not make telephone sales calls to any numbers listed on the Indiana no-call list. This list is updated quarterly and is available for a fee from the Consumer Protection Division of the Office of the Attorney General.
- Disclosure Requirements: When engaging in telemarketing, promptly and clearly disclose the purpose of the call. If the call is for selling goods or services, this must be stated upfront, along with other relevant information such as the nature and price of the goods or services.
- Prohibited Practices: Avoid making unsolicited calls using an automatic telephone dialing system or an artificial or prerecorded voice to any mobile telephone number or residential telephone line without prior consent from the called party. Additionally, do not transfer live calls to other persons if the initial call was made in violation of the Act.
- Consumer Rights Notification: Inform Indiana residents of their rights under the Act, including their ability

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to place their telephone numbers on the no-call list and the prohibitions against certain types of calls. This includes notifying them about the National Do Not Call Registry operated by the Federal Trade Commission.