

HALLORAN SAGE
Hartford, Connecticut
www.halloransage.com

Joseph Fortner
fortner@halloransage.com

Massachusetts

Does your state have its own version of the TCPA?

Yes.

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

While in many ways similar to the Federal TCPA, Massachusetts' version has the following distinctions:

- Massachusetts limits telemarketing calls between 8:00 a.m. and 8:00 p.m.ⁱ
- Massachusetts requires a telephone solicitor shall disclose (1) that the purpose of the telephone call is to make a sale or solicit funds; (2) the correct name of the telemarketing company that employees the individual telemarketer making the call; (3) the correct name of the ultimate seller whose goods or services are being offered by means of the telemarketing call; and (4) a complete and accurate description of the goods or services being offered including, but not limited to, the retail market value of the goods or services, within the first minute of the call.ⁱⁱ
- Massachusetts maintains its own Do-Not-Call list.
- A violation of the Massachusetts TCPA may result in a civil penalty of not more than \$5,000 for each knowing violation. If the consumer is over 65 years of age, a knowing violation fine cannot be less than \$1,500.ⁱⁱⁱ
- In a civil proceeding involving a violation of the Massachusetts TCPA, the prevailing party is entitled to attorneys' fees and costs.^{iv}
- Massachusetts law specifically provides as a defense that the telemarketer has established and implemented, with due care, reasonable practices and procedures to prevent violations of this chapter.

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

While some will try to pair a violation of Chapter 93A, which prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce, "the case law is clear that a statutory violation is not a *per se* violation of ch. 93A."^v

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

- Massachusetts maintains its own Do-Not-Call list. Make sure you subscribe to the Massachusetts' do-not-call list as well as the Federal list as a consumer may only be on one list.
- Ensure calls are only made during the allotted window.
- Create a script to ensure the required information is disclosed within the first minute of the call.
- Massachusetts is a two-party consent state; if you intend to record calls make sure you obtain the required consent.

ⁱ Mass. Gen. Laws 159C, §3.

ⁱⁱ Mass. Gen. Laws 159C, §5A.

ⁱⁱⁱ Mass. Gen. Laws 159C, §8.

^{iv} Mass. Gen. Laws 159C, §8.

^v *Jones v. Experian Info. Sols., Inc.*, 141 F. Supp. 3d 159, 163 (D. Mass. 2015).