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Does your state have its own version of the TCPA?

No, Michigan does not have its own version of the Telephone Consumer Protection Act ("TCPA").

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

Not applicable.

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

The TCPA is often paired with Michigan's Home Solicitation Sales Act, both of which prohibit certain types of telemarketing calls. For example, they both prevent automated calls and calls to individuals on the federal do-not-call registry. See *Dobronski v. NPS, Inc.*, No. 356617, 2022 WL 1194212, at *3 (Mich. Ct. App. Apr. 21, 2022) (citing to 47 USC 227(b)(1)(A)(iii); 47 CFR 64.1200(a)(1)(iii), (c)(2), and (e); MCL 445.111a(1) and (5)). Both acts also provide a private right of action that imposes fines for violations of the acts. 47 USC 227(b)(3); MCL 445.111c(3).

Michigan's Home Solicitation Sales Act

Under MCL § 445.111(a), "'Home solicitation sale' means a sale of goods or services of more than \$25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller." *Id.* Home solicitation sale does not include any of the following:

- "(i) A sale made pursuant to a preexisting revolving charge account,
- (ii) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale,
- (iii) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance,
- (iv) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale,
- (v) A sale made pursuant to a printed advertisement in a publication of general circulation,

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- (vi) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services, [and]
- (vii) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.”

Mich. Comp. Laws § 445.111 (a)(i–vii).

Further, MCL § 445.111(f) defines “written solicitation” as a “postcard or other written notice delivered to a buyer’s residence that requests that the buyer contact the seller or seller’s agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service.” *Id.*

MCL § 445.111(m) defines “telephone solicitation” as “any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call.” *Id.* It does not include any of the following:

- (i) A voice communication to a residential telephone subscriber with that subscriber’s express invitation or permission prior to the voice communication,
- (ii) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g).
- (iii) A voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

Mich. Comp. Laws § 445.111(m).

Michigan’s Home Solicitation Sales Act – Unfair and Deceptive Acts or Practices by Telephone Solicitors

Moreover, under MCL § 445.111c(1), “[i]t is an unfair or deceptive act or practice and a violation of this act for a telephone solicitor to do any of the following:

- (a) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, all of the following information:
 - (i) Total purchase price to the consumer of the goods or services to be received.
 - (ii) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of an offer to sell goods or services.
 - (iii) Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to cancel a home solicitation sale under section 21 and, if applicable, that the seller does not have a refund, cancellation, or exchange policy.
 - (iv) Any material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the “no purchase required” method of entering the contest.
 - (v) Any material aspect of an investment opportunity the seller is offering, including, but not limited

to, risk, liquidity, earnings potential, market value, and profitability.

- (vi) The quantity and any material aspect of the quality or basic characteristics of any goods or services offered.
- (vii) The right to cancel a sale under this act, if any.
- (b) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.
- (c) Make a false or misleading statement with the purpose of inducing a consumer to pay for goods or services.
- (d) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization. As used in this subdivision, "verifiable authorization" means a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.
- (e) Offer to a consumer in this state a prize promotion in which a purchase or payment is necessary to obtain the prize.
- (f) Fail to comply with the requirements of section 1a or 1b.2
- (g) Make a telephone solicitation to a consumer in this state who has requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation is made.
- (h) While making a telephone solicitation, misrepresent in a message left for a consumer on his or her answering machine or voice mail that the consumer has a current business matter or transaction or a current business or customer relationship with the telephone solicitor or another person and request that the consumer call the telephone solicitor or another person to discuss that matter, transaction, or relationship.

Mich. Comp. Laws § 445.111c.

Michigan's Home Solicitation Sales Act – Civil and Criminal Penalties

MCL § 445.111c(3) provides a private right of action and states: "[a] person who suffers loss as a result of violation of this section may bring an action to recover actual damages or \$250.00, whichever is greater, together with reasonable attorney fees. This subsection does not prevent the consumer from asserting his or her rights under this act if the telephone solicitation results in a home solicitation sale, or asserting any other rights or claims the consumer may have under applicable state or federal law." *Id.*

Note that under MCL § 445.112, a "buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with this act." *Id.*

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

Businesses should follow several best practices to comply with Michigan's Home Solicitation Sales Act including but not limited to:

- Provide a written contract with clear and conspicuous terms,
 - Include a complete description of the goods or services sold, the total price including taxes, fees, and additional charges, a statement of the consumer's right to cancel the contract within three days under MCL § 445.112, and the seller's contact information.

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- Do not engage wrongful tactics
 - Avoid making misrepresentations about the goods or services.
 - Avoid misleading sales practices such as false promises or exaggerating benefits.
- Consult legal counsel for questions regarding compliance
 - Should you need assistance complying with Michigan's Home Solicitation Sales Act, it is encouraged to seek legal expertise to ensure your business is in full compliance with this Act and other applicable regulations.