

North Carolina

Christopher A. Page

chris.page@youngmoorelaw.com

Matthew C. Burke

matthew.burke@youngmoorelaw.com

Does your state have its own version of the TCPA?

Yes, North Carolina has enacted its own state statute which restricted telephone solicitations and which provides a private right of action for violations. N.C. Gen. Stat. § 75-100, *et seq.*

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

North Carolina's version of the TCPA bans "telephone solicitations" (calls or texts over phone lines or mobile networks "for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation") to any phone number that appears on the "Do Not Call" Registry or to any phone number belonging to a person who has previously communicated to the telephone solicitor that they do not want to receive further telephone solicitations to that number. N.C. Gen. Stat. §§ 75-101(9), 75-102(a)-(b).

Similar to the federal TCPA, the NC act also restricts the use of an automatic dialing and recorded message player to make unsolicited telephone calls, except by tax-exempt charitable or civic organizations, political candidates or parties, government officials, or polling organizations. N.C. Gen. Stat. § 75-104(a)-(b).

There is no liability under the statute for telephone solicitations to a number on the "Do Not Call" Registry if the telephone solicitor has the telephone subscriber's "prior express invitation or permission" for the solicitation or if the telephone subscriber has an "established business relationship" with the telephone solicitor. N.C. Gen. Stat. § 75-103(a)(1)-(2). If there is a dispute about whether the telephone subscriber provided the telephone solicitor express permission for telephone solicitations, the telephone solicitor has the burden to show such permission "by producing the original document, a facsimile document, or an electronic form, signed by the telephone subscriber, or other authentication that evidences permission." N.C. Gen. Stat. § 75-103(e). The act also does not prohibit telephone solicitations for "sale of a subscription for a newspaper of general circulation." N.C. Gen. Stat. § 75-103(a)(6).

The statute prohibits telephone solicitors from

- Making a telephone solicitation before 8:00 AM or after 9:00 PM, N.C.

North Carolina

Gen. Stat. § 75-102(f),

- Using “threats, intimidation, or the use of profane or obscene language” or, N.C. Gen. Stat. § 75-102(h),
- transmitting misleading information regarding the origin of the telephone solicitation, N.C. Gen. Stat. § 75-102(i).

The statute also puts an affirmative obligation on “telephone solicitors” to do the following:

- “At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.” N.C. Gen. Stat. § 75-102(c)(1).
- “Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.” N.C. Gen. Stat. § 75-102(c)(2).
- “If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber's name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.” N.C. Gen. Stat. § 75-102(c)(3).
- “If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.” N.C. Gen. Stat. § 75-102(c)(4).
- “Inquire whether the telephone subscriber is under 18. If the telephone subscriber purports to be less than 18 years of age, the telephone solicitor shall discontinue the call immediately.” However, “No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts who are less than 18 years of age from its list of subscribers being contacted or can demonstrate that it does not target subscribers who are less than 18 years of age.” N.C. Gen. Stat. § 75-102(g).
- keep records up to 24 months of each person who makes telephone solicitations on behalf of the telephone solicitor. N.C. Gen. Stat. § 75-102(j).
- implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the “Do Not Call” Registry.” N.C. Gen. Stat. § 75-102(d).
- “train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures.” N.C. Gen. Stat. § 75-102(d).
- “ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded.” N.C. Gen. Stat. § 75-102(d).

The act also invalidates any contract entered into during a telephone solicitation unless:

- “The contract and the sales representations that precede it are not deceptive or abusive telemarketing acts or practices as elaborated in sections 310.3 and 310.4 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.”
- “The telephone solicitor has complied with the record keeping requirements of section 310.5 of the Telemarketing Sales Rule only to the extent that this Article requires telephone solicitors to comply with these regulations.”
- “The contract and the sales representations that precede it comply with all other applicable federal and

North Carolina

State laws, including Article 1 of [Chapter 75, which generally prohibits unfair and deceptive trade practices in commerce].”

N.C. Gen. Stat. § 75-102(o).

The statutory damages available in a private action for violations of the NC statute differ from statutory damages available under the TCPA. While the TCPA provides for recovery of \$500 per violation and \$1500 per willful violations, 47 U.S.C. § 227(b)(3), North Carolina’s act provides a private right of action to recover \$500 for the first violation, \$1,000 for the second violation, and \$5,000 for the third and any other violation that occurs within two years of the first violation, N.C. Gen. Stat. § 75-105(b). North Carolina’s act also authorizes attorneys’ fee awards against the defendant for willful violations of the statute or against the plaintiff for filing an action under the statute that the plaintiff knew or should have known was frivolous and malicious. N.C. Gen. Stat. § 75-105(d).

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

Generally, defendants facing a claim under North Carolina’s act restricting telephone solicitations should also expect to see a claim for unfair and deceptive trade practices under N.C. Gen. Stat. § 75-1.1. The act generally prohibits acts in commerce which are “unfair or deceptive,” which may be implicated by telephone solicitation conduct. This statute does not have a statutory damages provision but would allow the consumer to recover actual damages caused by the actionable conduct, treble or punitive damages (but not both of those), and attorneys’ fees. N.C. Gen. Stat. § 75-16, -16.1.

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

To comply with the statute, businesses who use telephone solicitations should do all of the following:

- “At the beginning of the telephone solicitation, state clearly the identity of the telephone solicitor and identify the individual making the telephone solicitation.” N.C. Gen. Stat. § 75-102(c)(1).
- “Upon request, provide the telephone subscriber with the telephone number or address at which the telephone solicitor may be contacted.” N.C. Gen. Stat. § 75-102(c)(2).
- “If the telephone subscriber requests to be taken off the contact list of the telephone solicitor, the telephone solicitor shall take all steps necessary to remove the telephone subscriber’s name and telephone number from the contact list of the telephone solicitor and stop calling the telephone subscriber within 30 business days.” N.C. Gen. Stat. § 75-102(c)(3).
- “If the telephone subscriber objects to the telephone solicitation, terminate the telephone solicitation and promptly disconnect from the telephone line of the person receiving the call.” N.C. Gen. Stat. § 75-102(c)(4).
- “Inquire whether the telephone subscriber is under 18. If the telephone subscriber purports to be less than 18 years of age, the telephone solicitor shall discontinue the call immediately.” However, “No inquiry is required where the solicitor has taken reasonable steps to remove all telephone contacts who are less than 18 years of age from its list of subscribers being contacted or can demonstrate that it does not target subscribers who are less than 18 years of age.” N.C. Gen. Stat. § 75-102(g).
- keep records up to 24 months of each person who makes telephone solicitations on behalf of the telephone solicitor. N.C. Gen. Stat. § 75-102(j).
- implement systems and written procedures to prevent further telephone solicitations to any telephone

North Carolina

subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the “Do Not Call” Registry.” N.C. Gen. Stat. § 75-102(d).

- “train, monitor, and enforce compliance by its employees and shall monitor and enforce compliance by its independent contractors in those systems and procedures.” N.C. Gen. Stat. § 75-102(d).
- “ensure that lists of telephone numbers that may not be contacted by the telephone solicitor are maintained and recorded.” N.C. Gen. Stat. § 75-102(d).

The North Carolina act provides a safe harbor for telephone solicitors to avoid liability in an action brought by a consumer for violations if the telephone solicitor can show that the violation was “the result of mistake” and that the telephone solicitor “implement systems and written procedures to prevent further telephone solicitations to any telephone subscriber who has asked not to be called again at a specific number or numbers or whose telephone number appears in the ‘Do Not Call’ Registry.” N.C. Gen. Stat. § 75-105(c).

