

Nebraska

Does your state have its own version of the TCPA?

Yes. Nebraska has the Automatic Dialing-Announcing Devices Act (NEB. REV. STAT. §§ 86-236 to 86-257). This Act corresponds with many of the provisions of the federal TCPA, although it adopts standards specific to Nebraska law.

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

The definition of an “automatic dialing-announcing device” differs slightly from the TCPA. In Nebraska, an “automatic dialing-announcing device” is defined as a device which selects and dials telephone numbers and automatically plays a recorded message. NEB. REV. STAT. § 86-238.

Nebraska’s Automatic Dialing-Announcing Devices Act provides additional requirements for telephone solicitations to residential lines in § 86-248. The Public Service Commission may administratively fine any person in violation of the Automatic Dialing-Announcing Devices Act. NEB. REV. STAT. § 86-257.

Further, under subsection (1) of § 86-248, the individual may only call residential lines with an automatic dialing-announcing device if the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller. The minimum standards for do-not-call lists in Nebraska are listed in subsection (2) of § 86-248.

Nebraska does not allow an individual to use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. NEB. REV. STAT. § 86-245.

If an individual is using an automatic dialing-announcing device *other than for telephone solicitations*, requirements on the registration of the device and the technique of the call apply. NEB. REV. STAT. § 86-256(1)-(2).

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

The Public Service Commission has several avenues for recourse when an individual violates the Automatic Dialing-Announcing Devices Act, including to:

- Seize, without a warrant, any automatic dialing-announcing device when the operation of which does not conform to the requirements imposed by the Act. NEB. REV. STAT. § 86-254.
- Conduct investigations and enforce the Act. NEB. REV. STAT. § 86-253.

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- Enter a cease and desist order on an ex parte basis, upon written complaint and supporting affidavit that an applicable law, rule, or regulation has been or is being violated, against the party named in the complaint. NEB. REV. STAT. § 86-253.
- Revoke or suspend a permit for failure to comply with an applicable law, rule, or regulation, in addition to any criminal or other penalties. NEB. REV. STAT. § 86-253.
- Administratively fine any person who violates the Act or its rules and regulations. NEB. REV. STAT. § 86-257. As stated in NEB. REV. STAT. § 75-156, a civil penalty of up to ten thousand dollars per day may be assessed against any person for each violation.

Nebraska has several other statutes that relate generally to telecommunications consumer protections, including:

- Telephone Consumer Slamming Protection Act: Designed to ensure that all subscribers all protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service. (NEB. REV. STAT. §§ 86-201 to 86-211)
- Telemarketing and Prize Protections Act: Requirements for prize promotions and payments attached to such prizes. (NEB. REV. STAT. §§ 86-212 to 86-235)
- Intrastate Pay-Per-Call Regulation: Rules and regulations for telecommunications services which permit simultaneous calling by a large number of callers to a single telephone number. (NEB. REV. STAT. §§ 86-258 to 86-270)

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

Calls should meet several requirements, both in the substance of the call and the technique of the call.

NEB. REV. STAT. § 86-247 states that all telephone solicitation messages transmitted by an automatic dialing-announcing device shall:

- At the beginning of the message, state clearly the identity of the person making the call; and
- During or after the message, state clearly the telephone number, other than that of the device which made the call, or address of such person.

Two or more telephone lines of a business with a multiline telephone system cannot be engaged simultaneously. NEB. REV. STAT. § 86-246. If an automatic dialing-announcing device is delivering a recorded message to a person, it shall release the telephone line of the person called within five seconds of the time a notification is transmitted to the device that the person called has hung up. NEB. REV. STAT. § 86-249. This is to ensure that the telephone line of the person called is able to be used to make or receive other calls.

An automatic dialing-announcing device cannot be used to dial telephone numbers sequentially, which means in any manner other than a random manner. NEB. REV. STAT. § 86-251. A detectable, predictable pattern which can be used to accurately project the device's number dialing will satisfy a finding that sequential number dialing is taking place in violation of this section. *Id.*

A person intending to use an automatic dialing-announcing device should ensure they have the correct permits from the Commission before using the device.

Nebraska's Automatic Dialing-Announcing Devices Act provides the procedure for obtaining a permit from the Public Service Commission in order to operate an automatic dialing announcing device to make telephone

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solicitations. NEB. REV. STAT. § 86-250(1). Any person using an automatic dialing-announcing device *other than for telephone solicitations* shall register the device with the Commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the message to be used. NEB. REV. STAT. § 86-256(1).

A caller should institute procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations made by or on behalf of the caller.

NEB. REV. STAT. § 86-248 (2) states that such procedures must meet minimum standards, including that:

- A written policy, available upon demand, for maintaining a do-not-call list must be established
- Personnel engaged in any aspect of telephone solicitation must be informed of the existence of and trained in the use of the do-not-call list

If a person making a telephone solicitation, or on whose behalf a solicitation is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, they must record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. NEB. REV. STAT. § 86-248(2)(c). If these requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation is made, the person on whose behalf the solicitation is made shall be liable for any failure to honor the do-not-call request. *Id.*