

## New Jersey

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### Does your state have its own version of the TCPA?

Yes, but New Jersey residents do not have a private right of action under the relevant statutes for unsolicited telephone calls or text messages. The statutes are enforced by the New Jersey Division of Consumer Affairs. An aggrieved person, however, does have a private right of action for unsolicited facsimiles.

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

New Jersey provides for protections against unsolicited telephone calls under its Do Not Call Law, N.J.S.A. 56:8-119 - 56:8-135 as follows:

- During the first 30 seconds of a telemarketing call, telemarketers calling New Jersey residents must accurately identify the name and telephone number of the entity it is calling on behalf of.
- Telemarketers are required to disclose their mailing addresses on any websites that they own or operate and in any written communications to consumers.
- Telemarketers may not make sales calls to New Jersey residents who are on the federal Do-Not-Call registry (there are exemptions, including calls from charities, political organizations, and pollsters).
- Telemarketers may not call New Jersey residents between the hours of 9 p.m. and 8 a.m.
- Telemarketers may not intentionally block the use of caller identification.
- Telemarketers or sellers that carry out “any plan, program or campaign” to sell merchandise to consumers in New Jersey must register with Consumer Affairs annually and disclose certain information about their business operations and principals.
- Telemarketers and sellers must maintain in-house Do-Not-Call lists pertaining to “existing customers” who have said they do not want to receive sales calls.
- Violations of the Do Not Call law may result in a penalty of not more than \$10,000 for the first offense and not more than \$20,000 for the second and each subsequent offense.

New Jersey provides for protection against unsolicited text messages under the Unsolicited Advertising by Text Messaging and the Blocking of Text Messaging, N.J.S.A. 2A:65D-1 – 2A:65D-5, as follows:

- Unsolicited advertisements by text message may not be sent to New

Jersey residents if the recipient may incur a telecommunications charge or a usage allocation deduction as a result of the message being sent.

- Unsolicited advertisement by text messaging may not be sent to New Jersey residents without first receiving prior express authorization from the intended recipient that includes the number to which the text message advertisement may be sent. The permission may be revoked at any time with a request that includes the number for which permission is being revoked.
- No telecommunications company shall sell, or offer to sell, text messaging services to its New Jersey customers unless the company also offers an option to block all incoming and outgoing text messages that result in telecommunications charges or usage allocation deductions (however, the telecommunications company may send text messages to its New Jersey customers concerning their existing accounts if the customer does not incur a charge or a usage allocation deduction as a result of the message being sent).
- A person who violates this statute shall be subject to a civil penalty in an amount not to exceed \$500 for the first violation and \$1,000 for each subsequent violation collectible by the New Jersey Attorney General.

New Jersey provides protections against unsolicited facsimiles under the New Jersey Junk Fax Act, N.J.S.A. 56:8-157 – 56:8-160, as follows:

- Applies only to unsolicited facsimiles sent from within New Jersey to a fax machine in New Jersey.
- It is not a violation if there is an existing business relationship between the sender of the unsolicited advertisement and the recipient and there is a clear and conspicuous notice on the first page of the unsolicited advertisement that (1) discloses that the recipient may request the sender not to send any future unsolicited advertisements; and (2) provides the domestic address and facsimile machine number for the recipient to transmit such a request to the sender.
- To be effective, a request not to send future unsolicited advertisements to a fax machine must: (1) identify the telephone number of the fax machine to which the request relates; (2) be made to the sender's domestic address or the fax machine number of the sender provided in the notice to the recipient; and (3) be sent in written form to the sender's domestic address or sent by return facsimile to the sender's facsimile machine number.
- A person violating the statute is subject to a penalty of not more than \$500 per occurrence or the actual damages caused by the violation, whichever is greater, together with costs of suit and reasonable attorney's fees. If plaintiff establishes that the sender failed to honor a proper notification to stop sending such unsolicited advertisements, the violator is further subject to actual damages or \$1,000 for each transmission, whichever amount is greater, together with costs of suit and reasonable attorney's fees, not to exceed \$1,000.

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

The New Jersey Consumer Fraud Act (CFA), N.J.S.A. 56:8-1, et seq., is a law that seeks to protect consumers from unfair and deceptive business practices, but is not typically paired with TCPA claims because there is no private right of action under the New Jersey law for unsolicited telephone calls or text messages.

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

Best practices include the following:

- Register annually with the New Jersey Division of Consumer Affairs;
- Do not call phone numbers on the Do Not Call Registry;
- Respect and timely process opt-out requests within thirty days of the customer's request;
- Maintain all customer's express written permission to allow telemarketing sales calls or text;
- Maintain a list of names and telephone numbers of customers who have requested not to receive advertisements that is continually updated and is no older than three months from the date of solicitation;
- Maintain records of any sales scripts and written materials used for telemarketing purposes; and
- Train employees in telemarketing rules and procedures.