

## Ohio

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

No.

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

#### The Ohio Consumer Sales Practices Act.

Ohio does not have its own version of the TCPA. The Ohio Supreme Court has also held that sending an unsolicited facsimile to an individual in violation of the TCPA is not a violation of the primary Ohio consumer protection statute, the Ohio Consumer Sales Practices Act (the “OCSPA”<sup>1</sup>) unless the communication itself is unfair and deceptive or unconscionable.<sup>2</sup>

A consumer practice is unfair and deceptive under the OCSPA if it misleads consumers about the nature of the product they are receiving.<sup>3</sup> Intent to deceive is not required for a practice to be found to be unfair or deceptive.<sup>4</sup> The OCSPA lists ten practices by suppliers that are *per se* unfair and deceptive.<sup>5</sup>

A consumer practice is unconscionable if it manipulates the consumer’s understanding of the transaction at issue.<sup>6</sup> An unconscionable practice must be “knowing,” but that has been defined as only requiring a knowing act, rather than requiring knowledge the conduct is unlawful.<sup>7</sup> The OCSPA provides a list of factors to be considered in determining whether a practice is unconscionable.<sup>8</sup>

The OCSPA allows a consumer to recover his or her actual damages and up to \$5,000 in noneconomic damages in an individual action.<sup>9</sup> In addition, if a practice has previously been found to be deceptive or unconscionable in an administrative rule or in a case published for public inspection by the Ohio Attorney General, the consumer may rescind the transaction, or recover, but not in a class action, three times the amount of the consumer's actual economic damages or two hundred dollars, whichever is greater, plus an amount not exceeding five thousand dollars in noneconomic damages, or recover damages or other appropriate relief in a class action under Civil Rule 23.<sup>10</sup> The Ohio Attorney General maintains a list of cases published for public inspection on its website.<sup>11</sup>

A trial court also has discretion to award attorneys’ fees for a knowing violation of the OCSPA.<sup>12</sup> To show a knowing violation of the OCSPA a “plaintiff need prove only that the defendant intended to commit the act of violation and not that the conduct was intended to violate the act. . .”<sup>13</sup>

## The Ohio Telephone Solicitation Act.

In addition, Ohio has a statute regulating telephone solicitors.<sup>14</sup> The statute requires telephone solicitors to register with the State of Ohio<sup>15</sup> and comply with various other requirements.<sup>16</sup> Telephone solicitors are defined as persons that engage “in telephone solicitation directly or through one or more salespersons either from a location in this state, or from a location outside this state to persons in this state.”<sup>17</sup> “Telephone solicitor includes, but is not limited to, any such person that is an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of, a business.”<sup>18</sup> Telephone solicitation in turn is defined as a communication by a telephone solicitor or salesperson acting on behalf of a telephone solicitor that “either represents a price or the quality or availability of goods or services or is used to induce the person to purchase goods or services, including, but not limited to, inducement through the offering of a gift, award, or prize.”<sup>19</sup> A communication:

means a written or oral notification or advertisement that meets both of the following criteria, as applicable:

(a) The notification or advertisement is transmitted by or on behalf of the seller of goods or services and by or through any printed, audio, video, cinematic, telephonic, or electronic means.

(b) In the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) The notification or advertisement is followed by a telephone call from a telephone solicitor or salesperson.

(ii) The notification or advertisement invites a response by telephone, and, during the course of that response, a telephone solicitor or salesperson attempts to make or makes a sale of goods or services. As used in division (A)(2)(b)(ii) of this section, “invites a response by telephone” excludes the mere listing or inclusion of a telephone number in a notification or advertisement.

The statute includes a number of broad exceptions to the definition of a telephone solicitation,<sup>20</sup> for example one time or infrequent transactions<sup>21</sup>, communications for charitable or political purposes<sup>22</sup>, communications by financial institutions<sup>23</sup>, or by insurance companies.<sup>24</sup> Violations of the statute can subject a telephone solicitor to civil penalties,<sup>25</sup> criminal penalties,<sup>26</sup> and a consumer can recover at least the amount paid to the solicitor as well as attorneys’ fees.<sup>27</sup> In addition, certain violations also can be enforced by a consumer as violations of the OCSPA.<sup>28</sup>

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

So long as a telephone solicitor, as defined in R.C. 4719.01(A)(8), complies with the requirements of that act, compliance with the TCPA will comply with Ohio law.<sup>29</sup>

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<sup>1</sup> R.C. 1345.01 *et seq.*

<sup>2</sup> *Culbreath v. Golding, Ents., L.L.C.*, 114 Ohio St.3d 357, 2007-Ohio-4278, 872 N.E.2d 284, ¶ 29-31.

<sup>3</sup> *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio 4985, 834 N.E.2d 791, ¶ 23.

<sup>4</sup> *Frank v. WNB Group, LLC*, 2019-Ohio-1687, 135 N.E.3d 1142, ¶ 30 (1st Dist.).

<sup>5</sup> R.C.1345.02(B).

<sup>6</sup> *Johnson v. Microsoft Corp.*, 106 Ohio St.3d 278, 2005-Ohio 4985, 834 N.E.2d 791, ¶ 24.

<sup>7</sup> *Einhorn v. Ford Motor Co.*, 48 Ohio St.3d 27, 548 N.E.2d 933 (1990).

<sup>8</sup> R.C. 1345.03(B).

<sup>9</sup> R.C. 1345.09(A).

<sup>10</sup> R.C. 1345.09(B).

<sup>11</sup> <https://opif.ohioattorneygeneral.gov/>

<sup>12</sup> R.C. 1345.09(F).

<sup>13</sup> *Charvat v. Ryan*, 116 Ohio St.3d 394, 2007-Ohio-6833, 879 N.E.2d 765, ¶ 27.

<sup>14</sup> R.C. 4719.01 *et seq.*

<sup>15</sup> R.C. 4719.02.

<sup>16</sup> *See, e.g.*, R.C. 4719.04 (posting bond); R.C. 4719.05 (registration of prizes); R.C. 4719.06 (disclosure requirements; R.C. 4719.07 (written confirmation requirements); R.C. 4719.08 (prohibited transactions).

<sup>17</sup> R.C. 4719.01(A)(8).

<sup>18</sup> R.C. 4719.01(A)(7).

<sup>19</sup> R.C. 4719.01(A)(2).

<sup>20</sup> R.C. 4719.01(B).

<sup>21</sup> R.C. 4719.01(B)(1).

<sup>22</sup> R.C. 4719.02(B)(2).

<sup>23</sup> R.C. 4719.02(B)(9).

<sup>24</sup> R.C. 4719.01(B)(10).

<sup>25</sup> R.C. 4719.12.

<sup>26</sup> R.C. 4719.99.

<sup>27</sup> R.C. 4719.15.

<sup>28</sup> R.C. 4719.14.