

## Rhode Island

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

Yes. Rhode Island's TCPA equivalent is the "Telephone Sales Solicitation Act" ("TSSA"), codified as R.I. Gen. Laws § 5-61-1, *et seq.*

The TSSA generally governs "telephone solicitation," defined as "the engagement of a telephone conversation for the purpose of encouraging a person to purchase personal property, investment opportunities, goods or services, or for the purpose of gathering information for sales solicitation." *Id.* The TSSA generally applies to telemarketing and other forms of telephonic solicitation conducted within the state.

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

There are several key distinctions (discussed in further detail below) between Rhode Island's TSSA and the TCPA:

- The Rhode Island TSSA is primarily enforced by the Office of the Attorney General's Consumer Protection Unit and requires "a telephone sales solicitation operation or telephonic seller" to register not less than 10 days prior to doing business in Rhode Island. *See* R.I. Gen. Laws § 5-61-3.
- In addition to civil remedies, the TSSA provides for criminal penalties, including imprisonment for up to one year for willful violations.
- Pursuant to Section 5-61-3.1 of the TSSA, a security in the amount of \$30,000 or greater must be filed as part of registration.

### Registration

The TSSA requires sales solicitation operations to register with the Consumer Protection Unit of the Office of the Attorney General not less than 10 days prior to doing business in Rhode Island. *See* R.I. Gen. Laws § 5-61-3. Registrations are subject to specific filing requirements and must be renewed annually. *Id.*

### Filing (Information Required)

Registration requirements for filing with the Consumer Protection Unit of the Attorney General's Office are enumerated in R.I. Gen. Laws § 5-61-4. Each filing must generally include a seller's form and place of organization, including a copy of its articles of incorporation, bylaws and amendments, and information pertaining to parent or affiliated organizations. *See id.*

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Importantly, the seller's officers, directors, trustees, general and limited partners, sole proprietors, owners, and other persons having management responsibilities must disclose in a statement: convictions of a felony or misdemeanor involving an alleged violation of the TSSA, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. See R.I. Gen. Laws § 5-61-4(8). Sellers subject to the TSSA must also disclose final judgments in civil or administrative actions, effective injunctions or restrictive court orders relating to business activity, and bankruptcies within seven (7) years of filing. See *id.*

### Security

Unlike its federal counterpart, Section 5-61-3.1 of the TSSA makes confirmation of registration conditional upon filing one (1) of the following securities:

- (1) A surety bond, written by a company recognized and approved by the commissioner of insurance within the department of business regulation and approved by that department with respect to its form, manner of execution, and sufficiency in due form to the state of Rhode Island; or
- (2) An irrevocable letter of credit issued for the benefit of the telephonic seller by a bank whose deposits are insured by an agency of the federal government; or
- (3) A certificate of deposit in a financial institution insured by an agency of the federal government that may be withdrawn only on the order of the department, except that the interest may accrue to the telephonic seller.

The amount of the bond, letter or certificate of deposit must be a minimum of \$30,000, however, the Attorney General has discretion to establish a greater amount to "ensure the general welfare of the public." See R.I. Gen. Laws § 5-61-3.1(b). The purpose of the security requirement is to indemnify a purchaser for actual damages. The security provision does not limit any other right of recovery and is not relevant in determining damage amounts to which a purchaser shall be entitled.

### General Disclosure Requirements

The TSSA requires sellers to make general disclosures when conducting telephonic solicitation pursuant to Section 5-61-3.3, which reads in full as follows:

- (a) Within the first thirty (30) seconds of a telephone call, a telephonic seller or salesperson shall identify herself or himself by stating her or his true name, the company on whose behalf the solicitation is being made, and the consumer goods or services being sold.
- (b) If a sale or an agreement to purchase is completed, the telephonic seller must inform the purchaser of her or his cancellation rights as provided in this chapter; state the registration number issued by the department for both the telephonic seller and the salesperson; and give the street address of the telephonic seller.
- (c) All oral disclosures required by this section shall be made in a clear and intelligible manner.

R.I. Gen. Laws § 5-61-3.3.

### Enforcement

#### Criminal Penalties

Any person including sellers, salespersons, agents thereof, or independent contractors who willfully violate any provision of the TSSA, or otherwise engage in deceitful or fraudulent conduct in connection with a sale, upon conviction, shall be subject to the following criminal penalties:

- (1) By a fine not exceeding ten thousand dollars (\$10,000) for each unlawful transaction;
- (2) By imprisonment in the state prison for not more than one year; or
- (3) By both fine and imprisonment specified in subsections (1) and (2).

R.I. Gen. Laws § 5-61-5.

#### Civil Remedies

Any purchaser may have a right of action against a seller who materially violates provisions of the TSSA. R.I. Gen. Laws § 5-61-5.1. Purchasers may recover triple the amount actually paid to a telephonic seller, as well as reasonable attorney's fees. *Id.* Injunctive relief relating to a threatened loss or damage is also available under the Act. Additionally, any person, firm, corporation, or other entity who violates the TSSA may be subject to a civil penalty of not more than \$10,000 for each violation. *See* R.I. Gen. Laws § 5-61-5.1(g). The department or court has the discretion to waive fines or costs "if the person has previously made full restitution or reimbursement or has paid actual damages" to purchasers injured by the unlawful act or practice. *See id.*

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

Rhode Island's Deceptive Trade Practices Act (R.I. Gen. Laws § 6-13.1-1, *et seq.*) and Privacy Act (§ 9-1-28.1) are often paired with the TCPA and the TSSA.

#### Deceptive Trade Practices Act (R.I. Gen. Laws § 6-13.1-1, *et seq.*)

The Deceptive Trade Practices Act ("DTPA") prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." R.I. Gen. Laws § 6-13.1-2.

An individual consumer, who suffers any ascertainable loss of money or property as a result of any deceptive practice used or engaged by another person, may bring an action to recover actual damages or \$500, whichever is greater. R.I. Gen. Laws § 6-13.1-5.2. The court may also award punitive damages, in its own discretion, attorneys fees and costs, and other equitable relief it deems appropriate. *See id.* Section 6-13.1-5.2 also authorizes class actions.

The Attorney General may bring an action against any person who violates any of the provisions of the DTPA, for a temporary or permanent injunction, restitution, or appointment of a receiver. R.I. Gen. Laws § 6-13.1-5. A civil penalty may be assessed on any person who violates an injunction issued under the DTPA, in an amount not to exceed \$10,000 per violation. R.I. Gen. Laws § 6-13.1-8.

### Privacy Act (R.I. Gen. Laws § 9-1-28.1)

The Privacy Act affords all persons in Rhode Island a right of privacy, to include the right to be secure from (1) unreasonable intrusion upon one's physical solitude or seclusion; (2) appropriation of one's name or likeness; (3) unreasonable publicity given to one's private life; and (4) publicity that reasonably places another in a false light before the public. *See* R.I. Gen. Laws § 9-1-28.1.

In *Laccinole v. Rocket Mortgage, LLC*, The United States District Court for the District of Rhode Island had occasion to interpret the Privacy Act in the context of unwanted phone calls. *See* 609 F.Supp.2d 68. Borrowing from the Restatement (Second) of Torts, the Court stated that the question of whether an invasion has been plausibly alleged “turns largely on whether the reasonable person would find the ‘persistence and frequency’ of the calls offensive.” *See id.* at 74; *see e.g., Laccinole v. Gulf Coast Collection Bureau, Inc.*, No. CV 22-223-JJM-LDA, 2023 WL 157719 (D.R.I. Jan. 11, 2023) (allegations did not rise to the requisite level of “overwhelming volume and frequency of calls,” where the defendant caller misdirected calls over several months and sent two letters to plaintiff requesting clarification regarding contact information).

### Rhode Island Data Transparency and Privacy Protection Act

On June 29, 2024, the Rhode Island Legislature passed a comprehensive privacy law, the “Rhode Island Data Transparency and Privacy Protection Act (”RIDTPPA”), codified as R.I. Gen. Laws § 6-48.1-1, *et seq.* The RIDTPPA will take effect on January 1, 2026. The RIDTPPA aims to enhance data privacy protection for Rhode Island residents (referred to as “Customers”) while setting guidelines for businesses operating in the state. Several key aspects of the RIDTPPA are as follows:

- The RIDTPPA protects “Personal Data,” defined as “any information that is linked or reasonably linkable to an identified or identifiable individual and does not include de-identified or publicly available information.” *See* R.I. Gen. Laws § 6-48.1-2(18).
- The RIDTPPA applies to any entity that conducts business in the state or produces products or services targeted at Customers and, during the preceding calendar year:
  - (1) Controlled or processed the personal data of not less than thirty-five thousand (35,000) customers, excluding personal data controlled or processed solely for the purpose of completing a payment transaction; or
  - (2) Controlled or processed the personal data of not less than ten thousand (10,000) customers and derived more than twenty percent (20%) of their gross revenue from the sale of personal data.

*See* R.I. Gen. Laws § 6-48.1-4.

- The RIDTPPA enumerates the following rights to Customers to protect and control personal data:
  - Confirm personal data;
  - Access personal data;
  - Correct personal data;
  - Delete personal data;
  - Obtain a copy of personal data in a portable format; and
  - Opt-out of processing of personal data.

*See* R.I. Gen. Laws § 6-48.1-5.

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

To ensure compliance with Rhode Island's TSSA, those subject to the Act should generally consider the following:

- Sellers must institute procedures for maintaining a "no-call" list of persons who do not wish to receive sales calls, in compliance with 47 C.F.R. 64 (the Federal Commerce Commission's restrictions on the use of telephone equipment) or 16 C.F.R. 310 (the Federal Trade Commission's Telemarketing Sales Rule).
- Calls may only be made during the authorized "hours of operation," meaning Monday through Friday (except on state or federal holidays) from 9:00 a.m. to 6:00 p.m., and Saturday from 10:00 a.m. to 5:00 p.m. See R.I. Gen. Laws § 5-61-2.
- Sellers must maintain compliance with Section 5-61-3.3, pertaining to general disclosures, when conducting telephonic solicitations.
- Text message advertisements are generally prohibited under the TSSA. Exceptions to this general prohibition include text messages transmitted from cellular telephone providers or businesses which have an existing relationship with the subscriber, if the subscriber is offered an option to opt out of receiving text messages.
- A telemarketer may use an automatic dialing-announcing device only if: (i) the subscriber has knowingly or voluntarily authorized receipt of the message; or (ii) the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. See R.I. Gen. Laws § 5-61-3.4.