

South Carolina

Does your state have its own version of the TCPA?

Yes. The South Carolina Telephone Privacy Protection Act (SCTPPA), codified at S.C. Code Ann. § 37-21-10, is the state's iteration of the federal Telephone Consumer Protection Act (TCPA).

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

In 1991, Congress enacted the federal Telephone Consumer Protection Act to prohibit robocalls to cell phones, residential telephone lines, emergency telephone lines, and telephone lines of any guest room or patient room of a hospital or similar establishment. *See* 47 U.S.C § 227(b)(1); *see also Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372-73 (2012). At the time, over half the States had enacted legislation aimed at restricting telemarketing. *Id.* at 372. However, Congress determined that federal action was necessary because telemarketers could circumvent state-law prohibitions via interstate operations. *Id.*

In 2018, South Carolina passed its iteration of the federal TCPA, called the South Carolina Telephone Privacy Protection Act. *See* S.C. Code Ann. § 37-21-10. The SCTPPA addresses telemarketing practices in South Carolina, providing for a civil cause of action. The United States District Court for the District of South Carolina held that the “anti-spoofing” provision of the SCTPPA (§ 37-21-50) was preempted by the federal Truth in Caller ID Act (TCIA) and, therefore, unconstitutional. *United Res. Sys., Inc. v. Wilson*, 614 F.Supp.3d 243, 258 (D.S.C. 2022).

Below are some key distinctions between the federal TCPA and the SCTPPA.

TCPA

- Prohibitions
 - Prohibits any call using any automatic telephone dialing system or an artificial or prerecorded voice to any emergency telephone line, any guest room or patient room of a hospital or similar establishment, any cell phone, or any residential line, except for emergency purposes or with the express prior consent of the called party.
 - Prohibits the transmission of unsolicited advertisements via telephone facsimile, computer, or other device to a telephone facsimile machine, unless there is an established business relationship between the sender and the recipient, or the sender obtained the number of the telephone facsimile machine

through voluntary communication of such number or the number was made available for public distribution by the recipient.

- Penalties/Remedies
 - The TCPA provides for criminal fines and civil remedies.
 - Criminal fines up to \$10,000 per violation or three (3) times that amount for each day of a continuing violation.
 - Civil remedies include injunctive relief and/or actual or statutory damages, whichever is greater.
 - Statutory damages are \$500 per violation. Statutory damages may be increased up to three (3) times that amount if the court finds the defendant willfully or knowingly violated the TCPA.
 - Civil Forfeiture
- Affirmative defense to a civil action that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violations of the TCPA.

SCTPPA

- Prohibitions
 - Prohibits telephone solicitation calls at any time other than between the hours of 8:00 AM and 9:00 PM local time without the prior written consent of the consumer.
- Requirements for Telephone Solicitors
 - Requires the telephone solicitor to provide their name and address, or the name and address of the person on whose behalf the call is made.
 - The caller must make several disclosures to the consumer, such as the caller's contact information, the purpose of the call, that no purchase is necessary to receive a prize or participate in a prize promotion if offered, the option to be added to the caller's 'do not call' list if request by the consumer, confirmation that the consumer will be placed on the 'do not call' list, the costs and quantity of any goods or services offered, and information of any policy of not making refunds, exchanges, refunds, cancellations, or repurchases.
 - If the consumer indicates that they do not want to hear the offer, the caller must end the call immediately.
- Remedies
 - The SCTPPA does NOT impose criminal penalties but does provide for a civil remedies.
 - Civil remedies include injunctive relief and recovery of actual losses plus statutory damages up to \$1,000 per violation.
 - If the court finds that the defendant's violation of the SCTPPA was willful, the court may increase the award to \$5,000 per violation.
 - The SCTPPA also provides for recovery of attorney's fees and court costs.
- Defense to an action brought under the SCTPPA includes an unintentional violation resulting from a bona fide error.

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

The Best Practices to Comply with the SCTPPA:

- Do not make telemarketing calls at any time other than between the hours of 8:00 AM and 9:00 PM local time without the prior written consent of the consumer.
- Provide the consumer with sufficient contact information about the person calling or the person on whose behalf the call is being made.
- Provide the consumer with information to make a do-not-call request.
- If a consumer makes a do-not-call request, immediately place that consumer's telephone number on an in-house do-not-call list.
- Immediately terminate the call if the consumer indicates that they do not want to hear the solicitation.
- Keep an up-to-date in-house do-not-call list.
- Each month, obtain/check the updated version of the National Do-Not-Call Registry.
- Do not place calls to telephone numbers listed on the in-house do-not-call list.
- Do not place calls to telephone numbers listed on the National Do-Not-Call Registry.
- Provide the consumer with the required disclosures under S.C. Code Ann. § 37-21-40. (solicitor's contact information, purpose of the call, prize information, option to be added to in-house do-not-call list, etc.).
- If a live telephone solicitor is not available to speak with the consumer within two (2) seconds of the consumer answering the call, there must be a pre-recorded identification and opt-out message that discloses that the call was for solicitation purposes, provides the name and telephone number of the person on whose behalf the solicitation is being made, and a telephone number that allows the consumer to make a do-not-call request during regular business hours. Additionally, there must be an automated, interactive voice-, and/or key press-activated opt-out mechanism that allows the consumer to make a do-not-call request during the phone call, and instructions on how to make the request. See S.C. Code Ann. § 37-21-60.
- Provide the required information in a clear and easy to understand manner so that the consumer can make an informed decision about the solicitation being offered or make a request to be placed on the caller's in-house do-no-call list.