

Texas

Does your state have its own version of the TCPA?

The Texas Telephone Solicitation Act (“TTSA”) is codified in the Texas Business & Commerce Code, Title 10, Subtitle A, Chapter 302. The TTSA regulates attempts by companies to sell or lease property, products, and/or services via telephone solicitation.

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

- The TTSA regulates telemarketing activities within the state of Texas, including the registration of telephone solicitation sellers and the maintenance of a no-call list for electric service providers.
- The TTSA prohibits telephone solicitations, including marketing calls to numbers on the Texas No-Call List, or the Electric No-Call List without prior express consent and authorization. A telemarketer may not make a telemarketing call to a telephone number published on the Texas No-Call List more than 60 days after the date the telephone number appears on the list.ⁱ
- Certain calls are exempt from the TTSA, such as calls made in connection with an established business relationship, calls to collect a debt, or calls made in response to a solicitation by the consumer. There is Texas case law indicating that the TTSA does not apply to text messages.ⁱⁱ In contrast, the TCPA covers text messages and faxes, not only telephone calls.
- As the TCPA, the TTSA also provides for “do not call lists”. But under the TTSA, the list is called the “No Call List” and there is also a list called “Electric No Call List” which allows business to register to avoid telemarketers calls from retail electric providersⁱⁱⁱ.
- The TTSA imposes stricter limits compared to the TCPA. The time restrictions under the TTSA prevent telemarketing and solicitations phone calls before 9:00am and after 9:00pm on weekdays and Saturdays, and before 12:00pm and after 9:00pm on Sundays.^{iv}
- The TTSA requires business engaged in telemarketing and solicitation services to registry with the Texas Secretary of State which includes a \$200.00 filing fee and a \$10,000.00 security deposit. The registration is valid for one year and must be renewed each year.^v

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- Under both statutes, a prevailing plaintiff is entitled to actual damages, injunctive relief and statutory damages of \$500.00 per violation which can increase to \$1,500.00 for willful violations, except that under the TTSA there is cap of \$10,000.00 for statutory damages.^{vi}

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

Not applicable.

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

Telemarketers can assert affirmative defenses, such as proving that the violation was an isolated occurrence and not part of a pattern or practice, provided that they can provide evidence that they have implemented reasonable procedures to prevent such violations. Business engaging in telemarketing services should follow the following measures to avoid violations to the TTSA:

- Ensure that your business is registered with the Texas Secretary of State as required by the TTSA.
- Obtain consent before making calls, sending text messages, or using automated systems. Ensure that the consent is well-documented, preferably in writing. This also applies to unsolicited communications. Avoid sending unsolicited text messages or making robo-calls without prior consent in writing.
- Regularly scrub your contact lists and compare them against the National Do Not Call Registry and the Texas No Call List to avoid contacting individuals who have expressly opted out of telemarketing calls.
- Offer recipients a clear and easy method to opt out of telemarketing and future communications.
- Maintain updated records of consent, communications logs with identifiers of date, time and summary of the conversations and compliance measures to protect your business from disputes.
- If outsourcing telemarketing, ensure that third party vendors have policies and procedures in place to comply with the TTSA.
- Adhere to call time restrictions. The TTSA prohibits telemarketing, and solicitation calls to residential phone numbers before 12 noon and after 9:00 p.m. on a Sunday or before 9:00am and after 9:00pm on weekdays or a Saturday (following the time consumer's time-zone).

ⁱ Tex. Bus. & Com. Code Ann. § 304.052; Tex. Bus. & Com. Code Ann. § 301.102

ⁱⁱ *Horton v. MultiPlan Inc.*, No. 3:23-CV-02098-S-BT, 2024 WL 3380236, at *9 (N.D. Tex. June 7, 2024), report and recommendation adopted, No. 3:23-CV-2098-S-BT, 2024 WL 3378719 (N.D. Tex. July 11, 2024); *Pepper v. GVG Cap. LLC*, 2023 WL 205297, at *4–5 (S.D. Tex. Jan. 17, 2023) (concluding that Chapter 302 did not apply to text messages based on its plain language and *Powers*).

ⁱⁱⁱ 16 Tex. Admin. Code § 25.484

^{iv} Tex. Bus. & Com. Code Ann. § 301.051

^v 1 Tex. Admin. Code § 105.201

^{vi} Tex. Bus. & Com. Code Ann. § 305.053