

Vermont

Does your state have its own version of the TCPA?

Yes. 9 V.S.A. § 2464(e), which is coextensive with the federal TCPA, which was made effective as of July 1, 2023.

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

There is no distinction between Vermont's iteration of the TCPA and the federal TCPA except the obvious difference in geographic scope and enforcement (state vs. federal). The Vermont TCPA, as stated in the statute itself, is intended to be coextensive with the federal TCPA. 9 V.S.A. § 2464(e).

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

Because the Vermont TCPA was only effective as of July 1, 2023, it is too early to state conclusively that other consumer protection statutes are "often" paired with it, but the general provisions of the Vermont Consumer Protection Law, 9 V.S.A. § 2453 (establishing the role of the Attorney General in adopting rules and the violation of those rules as prima facie proof of the commission of an unfair or deceptive act in commerce), and 9 V.S.A. § 2461 (establishing a private right of action), are likely to be paired with the Vermont TCPA, just as they are with other Vermont consumer protection laws.

Pursuant to these statutes, and consistent with federal penalties, a court may issue an award for the greater of a person's damages or a civil penalty of \$500.00 for a first violation and \$1,000.00 for each subsequent violation, and a person who commits a knowing and willful violation of this section shall be imprisoned for not more than 90 days or fined not more than \$1,000.00 per violation, or both.

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

Effective January 27, 2025, per the FTC, businesses must secure customer consent for telemarketing calls and texts on a seller-by-seller basis. Consumers must provide their consent for each separate seller to contact them. Consent must be tied to products or services that are "logically and topically" associated with the consumer's initial inquiry or interaction.

Under the new FTC rules, maintaining clear and verifiable records of consent is more critical than ever. Records should include the date, time, and method of consent; the specific seller(s) and products/services for which consent was granted.; and backup documentation, such as from third-party integrations which document and prove consent with video replays of users interacting with lead forms, to defend against potential litigation. The FTC extended the recordkeeping requirements for the Telemarketing Sales Rules (TSR) from two to five years in 2024, and the statute of limitations for the TCPA is up to six years.

Just as getting opt-in consent is important, the TCPA requires that consumers have clear access to an opt-out. Untracked opt-outs could be a source of litigation. Companies should quickly remove leads from lists and avoid calling consumers who are no longer consenting. The TCPA restricts telemarketing calls to between 8:00 am and 9:00 pm. Similarly, dialing a single lead repeatedly can frustrate that consumer and make them more likely to lodge a complaint or file suit. Use workflow dialing to automatically rest leads after a certain number of calls.

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Despite the 2021 Supreme Court ruling in *Facebook v. Duguid*, opt-in consent is still required for any teams using pre-recorded voicemails or intelligent virtual agent (IVA) technology in their marketing communications, which makes opt-in consent a reasonable best practice.

Similarly, honoring requests to stop calling, always being respectful of the consumer, frequently checking the National Do Not Call (DNC) Registry, and keeping an internal DNC list and policy are all best practices. Specifically, the TCPA requires that call centers maintain their own written procedures for regularly scrubbing their data against the DNC list. To follow this TCPA best practice, a company needs to maintain its own internal Do Not Call list, which can be cross-referenced against the national DNC registry. Additionally, leads need to be scrubbed against the Reassigned Numbers Database. Scrubbing any internal lists for litigators and distinguishing between cell and landline numbers are also best practices.

Finally, for telemarketing campaigns that leave prerecorded messages, the TCPA stipulates that the message must include:

- Multiple identity and purpose disclosures.
- A phone number for Do Not Call requests.
- An automated interactive voice or key-press operated opt-out mechanism to receive Do Not Call requests.

The FCC also clarified in February 2024, through unanimous adoption of a Declaratory Ruling, that AI-generated content qualifies as an “artificial voice” under the Telephone Consumer Protection Act (TCPA); and, as such, the “opt-in” rules discussed above must be complied with. 39 FCC Rcd 1783 (2); https://docs.fcc.gov/public/attachments/FCC-24-17A1_Rcd.pdf.

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