

## Wisconsin's Telemarketing Sales Rule

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

Yes. Wisconsin has an analog to the TCPA, the Wisconsin Telemarketing Sales Rule (ATCP 127).

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

The Wisconsin Telemarketing Sales Rule applies to most telephone solicitations aimed at Wisconsin consumers, regardless of where the calls originate. The Rule defines a telephone solicitation as an unsolicited initiation of a telephone conversation or text message for the purpose of encouraging the recipient to purchase property, goods, or services. However, mass advertisement, communication first initiated by the consumer, and noncommercial communication (including political messages) are not considered telephone solicitations and are therefore not regulated under the Rule. Generally, the Rule:

- Requires disclosures to consumers
- Prohibits deceptive sales practices
- Provides a 3-day right to cancel
- Prohibits unauthorized withdrawal of funds from consumer accounts
- Regulates prize offers
- Prohibits calls to consumers who have asked seller not to call
- Prohibits calls before 8 AM or after 9 PM
- In connection with State's unfair competition and unfair trade laws, may recover twice the amount of pecuniary loss, together with costs, including reasonable attorneys' fee

Wis. Admin. Code §§ ATCP 127.02-127.20.

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

The Wisconsin Telemarketing Sales Rule is paired with Wisconsin's statutes addressing unfair competition and unfair trade. Wisconsin Stat. § 100.20(1) prohibits unfair methods of competition in business and unfair trade practices. It also empowers the Department of Agriculture, Trade and Consumer Protection

to “issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. Sec. 100.20(2)(a). Pursuant to that authority, the Department issued Wis. Admin. Code ch. ATPC 127, which regulates, among other things, “telephone solicitations.” Wis. Admin. Code §§ ATPC 127.02-127.20.

Contained in Wis. Stat. § 100.20 is a private remedy available to any person sustaining a pecuniary loss resulting from unfair competition or trade practices. Specifically, the subsection reads: “Any person suffering pecuniary loss because of a violation by any other person of ... any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney fee.” Wis. Stat. § 100.20(5) Furthermore, Wis. Stat. § 100.264 enhances the penalties available under Wis. Stat. § 100.20(5) for persons that are disabled or 62 years of age or older.

Other statutes relevant to the Wisconsin Telemarketing Sales rule include Wis. Stat. § 100.52, known as Wisconsin’s “Do Not Call Law,” which requires that telephone solicitors register, and authorizes the Department to promulgate rules in that regard. The Do Not Call Law gives consumers an option to limit the number of telemarketing calls they receive. The Do Not Call Law generally prohibits:

- Telephone solicitations to a customer whose telephone number appears on the current Do Not Call Registry
- Use an electronically prerecorded message in a telephone solicitation without prior consent of that telephone number
- Failure to disclose the solicitor’s registration number
- Use caller-ID blocking when making a telephone solicitation

The Do Not Call Law generally applies to residential numbers but can apply to nonresidential (i.e. business) numbers if that number notifies the solicitor by mail that it does not wish to receive telephone solicitations. Furthermore, Wis. Stat. § 100.52(6) provides that the telephone solicitation prohibitions do not apply if “[t]he telephone solicitation is made to a recipient who is a current client of the person selling the property, goods or services that is the reason for the telephone solicitation.”

Wisconsin recently enacted a law regarding spoofing, which occurs when a caller purposefully falsifies their caller identification display in order to disguise their true identity. The new Wisconsin law prohibits any person from knowingly transmitting misleading or inaccurate caller identification records with intent to defraud or wrongfully obtain anything of value, including personally identifiable information, in connection with any telecommunication service. Wis. Stat. § 100.523(2), created in 2023 Wisconsin Act 243, becomes effective on April 1, 2025. There are two exceptions to the general prohibition on spoofing. First, the prohibition does not apply to authorized law enforcement activity or a court order specifically authorizing manipulation of a caller identification record. Second, the prohibition does not apply to a provider of telecommunication services, internet access services, or voice over services engaged in certain activities. Wis. Stat. § 100.523(3).

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

- Make sure to register with the Department of Agriculture, Trade and Consumer Protection
- Maintain an updated do-not-call registry

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- Pay attention to the disclosure requirements and calling restrictions set forth in Wis. Admin. Code §§ ATP 127.02-127.20
- Obtain proper consent and/or vet your leads
- Do not use auto recordings
- Do not use spoofing
- Utilize the Department and competent counsel