



Unsolicited Telephone Communications

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Unsolicited telemarketing calls and text messages continue to be a frustration for consumers. This issue briefly summarizes current state and federal laws regarding unsolicited telephone calls and text messages, and relevant resources for consumers.

STATE LAW

Certain telephone solicitations from telemarketers¹ are prohibited by state law. Under state law, a telephone solicitation is an unsolicited initiation of a telephone conversation or text message for the purpose of encouraging the recipient to purchase property, goods, or services. However, a mass advertisement,² any communication first initiated by the consumer, and noncommercial communications (including political messages) are not considered telemarketing.³ [\[s. 100.52 \(1\) \(i\) and \(j\), Stats.\]](#) Telemarketers must register with the Department of Agriculture, Trade and Consumer Protection (DATCP). [\[s. 100.52 \(3\), Stats.\]](#)

Disclosure Requirements

Under state law, a telemarketer is subject to certain disclosure requirements before it may enter into a transaction. For example, a telemarketer making a telephone solicitation must disclose certain information about its identity to the consumer before asking any questions or making any statements other than an initial greeting. A telemarketer must also disclose certain information about any potential transaction before the consumer enters into the transaction and before the telemarketer accepts any payment.⁴ [\[ss. ATP 127.04 \(1\) and 127.06 \(1\), Wis. Adm. Code.\]](#)

Telemarketing Practices

State law also prohibits certain telemarketing practices. Telemarketers may not deliver a prerecorded message by telephone or text message without the prior consent of the recipient of the communication. Telemarketers generally may not communicate with a number that is listed on the state Do Not Call registry, also discussed below, unless they have prior consent or the telephone number is associated with a current client. [\[s. 100.52 \(4\) \(a\) and \(6\), Stats.\]](#)

DATCP may investigate alleged violations of the telephone solicitations law and the state Do Not Call registry, and may commence an action in circuit court seeking injunctive relief or any other relief. A telemarketer may also be required to forfeit up to \$100 for each violation. [\[s. 100.52 \(9\) \(b\) and \(10\) \(b\), Stats.\]](#)

DO NOT CALL REGISTRY

The Wisconsin Do Not Call registry is managed by the U.S. Federal Trade Commission (FTC) as part of the national Do Not Call registry, also discussed below. [\[s. 100.52 \(1m\), Stats.\]](#) Individuals may register their telephone numbers for no charge. State and federal law prohibit telemarketers from calling telephone numbers on the Do Not Call registry. Organizations to which an individual has given consent, or with which an individual has a business relationship, may still call a telephone number on the registry.

FEDERAL LAW

Under federal law, several factors determine whether a communication is prohibited, including: the type of technology used, whether the communication is to a landline or mobile telephone number, whether

the content of the communication is telemarketing, and whether the telephone number is on the national Do Not Call registry.

“Robocalls”

Federal law prohibits certain “robocalls,” including text messages. “Robocalls” are prerecorded messages from “automatic telephone dialing systems,” which store numbers to be called or texted. [\[47 U.S.C. 227 \(a\) \(1\).\]](#) Generally, federal law prohibits robocalls to any telephone number without prior consent. This includes robocalls to mobile telephones even if the telephone number is not on the Do Not Call registry.⁵

The U.S. Federal Communications Commission (FCC) rules require a telemarketer to obtain written consent, on paper or by electronic means such as a website form or a telephone keypress, before making a robocall to any landline or mobile telephone number. [\[47 U.S.C. 227 \(b\) \(1\) \(B\).\]](#) Federal law also requires telemarketers to allow individuals to opt out of receiving additional communications at the outset of a prerecorded communication through an automated menu.

Subject to certain exceptions, telemarketing communications (robocalls or otherwise) to individuals with telephone numbers on the Do Not Call registry are prohibited unless the telemarketer has a prior relationship with the individual or has obtained the individual’s prior consent to communicate. Similar to state law, noncommercial communications are allowed even if the telephone number is on the Do Not Call registry. [\[47 U.S.C. 227 \(a\) \(4\).\]](#)

Deceptive and Abusive Telemarketing Practices

Federal law also prohibits certain deceptive and abusive telemarketing practices. Deceptive practices include failing to disclose truthfully, or otherwise misrepresenting, the total cost of a sale, limitations on a sale, refund or cancellation policies, or any other material information pertaining to the communication or a potential sale. [\[16 C.F.R. 310.3 \(a\).\]](#) Abusive telemarketing practices include threats or intimidation, harassment (e.g., causing a telephone to ring repeatedly), calling before 8 a.m. or after 9 p.m. local time, and not making the required disclosures.⁶ [\[16 C.F.R. 310.4 \(a\).\]](#) “Spoofing” is also prohibited, under the [Truth in Caller ID Act](#). Spoofing is defined as any masking or falsifying of information transmitted to a caller ID display.

REPORTING PROHIBITED TELEPHONE SOLICITATIONS

Consumer complaints regarding prohibited telephone solicitations may be filed with DATCP, the FTC, or the FCC. For information on filing a complaint with the state or federal government, see the [DATCP complaint page](#), the [FCC complaint page](#), or the [FTC complaint page](#).

¹ “Telemarketer” is defined as a person that employs or contracts with an individual to make a telephone solicitation. This does not include nonprofit organizations.

² “Mass advertisement” is defined as a solicitation that a seller publishes or makes accessible to an unrestricted mass audience. [\[s. ATCP 127.01 \(13\), Wis. Adm. Code.\]](#)

³ Under state and federal law, nonprofit organizations may solicit charitable donations via telephone even if the number is on the Do Not Call registry. However, any sales proceeds must be exempt from Wisconsin sales tax and federal income tax. [\[s. 127.80 \(10\) \(a\) 1., Wis. Adm. Code.\]](#)

⁴ During a telephone solicitation, a seller must disclose: (a) the nature and quantity of consumer goods or services included in the sale; (b) the total cost to purchase and receive the consumer goods or services; (c) all material terms and conditions affecting the sale, receipt, or use of the consumer goods or services, including credit terms if any; (d) the name of the principal seller; (e) the principal seller’s mailing address or a way to obtain the mailing address; and (f) the seller’s policy related to refunds, cancellations, exchanges, or repurchases if the seller either makes a claim about the policy or has a policy that prevents or substantially limits refunds, cancellations, exchanges, or repurchases. Generally, the seller must make these disclosures in writing, not orally. If the primary language used in a telephone solicitation is not English, the seller must make the required disclosures in the language primarily used. [\[s. ATCP 127.06, Wis. Adm. Code.\]](#)

⁵ For more information on robocalls, see the FCC [Consumer Guide: Stop Unwanted Robocalls and Texts](#).

⁶ Telemarketers must disclose the identity of the seller, that the purpose of the call is to sell goods or services, the nature of the goods or services, that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered, and that any purchase or payment will not increase the person’s chances of winning. [\[16 C.F.R. 310.4 \(d\).\]](#) Telemarketers making charitable solicitations must disclose the identity of the charitable organization and that the purpose of the call is to solicit a charitable contribution. [\[16 C.F.R. 310.4 \(e\).\]](#)