

Telephone Consumer Protection Act

Breaking Down Statutory Text

This chart details which preemption sections of various omnibus and sectoral statutes deal with federal preemption.

Codified Section	Type of Preemption	Are the circuit courts in general agreement on what this means?
47 U.S.C. §227(f)(1)	Floor Preemption	Yes – courts have considered this provision uniformly, without of Supreme Court guidance
47 U.S.C. §227(f)(2)	Express Preemption	Not litigated

Methodology

The statutory text overwhelmingly contains express preemption and various savings clauses. Express preemption is directly related to statutory text, and it is the only form of preemption with this quality. The remaining types of preemption – field, impossibility, and obstacle – are forms of *implied* preemption. As the name suggests, these preemption categories are implicit in every statute and consequently do not rely on statutory text. (However, sometimes a statute will explicitly address an implied preemption principle, such as 42 U.S.C. § 2000h-4.) Instead, implied preemption principles appear exclusively in case law. Case law that relies on a theory of implied preemption are appropriately notated.

Since courts have not addressed every issue, there may be areas that are marked as “Not litigated.”

Legend:

Express Preemption

Field Preemption

Impossibility Preemption

Obstacle Preemption

Floor Preemption

Anti-Preemption Provision

Compliance Savings Clause

Remedies Savings Clause

Sunset Provision

Ceiling Preemption

Statutory Text

47 U.S.C. §227

(f) Effect on State law.

(1) State law not preempted. Except for the standards prescribed under subsection (d) and subject to paragraph (2) of this subsection, nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulations on, or which prohibits—

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations.

(2) State use of databases. If, pursuant to subsection (c)(3), the Commission requires the establishment of a single national database of telephone numbers of subscribers who object to receiving telephone solicitations, a State or local authority may not, in its regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of such single national database that relates to such State.

Summary

There has not been a significant debate between the circuit courts about the application of the law. Most cases discuss the presumption against preemption.

Case Law

Patriotic Veterans, Inc. v. Indiana ex rel. Zoeller, 736 F.3d 1041 (7th Cir. 2013)

Facts: Indiana Code § 24-5-14-5 bans auto-dialed telephone calls without receiver's consent.

Rule: States with more stringent requirements than the TCPA are not subject to conflict preemption.

Holding: The state law is not preempted.

Van Bergen v. Minnesota, 59 F.3d 1541 (8th Cir. 1995)

Facts: A politician wanted to use robocalls to contact voters, which was prevented by Minnesota state law.

Holding: There is neither express preemption nor field preemption. The Minnesota law is virtually identical to the TCPA; therefore, it is not in conflict with the TCPA and it is not preempted.

State ex rel. Stenehjem v. FreeEats.com, Inc., 2006 ND 84 (N.D. 2006)

Facts: N.D.C.C. §51-28-02 prohibits the placement of telephone calls using an automatic dialing-announcing device, except in certain enumerated instances.

Holding: The North Dakota state law is not preempted.

Utah Div. of Consumer Prot. v. Flagship Capital, 2005 UT 76 (U.T. 2006)

Facts: Utah state law imposed heightened standards for companies wanting to make automated phone calls to Utah.

Holding: The Utah state law was not preempted under express preemption, field preemption, or obstacle preemption.

Sussman v. I.C. Sys., 928 F. Supp. 2d 784 (S.D.N.Y. 2013)

Facts: Defendant's calls violated New York GBL §399-p, but Defendant argues the state law is preempted by the TCPA.

Application: There is a Presumption Against Preemption. Congressional intent in enacting the TCPA was not to preempt state laws, but rather to regulate the telecommunications industry concurrently with the states.

Holding: The state law is not preempted under **express preemption**, **field preemption**, **obstacle preemption**, or **impossibility preemption**.