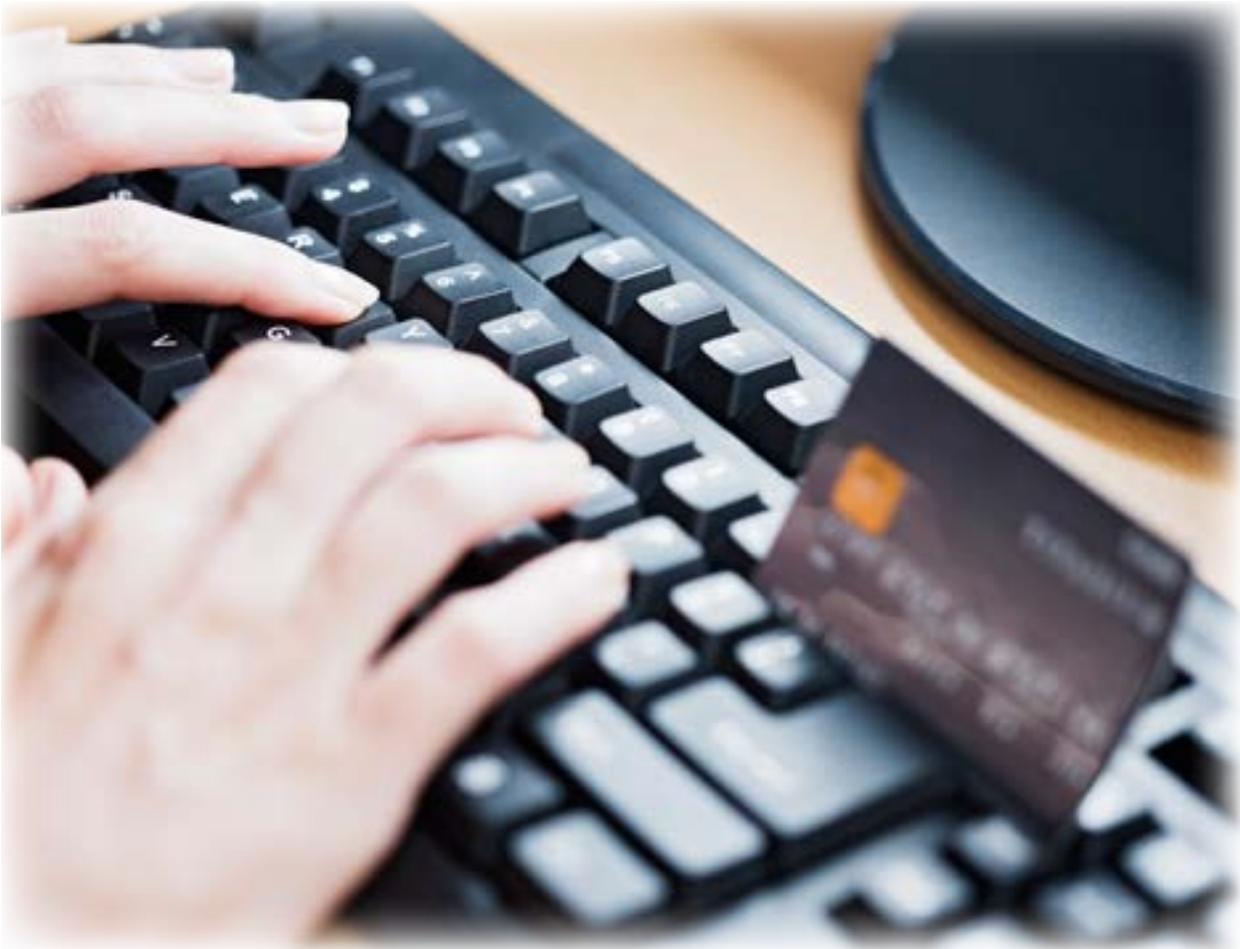


## Chapter 2

# Tennessee Consumer Protection Act





The Tennessee Consumer Protection Act (TCPA)<sup>6</sup> was created in 1977 to protect consumers from unfair and deceptive business practices. The TCPA has two main provisions:

- The prohibition of unfair or deceptive acts or practices affecting the conduct of any trade or commerce; and
- A list of specific acts which are considered to be deceptive acts and practices (which are listed in Appendix B).

Under the TCPA, the Tennessee Division of Consumer Affairs (DCA) and the Tennessee Attorney General are given specific powers to investigate potential violations of the law, including the ability to require the person or business to file a statement or report in writing and under oath, examine under oath any person in connection with the alleged violation, and examine any products that are part of the investigation.

### **Prizes Offered as Inducements**

The TCPA also applies when a prize or gift is offered as an incentive to buy a product.<sup>7</sup> For instance, TCPA provisions would apply to an advertisement in which a business offers a chance to win a four-wheeler if the consumer attends a sales presentation. The TCPA is violated:

- When a person or company fails to clearly and conspicuously state the name and street address of the person or company making the offer;
- When a person or company says that:
  - The consumer is or could be a winner, if the consumer contacted has not won or is not eligible to win; or
  - The consumer has been “selected” or is part of a special group eligible to receive the prize or travel service, if that is not true;
- When the person or company making the offer does not clearly and conspicuously state the retail price of each prize or travel service immediately next to the item when the initial offer is in writing. If the offer is verbal, the offering party must disclose each item’s approximate retail value; and
- When the offering person or company does not clearly and conspicuously state, next to each prize or travel service offered, a statement of the odds of receiving each item offered when in writing. If the initial offer is verbal, the person or company must clearly and conspicuously state the odds of receiving each item offered.

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<sup>6</sup> Tenn. Code Ann. §§ 47-18-101 *et seq.*

<sup>7</sup> Tenn. Code Ann. § 47-18-120.

There are other acts or practices contained in this prize and gift law that may violate the TCPA. If a person or company does not follow the TCPA rules about prizes and gifts, the consumer may be able to void the contract or agreement.

### **Private Litigation**

Consumers have a right to bring a lawsuit under some sections of the TCPA.<sup>8</sup> Consumers have only one year to bring the lawsuit. The one-year period starts to run on the day the consumer discovers the unlawful act. If a consumer does not discover the unlawful act until five years after the date the unlawful act happened, the time has run out to file the lawsuit.<sup>9</sup> Servicemembers should talk to an attorney quickly if they feel they are the victim of unfair or deceptive acts under the TCPA.

A consumer cannot use the TCPA to sue for certain conduct related to regulatory agencies of Tennessee or the United States. Acts of the media, some credit terms, and some claims by retailers against manufacturers or wholesalers are also exempted.<sup>10</sup>

Servicemembers who believe they have been victims of unfair or deceptive acts should file a complaint with the DCA. The DCA's contact information can be found in Chapter 11 and a complaint form is located in Appendix C.

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<sup>8</sup> Tenn. Code Ann. § 47-18-109.

<sup>9</sup> Tenn. Code Ann. § 47-18-110.

<sup>10</sup> Tenn. Code Ann. § 47-18-111.