

Amendment to Florida Law May Create “Mini-TCPA” and Impose Heightened Restrictions on Businesses

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Litigants spent years fighting over the definition of an Automatic Telephone Dialing System (“ATDS”) under the Telephone Consumer Protection Act (“TCPA”). That fight culminated in this year’s big ATDS defense win in the Supreme Court’s *Facebook v. Duguid* case, which set forth a narrow definition of an ATDS under the TCPA, requiring the use of a random or sequential number generator.

This win may be relatively short-lived. Effective July 1, 2021, Florida is set to amend its existing telephone solicitation laws to effectively upend the *Facebook* decision in the State of Florida. The revised law, which was introduced in February 2021 before the Supreme Court issued its decision in *Facebook*, sweeps in a wide array of dialing technology and brings into the fold a private right of action and statutory damages.

Florida’s newly amended law will include the following critical provisions:

- **Autodialer:** The statute does not include a definition of an autodialer, but instead applies to “automated system[s] for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed.”
- **Written Consent:** The statute imposes a written consent standard from the “called party” analogous to the federal requirement.
- **“Called party”:** Specifies that the “called party” is only the “regular user” of the phone (unlike the federal standard, which also includes the subscriber to the phone).
- **Telephonic Sales Calls:** The law applies, in relevant part, to telephonic sales calls
 - Defined as “a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes”
 - Requires written consent for telephonic sales calls
- **Private Right of Action:** Allows for an aggrieved party statutory damages up to \$500 (which can be trebled for willful violations)

Florida's existing telephone solicitation law already included the same "autodialer" language. However, it is the new law's introduction of the written consent requirement and statutory damages that makes this law so troublesome. In sum, solicitation and telemarketing calls and text messages in Florida will require written consent. Whether the dialer meets the Telephone Consumer Protection Act's definition of an ATDS will likely become less of an issue, if not a non-issue.

With these amendments, Florida will almost certainly become ground zero for a telemarketing class actions involving *en masse* dialing or transmissions. The critical issue moving forward will likely be what is needed for a complaining party to be "aggrieved" under the statutory damages provision. It is certainly unclear whether any recipient of a call is automatically "aggrieved."

Finally, the Florida's amendments include a number of ancillary provisions. For example, the law restricts the hours in which a telephonic sales call can be placed, from a 8 am to 8 pm (previously calls could be made until 9 pm) and makes it unlawful to place more than three telephone solicitation calls from any number to a person over a 24-hour period on the same subject matter or issue, regardless of the phone number used to make the call. The law also includes anti-spoofing provisions. These anti-spoofing provisions prohibit "deliberately display[ing] a different caller identification number ... to conceal the true identity of the caller," are broader than federal law, and includes criminal penalties.

These changes will substantially impact businesses that solicit in Florida or communicate with consumers with Florida area codes. ***As of the date of this publication, it does not appear that Gov. DeSantis has signed the bill. However, all impacted businesses should be prepared for the revised Act to go in effect as of July 1, 2021 absent a veto from Gov. DeSantis.***

Questions? Contact a member of Benesch's TCPA Practice Group.

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