CLIENT ALERTS & INSIGHTS

Florida "Mini-TCPA" Signed Into Law, Impacts Autodialed Telemarketing Calls and Text Messages

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It is official: effective July 1, 2021, Florida is set to amend its existing telemarketing laws to add significant teeth, via SB 1120. The statutory amendments of SB 1120 greatly expand liability for marketing calls and text messages.

Note, the recent positive developments gained by way of the *Facebook v. Duguid* case regarding the TCPA's definition of an "automatic telephone dialing system" may have no impact on this new Florida law. Companies should thus exercise extreme caution when making any changes to their outbound communications processes as a result of the *Facebook* decision. Myriad state laws will impact the ability of companies to communicate with consumers. In addition to Florida, other states like Washington, for example, also regulate certain telephonic communications with potentially different reach than the TCPA.

Florida's amendments alter two existing statutes governing telemarketing communications. Florida law, for example, already included "autodialer" terminology different from the TCPA. However, the addition of a private right of action and prior express written consent requirements add sizeable teeth to the existing statutory provisions.

Key Features of Florida's Amendments:

- The amended law 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."
- Telephonic sales calls are broadly 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."
- The revised act imposes a written consent standard analogous to the federal requirement under the TCPA.
- The amended law specifies that a "called party" is only the "regular user" of the phone (unlike the federal standard, which also includes the subscriber to the phone).
- Allows an "aggrieved party" to obtain $500 per violation, which may be trebled in the event of willful violations.

- The revised law further 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).
- The amendments contain provisions related to the use of spoofed numbers.
- The amendments make 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.

It is important for businesses to be prepared for the revised law to go into effect on July 1, 2021, as Gov. DeSantis recently signed this bill into law. Businesses should have appropriate express written consent to contact numbers with Florida area codes when placing telephonic sales calls or texts.

Benesch attorneys have predicted that states may amend their own telemarketing laws, particularly after the Supreme Court's *Facebook* decision. It remains to be seen whether other states may enact similar legislation, but Florida's legislation underscores the importance of following the best practices of consent when calling customers, in spite of recent changes to federal law. For more information regarding state and federal telemarketing and telephonic communication laws, please contact your Benesch relationship partner or the authors of this publication.

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

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