

Florida Takes Page Out of TCPA's Book with New Legislation

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The Florida legislature recently passed [CS/SB 1120](#) updating and significantly expanding the state's existing telemarketing laws, the [Florida Telemarketing Act](#) and the [Florida Do Not Call Act](#). Many of the new provisions are similar to the TCPA, including, most importantly, adding a private cause of action for any violations of the Florida Do Not Call Act and requiring prior express written consent for automated or prerecorded calls or texts. If the bill becomes law, it will go into effect on July 1, 2021.

Under the existing Florida Do Not Call Act, callers are prohibited from making telephonic sales calls using "an automated system for the selection or dialing of telephone numbers" unless (i) the call is in response to a consumer-initiated call, (ii) the numbers are unlisted or have been scrubbed against the state Do Not Call list, or (iii) the calls relate to goods or services previously ordered or purchased. This Act does not include exemptions from the definition of "telephonic sales calls." The Florida Telemarketing Act determines licensure, call timing, identification, and recordkeeping requirements, among others, and includes a number of exemptions.

Changes to the Florida Do Not Call Act

Significantly, CS/SB 1120 adds a private cause of action to the Florida Do Not Call Act, permitting aggrieved consumers to recover the greater of actual damages or \$500, or treble damages for any willful or knowing violations. In addition, the bill now requires "prior express written consent" before making "telephonic sales calls" via phone, text, or voicemail using an "automated system for the selection or dialing of telephone numbers" or a prerecorded message. The bill defines the term "prior express written consent" similar to the TCPA, including requiring an electronic signature and informing consumers that consent is not required to purchase goods or services. The bill deletes the existing call exemptions and creates a rebuttable presumption that any call made to a Florida area code is a call made to a Florida resident.

CS/SB 1120 also broadens the scope of dialer technology that is subject to the law, as compared with the TCPA. While the proposed amendments to the Florida Do Not Call Act do not separately define "autodialer," relevant provisions regarding consent and call requirements refer to "automated system[s] for the selection or dialing of telephone numbers." This reference is broader than the TCPA's definition of "automatic telephone dialing system," ("ATDS") which the [Supreme Court recently determined](#) only encompasses devices that use a random or sequential number generator to either store or produce a telephone number. It's possible, therefore, for a dialer to be subject to the Florida law while not technically constituting an ATDS under the TCPA.

Changes to the Florida Telemarketing Act

CS/SB 1120 also makes other noteworthy changes to the Florida Telemarketing Act, including:

- Changing the permissible call times from 8 AM–9 PM to 8 AM–8 PM;
- Prohibiting more than three “commercial telephone solicitation phone calls” within 24 hours about the same matter, regardless of the number used to make the call; and
- Prohibiting the use of technology to deliberately conceal the identity of the caller, punishable as a second-degree misdemeanor.

While the Florida Telemarketing Act includes a number of exemptions, the [bill analysis](#) indicates that the above amendments to the Act apply to both non-exempt and exempt entities.

The bill is currently enrolled, though it hasn’t been presented to the Governor. Because the Florida legislative session ended on April 30, the Governor will have 15 days after receipt to take action on the bill. If he signs the bill, or fails to take action, then the bill will become law and go into effect on July 1, 2021. If he vetoes the bill, the Florida legislature can override the veto with a two-thirds vote in each house. Both houses unanimously voted to approve the bill, so they would likely override a veto and the bill would still go into effect on July 1, 2021.

Given the above changes, risk mitigation strategies include having appropriate consent processes in place. If you have any questions about how these changes may affect your business, please reach out to [Alysa Hutnik](#). For more [telemarketing updates](#), [subscribe to our blog](#).

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