

CF on Cyber: An Update on the Changes to the Florida Telemarketing Act

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On June 29, Gov. Ron DeSantis signed into law a bill enacting substantial changes to the Florida Telemarketing Act, which are effective July 1, 2021. In this podcast, Carlton Fields shareholders Aaron Weiss and Charles Throckmorton discuss these changes and key new provisions in the act. If

your company is considering any phone or text-based marketing in Florida, this podcast may be of particular interest.

Carlton Fields has a nationally recognized TCPA practice and has handled hundreds of TCPA cases in Florida, as well as cutting-edge appellate issues in TCPA cases in the Eleventh Circuit Court of Appeals. The firm's extensive experience encompasses TCPA cases stemming from calls to cellphones, text messages, and faxes. The TCPA team also advises clients on compliance with related federal and state statutes.

Key Parts of the Amended Florida Act

- The most significant change is that there is now an explicit private right of action under the Florida law. It is similar to the TCPA and allows aggrieved parties to recover actual damages or \$500, whichever is greater, or treble damages if the violation is willful or knowing. The Florida statute did not previously include an explicit private right of action.
- The amendment also added provisions that restrict a person from making telephonic sales calls if such call “involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed” without the prior express written consent of the called party. Most of the anticipated litigation will likely relate to this provision. In its recent decision in *Facebook v. Duguid*, the Supreme Court dealt with specific statutory language, which defined “automatic telephone dialing system” as “equipment which has the capacity ... to store or produce numbers to be called, using a random or sequential number generator, and to dial such numbers.” Unlike the TCPA, the amended Florida statute does not have a statutory definition that limits its reach to technology that has the capacity to randomly or sequentially generate a number to be called.
- A rebuttable presumption was also created stating that any sales call made to any area code in Florida is made to a Florida resident or a person in the state at the time of the call.

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