

PUBLICATION

Florida Legislature Course-Corrects with Amendments to the FTSA

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In 2021, the Florida Legislature took drastic action in amending the Florida Telephone Solicitation Act (FTSA) to make the statute more consumer-friendly after the United States Supreme Court's landmark decision in *Facebook v. Duguid*, 209 L. Ed. 2d 272, 141 S. Ct. 1163, 1167 (2021), narrowly limited the definition of "automatic telephone dialing system" (ATDS) under the federal Telephone Consumer Protection Act (TCPA). You can read more about the *Facebook* decision [here](#) and the FTSA's enactment [here](#).

Now, the Florida Legislature has course-corrected and introduced new amendments to the FTSA, which include a narrower definition of the term "autodialer" as used in the statute and introduced a safe harbor provision for messages sent via SMS or text. These amendments, introduced in HB 761, have been signed into law by Governor DeSantis and are effective, by the bill's own terms, as of May 26, 2023.

The amendments change the definition of autodialer from "automated systems for the selection *or* dialing of telephone numbers" to "automated systems for the selection **and** dialing of telephone numbers." While this change may seem subtle, it is instrumental in realigning Florida's "Mini-TCPA" with the federal statute and narrows the definition of what an autodialer can be under the state statute.

The amendments also include the introduction of a safe harbor provision for telephone solicitors who are communicating via text message or SMS. Under the provision, a called party who wishes to stop receiving text messages from a telephone solicitor must notify that caller by replying "STOP" to the phone number that is sending the text messages. That notice then gives the caller 15 days to cease its text message solicitations to that called party. However, the telephone solicitor is allowed to send a message that simply confirms receipt of the notice after 15 days. If the called party continues to receive messages from the telephone solicitor after 15 days of sending notice, then, and only then, may the called party bring an action under this section of the FTSA.

Another significant amendment to the FTSA is clarification about how a called party can provide, or be deemed to have provided, express written consent by clarifying the definition of "signature" under the statute. Specifically, the definition of signature now includes reference to "an action that demonstrates express consent, including, but not limited to, checking a box indicating consent of responding affirmatively to receiving text messages, to an advertising campaign, or to an e-mail solicitation." This clarification will be immensely helpful for companies facing allegations of communication with consumers without "express written consent" when, in fact, a called party provided an acknowledgment of intent to be contacted.

Finally, and perhaps, most significantly for companies that have found themselves the target of lawsuits filed under the FTSA, HB 761 applies retroactively to any putative class action lawsuits that have not been certified on or before the effective date. Otherwise, the amended statute is applied prospectively.

If you or your company are facing litigation under the FTSA, the allegations should be reviewed closely in light of these amendments, with consideration given to the potential to raise arguments for dismissal or summary judgment given the context of the statute and its applicability. Further, if you or your company engage in

consumer outreach, whether via telephone calls or SMS/text message solicitations, your TCPA/FTSA compliance policies and procedures should be reviewed as necessary to ensure you remain fully compliant under these new amendments.

Please contact [Eve A. Cann](#) with any questions, if you need assistance with navigating these new FTSA amendments, or in relation to any aspect of the TCPA.

Brianna Riguera, a summer associate at Baker Donelson, contributed to this alert.