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June 2023

Amendments To Florida Mini-TCPA May Curb Lawsuits

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On May 25, 2023, Governor Ron DeSantis signed Florida House Bill 761, which made significant changes to the Florida Telephone Solicitation Act (“FTSA”)(Fla. Stat. § 501.059). The amendments became effective immediately and retroactively apply to any pending FTSA class action that was not yet certified by the effective date of the amendments.

What has changed?

[As we previously reported in September 2022](#), the FTSA “broadly applies to ‘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 amendments to the FTSA restrict its scope and substance in several significant ways.

Most notably, the amendments include the following:

- (1) **“Autodialer” Definition Narrowed:** The amendment narrows the categories of equipment covered by the statute, to “automated system[s] for the selection *and* dialing of telephone numbers” (emphasis added). In contrast, the original version of FTSA broadly applied to “automated system[s] for the selection *or* dialing of telephone numbers” (emphasis added).
- (2) **“Signature” Definition Expanded:** The amendment confirms that a “signature” includes acts such as “checking a box” and “responding affirmatively to receiving text messages.”
- (3) **Notice and Cure Period:** Perhaps the most notable change to the FTSA is the addition of a new 15-day notice-and-cure period before a plaintiff can file suit for text message solicitations, allowing defendants the time to avoid litigation by removing plaintiffs from their texting lists.

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- (4) **“Unsolicited Calls”**: Previously, the FTSA broadly prohibited all telephonic sales calls made using an automated system, unless the business had the customer’s prior express written consent. The amendment now limits liability to “unsolicited calls”, meaning that a business can now have peace of mind calling or texting customers with whom they have established business relationships or who otherwise expressly request the contact.

Where are we now?

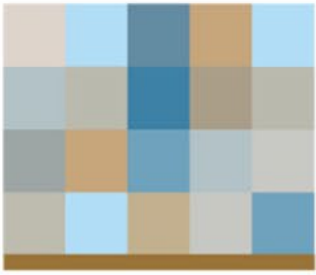
When first enacted, the breadth and ambiguity of the FTSA paved the way for a barrage of lawsuits. Its original autodialer definition was the broadest in the United States and the statute as a whole was extremely plaintiff-friendly, making it extremely difficult for telemarketers to conduct business in Florida. The amendments to the FTSA are a welcome relief as they have shifted the tide in Florida to a much more business-friendly status for telemarketers and a closer alignment to the FTSA’s federal counterpart, the Telephone Consumer Protection Act (“TCPA”). The impact of the amendments should be a greatly reduced number of lawsuits related to telephone and texting solicitations in Florida. Nonetheless, businesses facing pending class actions are not yet in the clear. The retroactive applicability of the amendments is guaranteed to result in challenges from plaintiffs who have pending putative class actions, and it will take time for courts to weigh in on the issue.

Conclusion

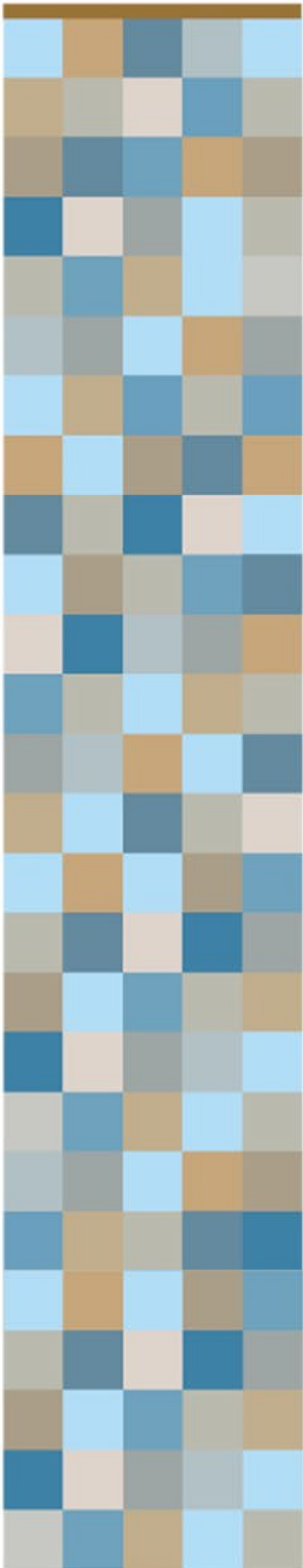
All businesses that engage in telemarketing to Florida residents and persons with a Florida-based area code should ensure that their policies and practices comply with the FTSA. Other states, such as Washington and Oklahoma, have begun to follow Florida’s lead in enacting more stringent laws governing telemarketing by telephone and text. Therefore, businesses need to stay abreast of how the growing labyrinth of state telephone laws and amendments may impact the ways their organizations conduct marketing and sales activities. Proactively monitoring new regulations and amendments will help companies to remain in compliance and avoid any legal consequences.

If you have any questions regarding the matter raised in this Alert, please feel free to contact Terese Arenth at tarenth@moritthock.com.

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