

ALERT

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Maryland's New Telemarketing Law Now in Effect: What You Need to Know

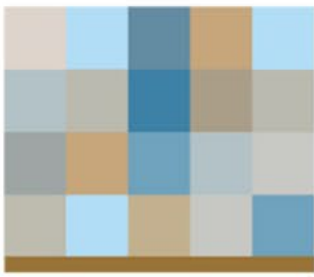
By: Terese L. Arenth

The state trend in regulating telephone and text message marketing continues. Maryland's new telemarketing law, the "Stop the Spam Calls Act of 2023," took effect on January 1, 2024. Like the federal Telephone Consumer Protection Act (TCPA), Maryland's law prohibits telephone solicitations (*i.e.*, marketing calls and texts) without the called party's prior express written consent. However, unlike the TCPA, which prohibits the use of an automatic telephone dialing system (ATDS or autodialer), Maryland prohibits the use of an "automated system."

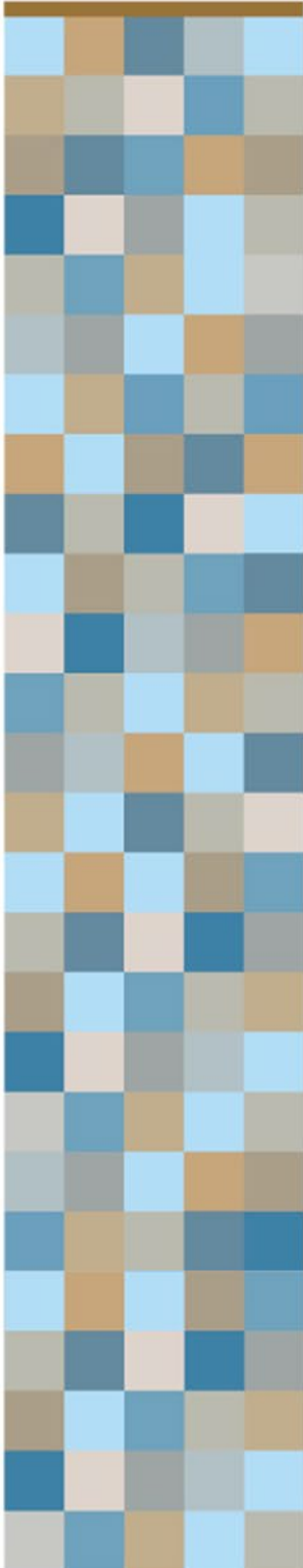
While the U.S. Supreme Court ruled in 2021 that an automatic telephone dialing system only encompasses devices that store or produce telephone numbers using a random or sequential number generator, Maryland's reference to an "automated system" is not defined. Consequently, it leaves open the possibility that a dialing system could be subject to Maryland's law while not constituting an autodialer under the TCPA. Notably, as we discussed in prior Alerts ([September 2022](#) and [June 2023](#)), when Florida implemented a similar law a few years ago, the resulting spike in litigation regarding autodialers led to an amendment of the Florida law which narrowed the autodialer definition, among other things. Whether or not a similar scenario will play out in Maryland remains to be seen.

Like the TCPA and similar state statutes, obtaining a call recipient's prior express written consent (PEWC) before engaging in telemarketing to that person is at the heart of the law. PEWC requires a written agreement signed by the called party (which includes an electronic or digital signature) that clearly authorizes the caller to solicit them through a telephone call, text message or voicemail (i) using an automated system to select or dial the called party's phone number; (ii) by playing a recorded or artificial voice message when a connection is completed to the number called; or (iii) by transmitting a pre-recorded voicemail. The consent must specify the telephone number to which the signatory authorizes the telephone solicitation to be delivered and must include clear and conspicuous disclosure that consent is not required to purchase goods or services.

As no one likes being constantly bombarded by telemarketer calls, the Act limits them to a calling window between 8 a.m. and 8 p.m. in the called party's time zone and allows no more than three such calls during a 24-hour period on the same subject matter or issue.



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Significant exemptions to the law include non-commercial solicitations for religious, educational, political, or charitable purposes; certain business-to-business sales; one-time telephone solicitations in response to a customer inquiry or request; and business-to-customer communications where the parties have an existing business contract or relationship with each other and the communication is initially intended for informational purposes only and, based on further inquiry from the customer, the communication becomes a telephone solicitation.

Violation of the Act will be considered an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act, which allows for regulatory enforcement and private rights of action. Potential remedies include civil penalties of up to \$10,000 per violation (or \$25,000 for repeat violations).

Companies telemarketing to Maryland residents should carefully review their marketing campaigns for compliance with the new law. This is particularly important given the law's use of the ambiguous term "automated system." Only time will tell whether or not this ambiguity will trigger a flood of litigation and how the courts may interpret "automated systems."

If you have any questions regarding the matter raised in this Alert, please feel free to contact **Terese L. Arenth** at tarenth@moritthock.com or (516) 880-7235.

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