

What to Know About Florida's Telephone Solicitation Act

by Robert A. Stines and Jeremy D. Richardson

A FREEBORN & PETERS LLP CLIENT ALERT

Telemarketers and companies throughout the country that promote their brands by telephone calls and text message to Florida residents need to know about Florida's Telephone Solicitation Act¹ (FTSA), which became law on July 1, 2021. Allegedly the brainchild of two Florida plaintiffs' lawyers, the FTSA imposes strict "opt-in" requirements and heavy penalties for failure to obtain a Florida resident's consent. Since the law was enacted, several class action lawsuits have been filed against companies conducting telephonic sales calls (including by text message) to phone numbers with Florida area codes.



Here is an overview of the FTSA:

Any company making "telephonic sales calls" from anywhere in the U.S. to consumers located in Florida is subject to the FTSA. Calls to any phone with a Florida area code are presumed to be to Florida residents. Telephonic sales call means a telephone call, text message, or voicemail transmission. A company must obtain "prior express written consent" before it can "make" or "allow [to be made]" a telephonic sales call using an automated system for the selection or dialing of telephone numbers. Prior to enactment of the FTSA, companies could make calls without consent under certain circumstances, but those exceptions have been removed. Prior written consent that meets the technical requirements of the FTSA is the only defense to avoid liability under this law.

Similar to the federal Telephone Consumer Protection Act, the FTSA defines "Prior Written Consent" as a written agreement that:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

¹Fla. Stat. § 501.059.

An electronic or digital signature is acceptable. This may include the called party responding to a text message as confirmation of written consent.

Companies should be most concerned about the financial implications of the law because it allows consumers (or plaintiffs' attorneys) to bring a private right of action. A party who is aggrieved by a violation of the law can sue to recover actual damages or \$500, whichever is greater. If the court finds that the defendant willfully or knowingly violated the law, the court may increase the amount to \$1,500. The law allows the prevailing party to receive reasonable attorney's fees and costs.

If accused of violating this law, companies should immediately consider their strategy to successfully defend against liability. Digital records, such as logs, text messages or other communications, that prove prior written consent, assuming proper consent was provided, should be identified, preserved and secured. Create a timeline of events that shows when the consumer first made contact with the company, when consent was provided and when consent was withdrawn (if ever). Because of the prevalence of telemarketing through mobile phones and text messages, one should expect to preserve thousands of communications with Florida consumers. To efficiently handle the process, the company should assign in house personnel with sufficient technical skills or an outside vendor to gather this information. If possible, consider early discussions with the aggrieved consumer(s) or their attorney to avoid the expense of protracted litigation. Needless to say, retain an attorney who understands the law and litigating these claims.

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