

# PUBLICATION

---

## New Limits on Predictive Dialers: Florida Enacts Its Version of the TCPA

Authors: Eve Alexis Cann

June 10, 2021

**On April 1, 2021, the Supreme Court issued its decision in *Facebook, Inc. v. Duguid*, resolving a circuit split and establishing that in order for a dialing system to be considered an automatic telephone dialing system (ATDS) under the Telephone Consumer Protection Act (TCPA), it must have the "capacity to either store or produce a telephone number based on a random or sequential number generator." This narrowing of the definition of an ATDS has provided a strong defense to companies sued under the TCPA, provided that their dialing systems cannot store or produce such numbers.**

However, this "win" for businesses has now been undercut as Florida's Legislature has unanimously passed CS/SB 1120. This bill updates the Florida Consumer Protection Law and the Florida Telemarketing Act and creates Florida's own version of the TCPA. While a state adopting its own version of a federal consumer protection statute is not unusual nor troublesome in and of itself, this is not the case for CS/SB 1120.

This statute limits the use of automatic dialers in making calls, text messages, or voicemail transmissions to consumers for the solicitation of sales of any consumer goods or services, including an extension of credit for consumer goods or services, without the prior express consent of that consumer. Crucially important to note, however, is that CS/SB 1120 departs from the definition of an ATDS used by the TCPA by defining it to include systems that permit the selection or dialing of telephone numbers. This broader definition seemingly covers predictive dialers that select numbers to be called from a database. This renders a number of dialing systems, although TCPA compliant, "at risk" of violating CS/SB 1120. The statute contains a large number of exemptions, including many broad categories. Most notably, there is an exemption for a "supervised financial institution or parent, subsidiary, or affiliate thereof operating within the scope of supervised activity."

While years of TCPA litigation has led companies to routinely obtain consent for calls under the TCPA, these protections would be undercut as CS/SB 1120 is not limited to calls to cellular telephones. In addition, CS/SB 1120 requires that the called party "clearly authorize" a company to send him or her telephonic sales calls through telephone, text message, or voicemail. The consent must include other specific disclosures. This specific language may result in prior consent obtained by companies to be insufficient to permit calls made to Florida residents. The statute also includes a rebuttable presumption that any call to a number with a Florida area code is to a Florida residence or to a person in Florida at that time the call is made.

The statute also includes other limitations on telemarketing calls, including a prohibition on commercial telephone solicitations before 8 a.m. or after 8 p.m. (in the time zone in which the consumer is located), barring more than three commercial telephone calls over a 24-hour period, and the use of spoofing technology to conceal the identity of a caller.

The new Florida statute also allows a consumer to assert a private cause of action for violations. Similar to the TCPA itself, violations of CS/SB 1120 provide \$500 in damages per call, which can be trebled to \$1,500 per call for willful violations; injunctive relief is also an available remedy. As of the date of this alert, Florida's governor, Ron De Santis, has not signed CS/SB 1120 and his position on this bill is unclear. However, given that CS/SB 1120 was passed unanimously, the Legislature could override any veto.

Provided there is no veto, CS/SB 1120 is scheduled to take effect on July 1, 2021, leaving little time for companies to comply. Companies that make marketing or sales calls in Florida, or to numbers with Florida area codes, should review their dialing systems, consent forms, and whether they are exempt under the updated law. Given the aggressive nature of consumer protection attorneys in Florida, suits will certainly follow once CS/SB 1120 becomes law.

If you have any questions about how this decision might impact your business, please contact [Eve A. Cann](#) for assistance.