

Publications

Oklahoma set to join Washington and Florida in the Next Wave of Mini-TCPAs

Related Attorneys

John L. Landolfi

Christopher L. Ingram

Christopher A. LaRocco

Gretchen Rutz Leist

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Since Florida's enactment of the Telephone Solicitation Act (FTSA) in July 2021, a host of other states have proposed similar "mini-TCPAs." These mini-TCPAs impose restrictions on telemarketing calls and texts similar to the federal Telephone Consumer Protection Act (TCPA), but at the state level. Like the TCPA, these mini-TCPAs provide a private right of action, which predictably has led to a wave of litigation in Florida. To date, Oklahoma and Washington are the only other states that have passed these laws, but other states are likely to follow. Florida and Washington's laws are currently in effect, while Oklahoma's law goes into effect on November 1, 2022.

Oklahoma's Law is Similar to the FTSA

Like Florida's FTSA, the Oklahoma Telephone Solicitation Act (OTSA) prohibits automated commercial calls and texts without obtaining the prior express written consent of the called party. The OTSA defines prior express written consent as a written agreement that:

- Bears the signature—such as an electronic signature—of the called party;
- Clearly authorizes the caller to use an automated system for selecting the number;
- Includes the telephone number that will receive the solicitation; and
- Includes a clear and conspicuous disclosure that the caller may use an automated system and the consumer need not enter the agreement to purchase goods.

Other key aspects of the OTSA are:

- Telephone solicitation must occur only between 8 a.m. and 8 p.m. in the called person's time zone; and
- Callers may not make more than three solicitation calls to one person in a twenty-four-hour period.

Several exemptions exist depending on the content of the message and the relationship to the call recipient.

Washington's Law Imposes Unique Requirements

While not as comprehensive or strenuous as the OTSA or FTSA, Washington's HB 1497 creates specific requirements that businesses should be aware of when engaging in "telephone solicitation." "Telephone solicitation" is contacting a person to encourage them to buy property, goods, or services, though several exemptions exist.

Non-exempted calls should abide by the following restrictions:

- The caller must identify themselves, the company they are calling on behalf of, and the purpose of the call within the first 30 seconds of the call;
- If the called party indicates they want to end the call, the caller must end the call within 10 seconds; and
- If the called party indicates that they do not want to be called again, the caller must state that the party's contact information will be removed for one year, end the call within 10 seconds, and not call the party for one year.

For further information about these or other telemarketing laws or privacy laws in general, please contact John Landolfi, Christopher Ingram, Christopher LaRocco, Gretchen Rutz, or your Vorys attorney.