Florida Statute Increases the Risk of Telemarketing

Posted on January 31, 2022 by Scott Shaffer

Sunshine State Takes a Strong Stance against Autodialed Calls and Texts

In 2021, Florida enacted a parallel version of the Telephone Consumer Protection Act (TCPA). Like the TCPA, the Florida Mini-TCPA, as it is called, provides aggrieved parties with a private right of action that allows recovery of $500 per violation, which can be increased to $1500 per violation in cases of willful and knowing violations. However, in one key area, the Florida law goes beyond its federal analogue. While the federal definition of an automatic dialing device was restricted last year by a Supreme Court ruling, the Florida definition is far broader.

Under the new law of the Sunshine State an illegal autodialer is one that uses “an automated system for the selection OR dialing of telephone numbers or the playing of a recorded message.” If a business’s dialing technology fits that description, it must have prior express written consent from the called party — even if the call would otherwise be legal under the TCPA.

Such consent is not easily acquired, because Florida defines prior express written consent as a written agreement that: (1) bears the signature of the called party which clearly authorizes the person making the call, text message or voicemail to deliver it using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message; (2) includes the number authorized to be contacted; and (3) a clear and conspicuous disclosure that informs the called party that (a) they are authorizing a call to be made using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message, and (b) they are not required to sign the agreement as a condition to purchasing any property, goods, or services. Other exemptions for calling consumers were also revoked with the passage of the Florida Mini-TCPA.

The effect of the new law was to increase the risk of bet-the-company lawsuits against businesses that solicit consumers over the telephone or via text messaging.

A number of lawsuits were filed shortly after the law took effect, including, for example, a class action against Pizza Hut for sending a text messaging offering discounted pizzas without prior express written consent.

TAKEAWAY: There is already a backlash against the Florida Mini-TCPA that has caused the state legislature to consider scaling back the definition of an autodialer so that it is again consistent with federal law. Until then, however, businesses marketing to Florida consumers by phone or text should be wary of using anything resembling an autodialer unless the called party has given prior express written consent that meets the Florida Mini-TCPA requirements.

Tags: Advertising, Telemarketing