



One of the most litigated state telemarketing laws in the country has been significantly pared down. On May 2, 2023, the Florida legislature passed a [bill to amend the Florida Telephone Solicitation Act \(FTSA\)](#), Fla. Stat. § 501.059. The bill was presented to Florida Governor Ron DeSantis on May 16 and was signed into law on May 25. In this post, we cover the origins of the FTSA, its prior scope, and how the amendments modify the law. This amendment should significantly curtail lawsuits filed under the FTSA against companies that use technology to assist in placing calls to consumers.

## **The FTSA's Origins**

The FTSA was enacted in the aftermath of the U.S. Supreme Court's decision in *Facebook v. Duguid*, where the Supreme Court limited the reach of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by interpreting the definition of an "automatic telephone dialing system" term narrowly. 592 U.S. \_\_\_, 141 S. Ct. 1163 (2021). The Supreme Court held that for equipment to qualify as an autodialer under the TCPA, it must have the capacity either to store a telephone number using a random or sequential number generator or to produce a telephone number using a random or sequential number generator. Thus, technologies that do not use a random or sequential number generator are not autodialers under the TCPA. This decision significantly narrowed the reach of the TCPA's autodialer provisions because, post-*Duguid*, far fewer technologies qualify as autodialers.

In the aftermath of *Duguid*, a number of states enacted or amended their own telemarketing laws, some featuring a broader concept of an "autodialer," designed to expand the application of telemarketing laws to a wide range of automated calling technologies. Florida led the way with the FTSA, Fla. Stat. Ann. § 501.059, and amendments to the Florida Telemarketing Act, Fla. Stat. § 501.601 et. seq. As we cover below, the recent amendments to the FTSA reverse or weaken several key aspects of the law.

## How Did the Amendments Modify the FTSA?

### Narrowed Definition of "Autodialer"

Like the TCPA, the FTSA requires prior express written consent to place marketing calls and texts (which it refers to as "telephonic sales calls") using an autodialer. Fla. Stat. Ann. § 501.059(1)(j), (8)(a). As enacted, the FTSA referred to an autodialer as an "automated system for the selection or dialing of telephone numbers." Fla. Stat. § 501.059. The plaintiff's lawyers interpreted this to cover any system that can automatically select *or* dial numbers. And, unlike the TCPA post-*Duguid*, they would claim the definition applied whether or not the system used a random or sequential number generator.

As amended, the FTSA includes a significantly narrower scope of what constitutes an autodialer. In particular, the amendment changes the phrase "automated system for the selection *or* dialing of telephone numbers" to "automated system for the selection *and* dialing of telephone numbers." [House Bill 761, § 1](#) (Apr. 27, 2023). Practically speaking, this means a violation of the FTSA can only occur where the automated system is used to *both* select *and* dial telephone numbers.

### Prohibition on "Unsolicited" Calls

As enacted, the FTSA applied to "telephonic sales call[s]," regardless of whether the call was solicited or unsolicited. Post amendment, however, the FTSA prohibits *only* "unsolicited telephonic sales calls." *Id.*

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