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Alabama

Alabama has its own version of the Telephone Consumer Protection Act (“TCPA”)

Alabama has two acts that broadly cover the subject matter of the TCPA. They are the Alabama Telemarketing Act (See Ala. Code 1975 § 8-19A-1) and the Alabama Telephone Solicitations Act (See Ala. Code 1975 § 8-19C-1).

The TCPA is more limited in scope than the Alabama Telemarketing Laws, but broader in method. The laws also differ in who can bring the claims, statute of limitations, and what constitutes a violation.

- The Alabama telemarketing laws are limited to phone calls, while the TCPA covers all forms of communications including phone calls, emails, facsimiles (“fax” or “faxes”), and text messages.
- Statute of Limitations
 - The TCPA does not have an enumerated statute of limitations, thereby defaulting to the catch-all four (4) year statute of limitations period per 28 U.S.C. § 1658(a). *See also Giovanniello v. ALM Media, LLC*, 726 F.3d 106, 115 (2d Cir. 2013).
 - Alabama Telephone Solicitations Act has a two (2) year statute of limitation period. *See Ala. Code. 1975 § 9-19C-9.*
 - Alabama Telemarketing Act does not have an enumerated statute of limitations. However, Alabama law has a catch-all statute of limitations under Ala. Code 1975 § 6-2-38, providing for a limitation of two (2) years to bring a cause of action.
- Jurisdiction
 - The TCPA provides exclusive jurisdiction to the federal court if the action is brought by the State itself. However, if the action is brought by an individual, an entity, or the Commission, then there is concurrent jurisdiction between the State and Federal courts.
 - Both Alabama state courts and federal courts have jurisdiction to hear actions brought under both the Alabama Telemarketing Act and the Alabama Telephone Solicitation Act.
- Who can bring the cause of action:
 - For the TCPA, either the State, the Commission, an individual, or an entity;

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- Under the Alabama Telephone Solicitations Act, either the Alabama Public Service Commission, an individual, or an entity;
 - Under the Alabama Telemarketing Act, the District Attorney.
- Violations of the TCPA and Alabama Acts differ. See “Actions Constituting a Violation” below.
- The TCPA represents the minimum requirements for regulating the field of unsolicited advertisements, and Alabama adds to those within its two Acts on this subject. Therefore, in the state of Alabama, a person could theoretically bring all three claims.

Actions Constituting a Violation

- TCPA
 - It is unlawful to:
 - Send an unsolicited call, email, or fax to any emergency telephone line, hospital room, health care facility, nursing home or other like establishment, mobile/paging service line, or use an automatic telephone dialing system to cause two or more telephone lines of a multi-line business to be dialed simultaneously;
 - Call the same person more than once within the same 12-month period by or on behalf of the same entity in violation of these regulations; and/or
 - Violate the technical and procedural standards described of fax and artificial /pre-recorded telephone messages within the act.
- Alabama Telemarketing Act
 - It is unlawful:
 - To require payment by credit card or announce a preferred payment method; or for any commercial telephone sellerⁱ to employ any unlicensed salespersonⁱⁱ;
 - For any commercial telephone seller or salesperson to be unlicensed; and/or
 - To otherwise violate the act.
- Alabama Telephone Solicitations Act
 - An individual or entity can bring a claim for:
 - Receiving an unsolicited phone call from the same salesperson more than once within the same 12-month period by or on behalf of the same entity;
 - Contacting anyone on the Commission’s designated no-call registry (Ala. Code 1975 § 8-19C-2); and/or
 - Salesperson’s failure to identify himself or to utilize a method that blocks caller ID services (Ala. Code 1975 § 8-19C-5).
 - The Commission can bring a claim for:
 - Contacting anyone on the Commission’s designated no-call registry (Ala. Code 1975 § 8-19C-2); and/or
 - Salesperson’s failure to identify himself or to utilize a method that blocks caller ID services

(Ala. Code 1975 § 8-19C-5).

Affirmative Defenses

Both the TCPA and the Alabama Telephone Solicitations Act contain the same affirmative defense. However, the Alabama Solicitation Act does not contain a broad affirmative defense to violations, but instead contains a list of twenty-five (25) exemptions.

- TCPA & Alabama Telephone Solicitations Act
 - If the sender/salesperson has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of both acts.
- Alabama Solicitation Act
 - The full list of the twenty-five (25) exemptions is found within Ala. Code 1975 § 8-19A-4.

Penalties

- TCPA
 - Damages:
 - Enjoin the sender's actions;
 - Recover actual monetary loss from a violation or to receive monetary damages of \$500 per claim,ⁱⁱⁱ whichever recovery is greater; or
 - Both injunction and monetary damages.
 - Who may receive the recovered damages:
 - Damages awards are recovered by the Plaintiff in the cause of action, whether that Plaintiff is the State, the Commission, an individual, or an entity.
- Alabama Telemarketing Act
 - Civil Penalties
 - Damages:
 - Enjoin the salesperson's actions;
 - Receive monetary damages of \$10,000 per violation; or
 - Both injunction and monetary damages.
 - Who may receive the recovered damages:
 - Damages are recovered by the State only as the enforcing authority.
 - Criminal
 - For a first violation, it is punishable as a Class C felony of not more than \$15,000 fine (Ala. Code 1975 § 13A-5-11(3)) and punishable by a minimum of a year and a day and up to 10 years in prison (Ala. Code 1975 § 13A-5-6(3)).
 - For a second violation, the violation is classified as a Class B felony, which is a
 - Fine of not more than \$30,000 (Ala. Code 1975 § 13A-5-11(3)), and/or

- Mandatory minimum of two (2) years in prison but not more than twenty (20) years (Ala. Code 1975 § 13A-5-6(3)).
- Alabama Telephone Solicitations Act
 - Damages:
 - Enjoin the salesperson's actions;
 - Recover actual monetary loss from a violation or to receive monetary damages of \$2,000 per claim, whichever recovery is greater; or
 - Both injunction and monetary damages.
 - Who may recover the damages:
 - The Alabama Public Service Commission;
 - An individual; or
 - An entity.

The State of Alabama has two applicable telemarketing consumer protection statutes that are often paired with TCPA.

- The Alabama Telemarketing Act found in Ala. Code § 8-19A-1
- The Alabama Telephone Solicitations Act found in Ala. Code § 8-19C-1

The following are current best practices for salespersons and commercial telephone sellers to ensure compliance with the State's iteration of the TCPA.

THE ALABAMA TELEMARKETING ACT

The Alabama Telemarketing Act primarily deals with the policies and regulations regarding licensing of commercial telephone sellers. Those wishing to solicit within the state of Alabama must comply with the licensing requirements enumerated in this Act.

- Those wishing to solicit must apply for a license and pay the current fee requirement.^{iv}
- Financial Requirements:
 - A minimum \$50,000 bond executed by a corporate surety that is approved by the Division and licensed to do business in Alabama^v;
 - An irrevocable letter of credit by a bank whose deposits are insured by an agency of the federal government; and
 - Certificate of deposit in a financial institution insured by an agency of the federal government.
- Oral Disclosures
 - If there is an agreement to purchase, the salesperson shall inform the purchaser of:
 - His right to cancel the order as provided for in the chapter;
 - State the license number issued by the Division for both the company and the salesperson;

- and
 - Give the street address of the seller.
- Within the first thirty (30) seconds of a telephone call, the salesperson must state:
 - Their true name;
 - The company on whose behalf the solicitation is being made; and
 - The consumer goods or services being sold.
- The Act also expressly defines what constitutes contracts and rights of the purchaser within those contracts. Specifications are found in Ala. Code 1975 § 8-19A-14. Please carefully review these requirements when drafting contracts and engaging with purchasers.
- The Alabama Telemarketing Act also requires certain disclosures if the salesperson represents to a prospective purchaser that they may be eligible to receive a gift, premium, bonus, or prize.

THE ALABAMA TELEPHONE SOLICITATIONS ACT

The Alabama Telephone Solicitations Act primarily deals with the creation of the Do Not Call Registry, commercial telephone seller's access to said registry, and violating the registry. The Alabama Public Service Commission ("Commission") is in charge of regulating the Do Not Call database.

- The Do Not Call database
 - To gain access to the list to ensure proper compliance, the salesperson or the commercial telephone seller must pay an annual fee to the Commission.
 - The Commission has authority to commence proceedings against those in violation of this Act.
 - These violations include:
 - Calling someone on the Do Not Call database;
 - Using a method to block caller ID;
 - Failing to identify oneself within the first thirty (30) seconds of the call; and
 - Receiving an unsolicited phone call from the same caller more than once within the same 12-month period by or on behalf of the same entity.
- Liabilities
 - Third parties cannot be sued for the violations committed by salespersons or companies.^{vi}

ⁱ “Commercial telephone seller” is defined by the Alabama Telemarketing Act as “any person who engages in commercial telephone solicitation on his or her own behalf or through salesperson. . . . Ala. Code 1975 §8-19A-3(2).

ⁱⁱ “Salesperson” is defined by the Alabama Telemarketing Act and the Alabama Telephone Solicitations Act as “any individual employed, appointed, or authorized by a commercial telephone seller...who attempts to solicit or solicits a sale on behalf of the commercial telephone seller.” Ala. Code 1975 § 8-19A-3(15).

ⁱⁱⁱ If willful and knowing violation of the act, then the penalty can be a maximum of \$1,500 per violation.

^{iv} As part of the licensure process, salespersons will be expected to make certain disclosures to the State of Alabama, including such disclosures as the names and contact information of a business’s salespersons.

^v “The Division” refers to the Consumer Division of the Office of Attorney General which has full authority to deny any applicant from receiving a license but must enumerate the reasons for denial as stated in Ala. Code 1975 § 8-19A-11.

^{vi} Third parties are defined as a “provider of telephone caller identification service, local exchange telephone company, or long distance telephone company.” Ala. Code 1975 §8-19C-12.