

## Florida

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### Does your state have its own version of the TCPA?

Yes, Florida enacted its own version of the TCPA called the Florida Telephone Solicitation Act (“FTSA”) under Florida Statute §501.059. The FTSA was recently amended in 2023 to respond to an increase in litigation following the grant of a private right of action to enforce the FTSA in 2021. The FTSA covers calls made to Florida residents and anyone physically in the State of Florida.

### *If so, please explain the distinction between the state’s iteration of the TCPA.*

The FTSA and TCPA are substantially similar, for instance both require the caller to truthfully identify themselves and the business they are calling on behalf of and prohibit caller ID “spoofing.” The Florida case law interpreting the TCPA is often applied to the FTSA. However, there are a few distinctions worth noting:

- The FTSA provides greater restrictions regarding the use of automatic equipment. Unlike the TCPA, the FTSA does not contain a definition of “automatic telephone dialing system,” instead it prohibits unsolicited sales calls which involve an automated system for the selection and dialing of telephone numbers<sup>i</sup> or the playing of a recorded message. This restriction is more stringent than under the TCPA.
- Under the FTSA, a call is unsolicited unless it has been expressly requested by the recipient, is primarily in connection with an unfulfilled existing debt or contract, is made to a person the caller has a prior or existing business relationship, or is made by a newspaper publisher (or his or her agent or employee) in connection with his or her business.
- The FTSA also requires the State of Florida to maintain its own “do not call” lists, which incorporates the federal one. This means that some Floridians may not be on the federal list but still may not be contacted under the FTSA.
- The FTSA time of day restrictions are slightly shorter than under the TCPA. The TCPA allows telemarketer calls between 8:00 a.m. and 9:00 p.m. for the recipient’s local time.<sup>ii</sup> The FTSA cuts back an hour, allowing calls from 8:00 p.m. to 8:00 p.m., also at the recipients’ local time. It is important to note that Florida covers two time zones, while most Floridians live in the Eastern Time Zone, a sizable portion live in the Central Time Zone as well.
- The FTSA provides requirements for consumer contracts made via telephone. Those requirements include that such contracts must be reduced to a writing signed by the consumer which contains a detailed

description of the underlying goods or services, as well as additional information<sup>iii</sup>.

### **Please address state specific consumer protection statutes that are often paired with TCPA or its state iterations and the additional element and penalties.**

The FTSA goes hand in hand with the Florida Deceptive and Unfair Trade Practices Act, found at Fla. Stat. § 501.202, and makes unlawful “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” This law is construed liberally and is designed:

- “To simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.”
- “To protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”
- “To make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.<sup>iv</sup>”

In addition, the FTSA works in conjunction with the Florida Telemarketing Act.<sup>v</sup> The Florida Telemarketing Act further regulates telemarketing businesses and allows the state to impose civil and criminal penalties for violations. A key provision requires registration and licensing through the Florida Department of Agriculture & Consumer Services before doing business in Florida. This also applies to the individual salespersons themselves.<sup>vi</sup> Some key notes about the Florida Telemarketing Act are:

- One-off calls made when the solicitation is an isolated event and not part of a regular business pattern are exempt from the Florida Telemarketing Act. However, these exemptions do not relieve callers of the time-of-day and other restrictions.<sup>vii</sup>
- Additionally, exempt parties calling for religious, charitable, political, or educational purposes must also provide documentation to the state claiming such exemption. A full list of the exemptions is found at Fla. Stat. § 501.604.

### **What are the current best practices to comply with the State’s iteration of the TCPA?**

To maintain compliance with the FTSA, and to avoid penalties associated with noncompliance, best practices involve both the targets of calls, the content of the calls, and the methods for making the call. Each of these three areas encapsulates key provisions in the FTSA and help guide the decision-making process to avoid running afoul of the FTSA. Some best practices are:

- Stay apprised of the Florida Do Not Call Registry maintained by the Florida Department of Agriculture & Consumer Services and honor do not call requests.
- Keep in mind the definition of unsolicited sales calls when using automatic equipment.
- Avoid using automated or recorded messages when making unsolicited sales calls.
- Monitor the volume and frequency of texts and calls to ensure no more than three in any 24-hour period.

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<sup>i</sup>The TCPA defines “automatic telephone dialing system” as “equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator and (B) to dial such numbers.

<sup>ii</sup> While not addressed directly in the statute, 47 CFR § 64.1200(c) contains the time restrictions imposed under the TCPA. Similarly, the FSTA’s time restrictions are found outside of the statute at Fla. Stat. § 501.616(6).

<sup>iii</sup> A full list of the requirements for contracts made via telephone can be found at Fla. Stat. § 501.059(5)(6)(b). For exclusions to this provision see Fla. Stat. § 501.059(6).

<sup>iv</sup> Fla. Stat. § 501.202

<sup>v</sup> Fla. Stat. § 501.601 *et. seq.*

<sup>vi</sup> Fla. Stat. § 501.607

<sup>vii</sup> Fla. Stat. § 501.604 notes that the Florida Telemarketing Act does not apply to certain groups or individuals, but they still must comply with § 501.608 and § 501.616(6) and (7).