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FLORIDA TELEMARKETING RULES AND COMPLIANCE GUIDE

Prepared by CompliancePoint, a PossibleNOW Company

Enabling responsible interactions between customers and the marketplace.

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General Information and Overview

Disclaimer

This guide is not to be construed as legal advice nor should it be used as a substitute for legal counsel. Please seek the opinion of your attorney regarding matters of law.

What is Florida SB 1120?

Florida SB 1120 updates the Telephone Solicitation section of the General Provisions section of the Florida Consumer Protection Statutes and the Exemptions Section of the Florida Telemarketing Act.

The bill was signed by the Governor on June 29, 2021.

When will the provisions of this legislation go into effect?

These provisions are in effect as of July 1, 2021. There is no grace period for the effective date of these provisions.

What are SB 1120's important updates?

(For more detail, please refer to the specific section of this FAQ)

- The law **restricts the use of automated technology and prerecorded messages by requiring prior express written consent** before making sales or marketing calls and removes exemptions for making calls without consent. This restriction even applies to calls made with an established business relationship and calls to consumers not on the Florida state DNC list. The definition of an auto-dialer under Florida law is broader than the Federal TCPA and includes "an automated system for the selection or dialing of telephone numbers or the playing of a recorded message."
- The law **includes a private right of action** for violations of Section 501.059 of the Consumer Protection Act with potential damages as high as \$1500 for each willful violation or the greater of actual damages or \$500 for violations that are not deemed to be willful. Companies that are found to violate these rules may also be prohibited from subsequent calling activities in the state.

- The law adds a presumption that **any call to a Florida area code** is a call to a Florida resident or a person in the state.
- The law updates legal calling times from 8AM to 9PM to 8AM to 8PM.
- The law sets a cap on the number of calling attempts at **three attempts per 24-hour period**.
- The law updates Caller ID restrictions for calls from and into Florida.

What is a Private Right of Action?

A private right of action is when any person with legal standing can bring a suit to enforce a law. In some cases, class action lawsuits can be brought if a private right of action is available. If a law does not include a private right of action, it is typically only enforced by a regulatory agency or an attorney general.

What are the main telemarketing provisions subject to a Private Right of Action under SB 1120?

- SB 1120 adds a private right of action for violations of Section 501.059 of the General Provisions section of the Florida Consumer Protection Act. Potential provisions under this section that could be subject to the private right of action include:
 - Updated restrictions requiring express written consent to call consumers via an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.
 - Telephonic sales calls to consumers on National, Florida State, or internal Do Not Call lists without an exemption even if these calls are not made with automated technology. Under the Florida Consumer Protection Act, the internal Do Not Call list should be managed on a consumer by consumer basis. These means that if a consumer makes an internal Do Not Call request, all of the consumers known numbers should be placed on the internal Do Not Call list.
 - The requirement that telephone solicitors who make an unsolicited telephonic sales call to a telephone number immediately identify themselves by their true first and last names and identify the business on whose behalf they are soliciting.
 - Requirement that all credit or electronic fund transfers that result from telephonic sales call be accompanied by a written contract that has been signed by the consumer and comply with other sections of the Consumer Protection Act.
 - Caller ID restrictions including failing to transmit accurate caller ID information.

What is not subject to the Private Right of Action?

The attempts and calling times rules found in SB 1120 are not subject to the private right of action.

How do I know if a consumer is located in Florida?

These provisions apply to Florida residents and consumers located in Florida. SB 1120 creates a rebuttable presumption that calls to Florida area codes are calls to Florida residents or a person in the state. Note, the rebuttable presumption here means that unless a company can prove with solid evidence that a Florida area code does not ring to a person located in the state that the court may accept this presumption as fact.

How do I know if my dialer is considered 'automated technology'?

Under the Florida Consumer Protection Act, the definition of automated technology includes technology that uses automated means for the selection or dialing of telephone numbers or the playing of a recorded message. Like the issues companies have faced under the TCPA, this is a grey area that will likely be decided in the courts. Companies should have their dialer technology evaluated by an expert.

Why are the types of communications covered by the Express Written Consent and Private Right of Action different from the types of communications covered by the Attempts and Calling Times restrictions?

The law updates Section 501.059 of the General Provisions of the Florida Consumer Protection Act and 501.616 of the Florida Telemarketing Act. The classes of calls covered by these sections are slightly different, and as a result, there may be differences in what calls are covered by the amendments.

For instance, the Private Right of Action and Express Written Consent requirements are found in Section 501.059 of the General Provisions of the Florida Consumer Protection Act. These requirements only apply to Telephonic Sales calls as defined in that section.

In contrast, attempts and calling times requirements are found in 501.616 of the Florida Telemarketing Act. These restrictions apply to commercial telephone solicitations as defined in that section.

Prior Express Written Consent to Place Automated Sales or Marketing Calls to Persons Located in Florida

What is the definition of an auto-dialer under SB 1120?

The definition of automated technology is broader than the Federal standard and includes any “automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.” Like the issues companies have faced under the TCPA, this is a grey area that will likely be decided in the courts. Companies should have their dialer technology evaluated by an expert.

What are the required elements of express written consent under this new law?

The requirements for Express Written Consent under the law are:

1. Bears the signature of the called party;
2. Clearly authorizes the person making or allowing the placement of a telephonic sales call by telephone call, text message, or voicemail transmission to deliver or cause to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers, the playing of a recorded message when a connection is completed to a number called, or the transmission of a prerecorded voicemail;
3. Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered; and
4. Includes a clear and conspicuous disclosure informing the called party that:
 - a. By executing the agreement, the called party authorizes the person making or allowing the placement of a telephonic sales call to deliver or cause to be delivered a telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and
 - b. He or she is not required to directly or indirectly sign the written agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

Who are persons located in Florida?

SB 1120 creates a rebuttable presumption that calls to Florida area codes are calls to Florida residents or a person in the state. Note, the rebuttable presumption here means that unless a company can prove with solid evidence that a Florida area code does not ring to a person located in the state that the court may accept this presumption as fact. **The most conservative approach is to treat all consumers with Florida area codes or zip codes as persons located in Florida.**

Are Business-to-Business (B2B) calls covered by this restriction?

No, this restriction applies to Telephonic Sales Calls. Telephonic Sales calls means “a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Business-to-Business calls fall outside of this definition.

Are calls to consumers on the Florida State Do Not Call and National Do Not Call List covered by this restriction?

Yes, calls to consumers on the Florida State or National DNC list that utilize an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called are covered by this restriction. Calls to these consumers require Express Written Consent prior to placing a telephonic sales call.

Are calls to consumers with an Established Business Relationship (EBR) covered by this restriction?

Yes, calls to consumers with an EBR that utilize an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called are covered by this restriction. Calls to these consumers require Express Written Consent prior to placing a telephonic sales call.

How are calls to landlines and cellphones impacted?

The law does not distinguish between landlines and cellphones. Calls to consumers on landlines or cellphones that utilize an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called are covered. Express Written Consent to call consumers with automated technology must be obtained before calling landlines or cellphones.

Are informational communications impacted by the legislation?

No. Telephonic Sales calls means “a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Purely informational calls fall outside of this definition.

What are the potential damages under the Private Right of Action for violations of Section 501.509 of the Consumer Protection Act under SB 1120?

The law includes a private right of action with potential damages as high as \$1500 for each willful violation or the greater of actual damages or \$500 for violations that are not deemed to be willful. Companies that are found to violate these rules may also be prohibited from calling activities in the state. It is possible that consumers may attempt to bring Class Action lawsuits to recover under this statute.

Calling Times and Attempts Restrictions

What types of calls do the calling times and attempts restrictions apply to?

The calling times and attempts restrictions apply to commercial telephone solicitations. Under the Florida Telemarketing Act, a “commercial telephone solicitation” means:

1. An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(8) for the purpose of inducing the person to purchase or invest in consumer goods or services;
2. Other communication with a person where:
 - A gift, award, or prize is offered; or
 - A telephone call response is invited; and
 - The salesperson intends to complete a sale or enter into an agreement to purchase or invest in consumer goods or services during the course of the telephone call; or
3. Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.”
4. For purposes of this section, “other communication” means a written or oral notification or advertisement transmitted through any means. Also, for purposes of this section, “invites a response by telephone” does not mean the mere listing or including of a telephone number in a notification or advertisement.

What are the calling times restrictions?

Under the law, Commercial Telephone Solicitations may only be made between 8AM and 8PM.

What are the attempts restrictions?

Under the law, no more than three commercial telephone solicitation phone calls from any number to a person over a 24-hour period on the same subject or issue may be placed regardless of the phone number used to make the call.

Do the calling times and attempts restrictions apply to business-to-business calls?

The calling times and attempts restrictions apply to Commercial Telephone Solicitations. Some business-to-business calls may fall within the definition of a Commercial Telephone Solicitation. These calls would need to adhere to the calling times and attempts restrictions.

Do the calling times and attempts restrictions apply to informational calls?

No. The calling times and attempts restrictions apply to Commercial Telephone Solicitations. Purely informational calls with no sales or marketing component would fall outside the definition of a Commercial Telephone Solicitation.

If I have Express Written Consent can I make more than three calls in 24 hours or call after 8PM?

No, the law does not carve out an exemption to the attempts rules or calling times restrictions for calls made with Express Written Consent.

Preparing to Comply

What can you do now to prepare for these changes?

- Decide whether your dialing platform is an auto-dialer under Florida law. The Florida definition of an auto-dialer is broader than the Federal standard and includes any “automated system for the selection or dialing of telephone numbers or the playing of a recorded message.”
- Make sure you obtain Express Written Consent prior to placing any calls to Florida area codes or persons in Florida. This includes ensuring that any purchased leads have adequate Express Written Consent for your business to call. Maintain records of Express Written Consent for at least five years from the last date the consent was relied upon to place a call.
- Update your calling times for calls to Florida area codes or persons in Florida from 8AM to 9PM to 8AM to 8PM. Keep in mind that Florida is a two time-zone state when making these changes.
- Ensure that your dialer can cap the number of attempts to Florida area codes and persons in Florida to three attempts per 24-hour period. This may include ensuring that lists are appropriately de-duped to make sure that the same number coming in from various lead sources is not called more than three times in 24 hours.
- Document any changes made to your policies or procedures, including what changes were made and when they went into effect including updating attempts limits, calling times, and managing your internal DNC list by consumer (as opposed to by telephone number).

Chart Summaries

Is Express Written Consent required to call with automated technology?

Call Type	Does the requirement apply?
Business-to-Consumer Calls	Yes
Business-to-Consumer Informational Calls	No, but prior consent is still required for informational calls to cell phones with an Automated Telephone Dialing System (ATDS) under the TCPA
Business-to-Business Sales Calls	No, but prior consent is still required for informational calls to cell phones with an Automated Telephone Dialing System (ATDS) under the TCPA
Business-to-Business Informational Calls	No, but prior consent is still required for informational calls to cell phones with an Automated Telephone Dialing System (ATDS) under the TCPA
Debt Collection Calls to Consumers	No, but prior consent is still required for informational calls to cell phones with an Automated Telephone Dialing System (ATDS) under the TCPA

*NOTE: Florida Law does not distinguish between landline and wireless numbers

Calling Times and Attempts Restrictions

Call Type	Does the requirement apply?
Business-to-Consumer Sales Calls (landline and wireless numbers)	Yes
Business-to-Consumer Informational Calls (landline and wireless numbers)	No
Business-to-Business Sales Calls	Yes
Business-to-Business Informational Calls	No
Debt Collection Calls to Consumers	No

*NOTE: Florida Law does not distinguish between landline and wireless numbers

TCPA vs. Florida SB 1120

General Information

	TCPA	Florida SB 1120
Definition of Automated Technology	The TCPA defines Automated Telephone Dialing System (ATDS) as any equipment which “has the capacity—(A) to store telephone numbers to be called, using a random or sequential number generator, or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.”	The definition of automated technology is broader than the Federal standard and includes any “automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called.”
Calling Times	8 AM – 9 PM (individual states may have more restrictive calling times)	8 AM – 8 PM
Attempts	The TCPA does not specify the maximum number of attempts to contact the consumer with a solicitous offer but it is recommended that a maximum call attempt policy be implemented internally.	No more than three commercial telephone solicitation phone calls from any number to a person over a 24-hour period on the same subject or issue may be placed regardless of the phone number used to make the call.

Is a Private Right of Action with Statutory Damages available for violations?

	TCPA	Florida SB 1120
Calling Times	Yes	No
Attempts	N/A	No
Calls made to consumers on the National or State DNC list without an exemption	Yes (for National DNC List Violations)	Yes (for National or Florida DNC List Violations)
Calls made to consumers on the company’s internal DNC list	Yes	Yes
Calls made without the appropriate level of consent (see chart titled “Consent Requirements”)	Yes	Yes

Consent Required to Place Calls or Texts to Consumers*

	TCPA				Florida SB 1120	
	Calls to Landlines		Calls/Texts to Wireless Numbers		Calls to Landlines and Calls/Texts to Wireless Numbers	
	ATDS	Manual	ATDS	Manual	Automated System, including pre-recorded voice	Manual
B2C Marketing or Sales Calls	None, unless using pre recorded message, express written consent required	None	Prior express written consent	None	Prior express written consent	None
Non-solicitous calls including Informational and Debt Collection Calls	None	None	Prior express consent	None	None	None

*DNC rules could still apply

PossibleNOW is the pioneer and leader in customer consent, preference, and regulatory compliance solutions. We leverage our MyPreferences technology, processes, and services to enable relevant, trusted, and compliant customer interactions. Our platform empowers the collection, centralization, and distribution of customer communication consent and preferences across the enterprise. DNCsolution addresses Do Not Contact regulations such as TCPA, CAN-SPAM and CASL, allowing companies to adhere to DNC requirements, backed by our 100% compliance guarantee.

PossibleNOW's strategic consultants take a holistic approach, leveraging years of experience when creating strategic roadmaps, planning technology deployments, and designing customer interfaces.

PossibleNOW is purpose-built to help large, complex organizations improve customer experiences and loyalty while mitigating compliance risk.

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