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## New & Amended Telemarketing Laws Sweep the States

**Best Practices:** *Any company not otherwise exempt that engages in telemarketing to residents of Oklahoma, Washington, New York, and Florida (or anyone with an area code in these states) should immediately take the following steps: (1) ensure their procedures and processes for making calls are in compliance with each state’s law; (2) ensure methods of obtaining consent to be called are sufficient under each state’s laws; (3) review each state’s requirements for registration, caller ID functionality, and call timing restrictions; and (4) review internal “do not call” (“DNC”) policies, call scripts, and training.*

Last year, the Florida legislature amended its Consumer Protection Law and Telemarketing Act. In what would later be dubbed the “Florida [mini-TCPA](#),” lawmakers broadly defined the type of equipment that could constitute an “autodialer”; restricted the number of calls that could be made; and placed other restrictions on when and how calls are made. In the year that followed, the Florida court system has seen an uptick in the number of telemarketing class action lawsuits.

Now, several other states have passed (or are considering) changes to their telemarketing laws. In this Alert, we examine some of these laws and how they may impact your business.

### OKLAHOMA

Oklahoma Governor Kevin Stitt recently approved the Telephone Solicitation Act of 2022 (the “Act”)—commonly referred to as Oklahoma’s “mini-TCPA”—after it passed both the House and Senate. The [final version](#) of the Act will be effective November 1, 2022. Notably, the Act largely emulates Florida’s recently enacted telemarketing law.

The Act prohibits **any person** from making “a telephonic sales call” if the “call involves 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 **without the prior express written consent** of the called party” (emphasis added). “Express written consent” is a written agreement with the signature of the called party, which may be an electronic or digital signature. Disclosure language must also be included in the agreement.

“Automated system,” “automated dialing,” and “telephonic sales call” are not further defined in the Act. The originating telephone number (when available by the solicitor’s carrier) and the name of the telephone solicitor must be displayed to any caller identification service used by a call recipient. However, the name of the seller can be displayed instead of a call center—so long as the customer service telephone number for the seller is displayed and can be answered during regular business hours. If a phone number is made available through a caller identification service, that number must be capable of receiving calls.

The Act creates a private right of action where any called party may file a lawsuit. A party may recover actual damages or \$500, whichever is greater. If a defendant willfully or knowingly violates the Act, or rules adopted pursuant to the Act, the court has the discretion to increase the award up to three times.

There are several other provisions worth noting, including:

- The Act applies to any “person,” and does not limit its application to any specifically defined telephone seller, commercial party, or any other solicitor.
- There is a rebuttable presumption that a sales call made to an area code in Oklahoma is being made to a resident or person in Oklahoma at the time of the call.
- No call can be made before 8:00 a.m. or after 8:00 p.m. local time.
- Caller cannot make more than three “commercial telephone solicitation” phone calls from any number to a person over a 24-hour period on the same subject matter or issue, regardless of the phone number used.
- Some of the notable exemptions include:
  - If the solicitation is an isolated transaction and not in the course of a repeated transaction of like nature.
  - Solicitations for religious, charitable, political, or educational purposes.
  - Solicitations from nonprofit organizations registered with the secretary of state.
  - Licensed securities, commodities, or investment brokers, dealers, or investment advisers when soliciting within the scope of their license.
  - Insurance brokers, agents, or customer representatives when soliciting within the scope of their license.
  - Real estate agents when soliciting within the scope of their license.
  - Some business-to-business sales.

### Issues That May Arise in Litigation in Oklahoma

If the Florida law and related litigation is any guidance, companies who find themselves in a lawsuit arising out of any of the new state telemarketing laws should focus on the following issues:

- Did the call involve an “automated system for the selection or dialing of telephone numbers or the playing of a recorded message”?

- Is the company exempt (for example, under Section 5 of the Oklahoma law)?
- Compliance with policies designed to reduce DNC violations, including call scripts requiring seller identification and procedures for placing persons who no longer wish to be called on internal DNC lists.
- If a class is alleged, does it include individuals outside of the state?
- The state’s standing requirements.

### WASHINGTON

In a [law](#) set to go into effect June 9, 2022, Washington legislators [amended](#) the state’s Do Not Call law in a manner which broadens its scope and reach.

Among other things, the law expands the definition of “telephone solicitation” to include calls to any “person.” Previously, the law restricted calls to “residential telephone customers.” This change potentially permits claims by cellular phone users, businesses, and non-subscribers.

The law now also states “[a] commercial telephone solicitor must promptly implement a call recipient’s statement or indication they do not want to be called again or want to be removed from the telephone lists used by the company or organization making the telephone solicitation.” The law does not define or provide examples of “indication[s],” which could lead to litigation over the reasonableness of a consumer’s claimed revocation of consent.

In addition, the amendment requires the caller identify him or herself and the company or organization on whose behalf the telephone solicitation is being made, and the purpose of the call, within the first 30 seconds. If a consumer asks to have his or her contact information removed from the business’ list, callers must also inform the consumer his or her contact information will be removed from the business’ list for not less than one year and end the call within 10 seconds.

Both the state and aggrieved individuals can file suit for violations of the law. A private party can recover at least \$100 per violation and attorneys’ fees and costs of suit.

## NEW YORK

The state [Assembly](#) and [Senate](#) recently amended New York's DNC law. The bill awaits signature by Governor Kathy Hochul, who is expected to sign it into law.

The bill would amend [existing law](#) to require telemarketers begin each call by advising the consumer of the consumer's option to automatically be added to the caller's internal DNC list; state the purpose of the call; and identify any goods or services for which a fee will be charged. Previously, the law required callers make similar disclosures—but did not dictate when during the call they had to be made.

Violations of the law are subject to penalties of up to \$11,000 by the Secretary of State.

For further information or assistance, contact [Ana Tagvoryan](#), [Jeffrey N. Rosenthal](#), [Harrison Brown](#), [Nicole Bartz Metral](#), or a member of Blank Rome's [Privacy Class Action Defense](#) group.

**Ana Tagvoryan**  
424.239.3465 | [ana.tagvoryan@blankrome.com](mailto:ana.tagvoryan@blankrome.com)

**Jeffrey N. Rosenthal**  
215.569.5553 | [jeffrey.rosenthal@blankrome.com](mailto:jeffrey.rosenthal@blankrome.com)

**Harrison Brown**  
424.239.3433 | [harrison.brown@blankrome.com](mailto:harrison.brown@blankrome.com)

**Nicole Bartz Metral**  
424.239.3483 | [nicole.metral@blankrome.com](mailto:nicole.metral@blankrome.com)