



Oklahoma State Telemarketing Guide

A guide to the latest regulations governing calls made to the Sooner State

Overview

In May 2022, Oklahoma Governor Kevin Stitt signed the Oklahoma Telephone Solicitation Act of 2022 (OTSA) into law. Much like the previous year's Florida Telephone Solicitation Act (FTSA), it functions as a state-level, miniature version of Telephone Consumer Protection Act (TCPA). It mimics the federal law's enforcement mechanisms and penalties and, like the Florida law, centers on autodialer restrictions that are significantly broader than those found within the TCPA's regulations. The law took effect on November 1, 2022.

Did You Know?

The OTSA contains a rebuttable presumption that calls made to any phone number with an Oklahoma area code is to an Oklahoma resident and thus covered by the law.

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Enforcement and Penalties

Like the TCPA, the OTSA contains a private right of action and penalties of up to \$500-per-violation and up to \$1,500-per-willful-violation. It also has uncapped statutory damages, creating the same litigatory incentives as the federal law and its Florida counterpart.

Autodialer Restrictions

The most important provision of the OTSA is as follows: "A person may not make or knowingly allow a commercial telephonic sales call to be made if such 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."

Crucially, the OTSA does not define "automated system" or "commercial telephonic sales call." This leaves plaintiffs and litigators ample opportunity to argue to courts that calls made with a wide variety of technologies and for a wide variety of purposes may violate these restrictions. In Florida, the FTSA's similar provisions have resulted in numerous class action lawsuits stemming from text message marketing, with many resulting in expensive settlements.

Definition

The OTSA defines "prior express written consent" as "a written agreement that (a) bears the signature of the called party; (b) Clearly authorizes the person making or allowing the placement of a telephonic sales call ... to be delivered to the called party a telephonic sales call using an automated system for the selection or dialing of telephone numbers...; (c) Includes the telephone number to which the signatory authorizes a telephonic sales call to be delivered... (d) includes a clear and conspicuous disclosure" that the called party is authorizing the receipt of sales calls and that signing of the written agreement is not a condition of purchase..

Additional Provisions

While the autodialer restrictions are the most notable and dangerous provisions of the OTSA, it does also overhaul other aspects of Oklahoma's telemarketing regulations.

Other key provisions include:

- Reducing the allowed calling times from 8:00 am to 8:00 pm in the consumer's time zone
- Adding a restriction on calling the same person about the same subject matter more than 3 times in any 24-hour period
- Restrictions against sales calls that block caller ID or display a different phone number than the originating number
- Restrictions against sales calls that intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to mislead or confuse the recipient

Did You Know?

Unlike the FTSA, the OTSA's private right of action applies to all of the law's provisions.

Exemptions

The law mentions 26 exemptions, including the following:

- Sales calls of an infrequent or one-time nature
- Calls for noncommercial purposes
- Solicitors who do not make the sales presentation during the call, but rather arrange a face-to-face meeting
- Financial institutions or licensed securities, commodities, investment, or insurance brokers
- Newspaper or cable solicitations, or book, video, or record club plans
- Qualified business-to-business sales calls

Best Practices

Get a Third Party Compliance Provider

Compliance with state-level telemarketing regulations is more important than ever. However, each state law has its own complexities and nuances. The disparity between how the TCPA and Oklahoma's mini-TCPA regulate texting is one key example of these state-level complications. It is critical to have a compliance provider on your side. You will save money, avoid compliance-related headaches, and prevent brand damage.

Don't Call Known Litigators and Serial Plaintiffs

The easiest way to avoid a lawsuit is to not contact the people who are most likely to sue. The best defense is to remove these predatory individuals from all calling lists before reaching out.

Maintain Rigorous Consent Standards

Under the new law, it is absolutely imperative that all marketing calls and texts in Oklahoma be made to consumers who have given prior express written consent. Make sure that you have procedures in place for obtaining and tracking consent before placing calls.