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THE TELEPHONE CONSUMER PROTECTION ACT: WHAT YOU NEED TO KNOW AND RECENT DEVELOPMENTS

This article primarily covers two topics. First, it provides an overview of the statutory elements and regulations on the TCPA. Second, it presents a summary of recent developments regarding the application and interpretation of the TCPA, at both the federal and state levels.

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The Telephone Consumer Protection Act (“TCPA”) regulates calls or texts placed using an automatic telephone dialing system (“ATDS”) or an artificial or pre-recorded voice. Until recently, any time a business placed a call or sent a text message using anything but a manually dialed telephone number, the company was at risk for violating the TCPA. However, there have since been some favorable changes to the interpretation of certain provisions of the TCPA that has reduced that risk.

The TCPA was first introduced in 1991 as a bill to amend the Communications Act of 1934 to prohibit certain practices involving the use of telephone equipment for advertising and solicitation purposes. In other words, it was enacted to stop telephone calls that some consumers deemed to be annoying or harassing. However, 30 years ago, people were not regularly communicating via mobile phones and text messages, and the statute has not been updated to contemplate all forms of modern technology. This has led to differing interpretations of key elements of the statute.

Indeed, since the creation of the TCPA in 1991, there is no industry or practice that has proven immune to

TCPA class actions. While the TCPA does not provide for an award of attorneys’ fees, TCPA class action litigation under Federal Rule of Civil Procedure 23 has proven to be very lucrative for the plaintiffs’ bar. Lawsuits have been filed against social networking sites, sports franchises, big pharmacies, and many other industries that have utilized text messaging or other types of technology to communicate with their customers and consumers.¹

THE STATUTE

The Prohibitions of the TCPA

The TCPA establishes key prohibitions that businesses must understand to ensure compliance with the law.² The prohibitions are divided into four sections.

¹ *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1168-69 (2021); *Emanuel v. L.A. Lakers, Inc.*, No. CV 12-9936-GW(SHx), 2013 U.S. Dist. LEXIS 58842, at *13 (C.D. Cal. Apr. 18, 2013); *Lowe v. CVS Pharm., Inc.*, 233 F. Supp. 3d 636, 638-39 (N.D. Ill. 2017).

² 47 U.S.C. § 227 (b)(1).

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