

## A Single Unsolicited Text Message is a TCPA Violation - 5th Circuit Ruling

May 28, 2021 - A ruling from the US 5th Circuit Court of Appeals has determined that a single unsolicited text message from a business is enough to confer standing to anyone who chooses to sue that business using the Telephone Consumer Privacy Act (TCPA). The ruling results in a circuit split between the 5th and 11th Circuits in similar cases. The 11th Circuit has already ruled that a plaintiff needs to show a concrete injury from an unsolicited text message in order to be able to sue. The latest ruling means that it will likely be up to the Supreme Court to settle the issue.

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})();
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po.src = 'https://apis.google.com/js/plusone.js';
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})();
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Under the TCPA, businesses may only text consumers who have opted in to receive texts. Put another way, you have to provide businesses with prior written permission before they can send you random text messages.

Businesses that violate the TCPA can be forced to pay \$500 per text message for inadvertent violations, and up to \$1,500 per text messages if they are determined to have willfully violated the law.

In addition to the TCPA, which is a federal law, a variety of states have similar laws that are proposed or already on the books. Florida is the latest state to jump on this bandwagon, with proposed amendments to the state's existing telemarketing laws that will provide a right of private action to anyone who possesses a Florida based area code on their phone, regardless of if they currently live in the state. The fine amounts for Florida are identical to those in the TCPA; which means that businesses who send unsolicited texts to Florida based phone numbers could potentially face law suits at both the federal and state levels.

The change to Florida's law can't take place until the state legislature comes back into session and sends it to the governor's desk for signature. There is currently no word on whether or not the governor will sign the bill into law, but given the unpopularity of telemarketing and spam text messages, there is a high probability that he will.

by Jim Malmberg

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