

Will the Definition of an ATDS Soon Include Text Messages?

Aylix K. Jensen

The Safe Harbor: Debt Collection Law Update by Aylix Jensen (July 2022)

07.21.2022

Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the July 2022 edition.

On July 12, 2022, the House of Representatives introduced H.R. 8334 to amend the Communications Act of 1934 to prohibit the use of automated telephone equipment to send unsolicited text messages, and for other purposes.

Currently, the Telephone Consumer Protection Act (“TCPA”), which amended the Communications Act of 1934, defines an “Automatic Telephone Dialing System (“ATDS”) as equipment which has the capacity -

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

The proposed bill would amend the definition of an ATDS as follows:

- In subparagraph (A), the bill would strike “, using a random or sequential number generator” and replace it with “or sent a text message”
- In subparagraph (B), the bill would strike “dial such numbers” and replace it with “automatically dial or send a text message to such numbers”

The proposed bill also adds a safe harbor for TCPA violations for reassigned numbers. However, the proposed bill sets forth that the safe harbor will not apply unless the person making the call or sending the text message queried the Federal Communications Commission (“FCC”)’s reassigned telephone number database prior to doing so.

In the event the bill is enacted, the FCC will have 18 months to issue a rule defining the terms “automatically”, “dial”, “send”, and “charged for the call”, as used in 227(a)(1) of the Communications Act of 1934, as amended by the bill, taking into consideration modern dialing practices and consumer preferences.

While this bill is in the first stage of the legislative process, it is important to consider possible implications to collection policies and procedures if this bill were to be enacted. A bill must be passed by both the House and Senate in identical form and then be signed by the President to become law.

Attorneys

Aylix K. Jensen

Practice Areas

Financial Services

