

Texas Mini-TCPA Law – FAQs for Marketing Texts

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As we [reported](#) earlier this summer, a bill (S.B. 140) was recently enacted in Texas that amends the state’s telemarketing law ([TX BUS & COM T.10, Chap. 301-306](#)) to 1) expand the definition of “telephone solicitation” to include text messages, 2) create a broad private right of action through a hook to the state’s [Deceptive Trade Practices Act](#) (DTPA), and 3) explicitly provide for successive recoveries by or on behalf of the same individual.

With the effective date of [S.B. 140](#) fast approaching, many text marketers may be wondering what these changes mean and how to implement them. Here, we address some of the most common questions and outline key takeaways for businesses. Click on any question to jump directly to the answer.

[How does S.B. 140 change the scope of Texas’s telemarketing law? What does this mean for companies engaged in text marketing?](#)

[I am a text marketer - do I have to register with the Texas Secretary of State?](#)

[Does S.B. 140 add new substantive obligations for text marketers related to consent, quiet hours, or the Texas no-call list?](#)

[What remedies are available for consumers under the Texas Deceptive Trade Practices Act?](#)

[Is there anything else text marketers need to know or should consider here?](#)

[Practical Takeaways](#)

Kelley Drye’s Privacy and Communications groups are highly experienced in this area and are available to discuss your company’s compliance program. Please contact the authors above, or your usual Kelley Drye contact for more information.

FREQUENTLY ASKED QUESTIONS

Question: How does S.B. 140 change the scope of Texas’s telemarketing law? What does this mean for companies engaged in text marketing?

Answer: “Telephone solicitations” now explicitly include text messages. Companies engaged in text marketing in the state may be required to comply with additional requirements under Chapter 302.

S.B. 140 amends the definition of “telephone solicitation” to include “transmission of a text or graphic message or of an image.” Previously, the term only included “telephone calls” initiated by a seller or salesperson to induce a person to purchase, rent, claim, or receive an item. The amendment also explicitly adopts the definition of “telephone call” as used in §304.002, which already included

text messaging. As such, S.B. 140 clearly expands the applicability of Chapter 302 to include text marketers, which imposes registration and certain disclosure requirements on “sellers” making telephone solicitations.

Importantly, text marketers were already subject to Chapters 304 and 305 of the law, which impose substantive consent requirements and restrictions on telemarketing. The scope and applicability of these sections has not changed (although the potential penalties associated with non-compliance has).

Question: I am a text marketer - do I have to register with the Texas Secretary of State?

Answer: Yes, text marketers now need to register unless an applicable exception applies.

As amended, § 302.101 requires businesses 1) sending text messages on their own behalf 2) from within Texas or to a consumer located in Texas 3) for the purposes of inducing a person to purchase, rent, claim, or receive an item, to comply with Chapter 302. This encompasses businesses engaged in text marketing, but likely does not include text marketing platform providers (although platforms may still be liable under third-party liability claims).

Chapter 302 provides a number of exemptions from the registration requirement, notably including:

- Persons regulated by other laws, such as publicly traded organizations registered with the SEC or state Securities Board, persons licensed under the Insurance Code (if the operative transaction is covered by the Code), a supervised financial institution, a business regulated by the Public Utility Commission of Texas, a person subject to the control or licensing regulations of the FCC, etc. (§ 302.053).
- A person soliciting business from a former or current customer that has operated under the same business name for two years (§ 302.058).

For purposes of the § 302.058 exemption, the law does not define current or former “customers.” However, related terms in other Chapters should be read in context, and define an “established business relationship,” as one that “(A) is formed by voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged; (B) pertains to a consumer good or service offered by the person; and (C) has not been terminated by either party” (§ 304.002(4)). Based on this, and the common understanding of the term “customer,” a Texas court would likely only include individuals that have at least engaged in some sort of voluntary marketing-related communication with the business, or that have affirmatively reached out to the business in the scope of “current customer” (i.e., a customer relationship cannot be formed by a business’s one-way communications only).

Now, text marketers that do not fall under an applicable exemption must complete a registration form with the Secretary of State, available [here](#). In addition to registration, a covered seller must pay a security deposit of \$10,000 and pay a filing fee of \$200. These entities are also required to provide certain public facing disclosures under Chapter 302, such as posting a copy of the state registration certificate online, as well as communicate specific information to consumers before engaging in a sale.

[Please click here for an update as of 11/24/25 on clarification on consent-based text marketing.](#)

Question: Does S.B. 140 add new substantive obligations for text marketers related to

consent, quiet hours, or the Texas no-call list?

Answer: The amendment does not add to the law’s existing consent requirements and restrictions on telemarketing, but makes the potential penalties associated with non-compliance much greater.

Chapters 304 and 305 regulate telephone calls (including text messages) made for telemarketing or sales purposes by imposing consent requirements, mandatory disclosures, no-call list restrictions, and other obligations. **S.B. 140 did not alter or add to these substantive requirements.**

However, S.B. 140 **did amend these Chapters to establish violations of the state telemarketing law as automatic violations of the Texas DTPA**, which provides consumers a private right of action and significantly increases the potential penalties associated with non-compliance. Consumers had the right to bring private actions under the pre-amended version of Chapters 304 and 305 – however, under Chapter 304, consumers were required to complete a number of procedural steps before filing an action, such as providing the telemarketer with notice and issuing a complaint with the state attorney general or regulatory body. S.B. 140 provides consumers the ability to subvert these procedural requirements and file private actions based on violations of the law directly through the DTPA.

S.B. 140 did not amend Chapter 301, which imposes “quiet hours” restrictions on “telephone solicitors” making “consumer telephone calls” and limits calling hours to 9:00 AM – 9:00 PM Monday-Saturday and 12:00 PM – 9:00 PM on Sunday. Notably, Chapter 301 does not define consumer telephone calls. However, it would be reasonable to apply the quiet hours restrictions to telemarketing text messages based on the definition of telephone calls in Chapter 304, which as noted above, explicitly includes transmissions of text or graphic images.

Question: What remedies are available for consumers under the Texas Deceptive Trade Practices Act?

Answer: Consumers can bring private actions under the Texas Deceptive Trade Practices Act and recover treble damages for willful violations, in addition to mental anguish awards and attorney’s fees.

Consumers can bring private actions under the state DTPA for violations of Chapters 302, 304 and 305 of the telemarketing law, and can seek treble damages for willful violations, in addition to mental anguish awards and attorney’s fees. And settling a dispute once does not provide any protection against lawsuits brought by or on behalf of the same plaintiffs in the future, because S.B. 140 explicitly provides that “***[t]he fact that a claimant has recovered under a private action arising from a violation of this chapter more than once may not limit recovery in a future legal proceeding in any manner.***” However, the DTPA still provides that cumulative remedies are unavailable to redress the same act or practice in the same lawsuit. The result is a net increase in the potential legal and monetary risk associated with non-compliance.

Question: Is there anything else text marketers need to know or should consider here?

Answer: Yes! As state and federal telemarketing regulations continue to evolve, so should your compliance program.

Outside of Texas, state and federal telemarketing regulations and associated compliance obligations are constantly changing, and businesses need to stay nimble to avoid violating applicable laws. For example, rules related to consent and revocation (the “Opt-Out Rule”) under the federal Telephone

Consumer Protection Act (TCPA) for regulated calls and texts went into effect in April, subject to a one-year [limited waiver](#) of the so-called “revoke all” mandate. And while the [TCPA 1:1 consent rule was vacated days before it was set to take effect](#), many texting platforms, following guidance from the wireless industry, expect their brand customers to have specific consent for marketing and informational texts. There is also the Federal Trade Commission’s [Telemarketing Sales Rule](#) to consider. Additionally, fragmented laws regulating telemarketing across numerous states impose various and sometimes ambiguous requirements that warrant close analysis to determine how these provisions affect one’s business. In addition to regularly monitoring these and other updates, having a comprehensive and workable written compliance program covering your business’s text marketing practices is essential to be properly prepared for unexpected curveballs and to mitigate the risk of lawsuits or government investigations.

Practical Takeaways:

The most impactful changes ushered in by S.B. 140 relate to the increased accessibility of private actions for violations of the Texas telemarketing law, and the potential for significantly higher penalties associated with continued non-compliance. As such, companies engaged in call or text telemarketing in Texas may consider employing one or multiple risk mitigation strategies to ensure their current telemarketing practices (or the practices of their clients) comply with legal requirements in Texas and to reduce the likelihood of being targeted for non-compliance.

- ***Review current consent practices:***

The Texas telemarketing law prohibits telephone calls (including text messages) or the use of an automatic dial announcing device to make a telephone call for the purpose of making a sale if the person making the call knows or should have known that the number is a mobile number, and the called person has not consented (§ 305.001). As such, businesses engaging in telemarketing should review their consent practices to ensure they are collecting clear and affirmative consent for each channel through which they contact consumers. Additionally, businesses should maintain documentation regarding their consent and opt-out practices.

- ***Regularly review state do not call list and quiet hours compliance:***

Under S.B. 140, violations of the Texas no-call list are accompanied by increased risk of litigation and potential damages through the hook to the state’s DTPA. Regularly reviewing the list (which is updated January 1, April 1, July 1, and October 1 of each year.) is key – businesses may not call a number that has been on the list for 60 days or more. Additionally, while the provisions regarding quiet hours restrictions were not amended by S.B. 140, this remains an area ripe for private action. Companies should ensure compliance here, to avoid opening the door to additional investigation and discovery of violations subject to increased penalties.

- ***Partner relationships:***

While text marketing platforms may not be directly implicated by the changes added through S.B. 140, they may still face third-party liability under the Texas telemarketing law. As such, these businesses should review the requirements they impose on customers regarding collecting consumer consent, processing opt-outs, and respecting quiet hours, regularly audit these customers to ensure compliance, and offer guidance regarding best practices. These businesses may also consider reviewing applicable agreements to ensure appropriate limits on liability and clear terms requiring customers to comply with applicable law.