

Insights

KEEP YOUR SADDLE OILED AND YOUR GUN GREASED! YOUR BUSINESS MAY NEED TO REGISTER AS A TELEMARKETER IN TEXAS BY SEPTEMBER 1

Aug 26, 2025

Since the publication of BCLP's latest telemarketing alert, [Don't Mess with Texas! How Will Texas's Amendment to Its State Telemarketing Law Impact Litigation?](#), many clients have reached out to us wondering if their businesses need to register as telemarketers in Texas starting on September 1, 2025. Great question! If your business makes telemarketing calls or sends SMS messages to consumers who are located in Texas, the answer is most likely Yes.

Background - Not Our First Rodeo

On June 20, 2025, Governor Greg Abbott of Texas signed Texas SB140 into law, significantly amending Texas's telemarketing statute, which is part of the Texas Business and Commerce Code ("TBCC").^[1] The amendments are scheduled to take effect on **September 1, 2025**. As we noted in our previous alert, the amendments have major implications for businesses that engage in outbound telemarketing or text message marketing to consumers in Texas. One of the most important changes is that a "telephone call" or "telephone solicitation" now includes not just calls and faxes, but text messages, images, graphic messages, or other electronic transmissions to a consumer's telephone.^[2]

All Hat And No Cattle - Texas Registration Requirement

Texas prohibits a "seller," defined as "a person who makes a telephone solicitation on the person's own behalf," from making "a telephone solicitation from a location in this state or to a purchaser located in this state unless the seller holds a registration certificate for the business location from which the telephone solicitation is made."^[3] (Note: while this requirement appears to permit businesses to register either in Texas or in the state where they are located, the Texas Secretary of State's Office has advised that any business sending marketing text messages to consumers in Texas must register as a telemarketer in Texas. As of the writing of this alert, the General Counsel of the Texas Secretary of State has not yet responded to our request for clarification.)

Ambiguous Definitions -Just Because A Chicken Has Wings Don't Mean It Can Fly

Texas's definition of "purchaser" is far broader than the generally understood definition of someone who has purchased a good or service. "Purchaser" means a "person who: (A) is solicited to become **or** becomes obligated for the purchase or rental of an item; or (B) is offered an opportunity to claim or receive an item."^[4] Thus, ironically enough, a purchaser need not have actually purchased anything to qualify as a purchaser – a mere solicitation is sufficient. As a result, the use of the word purchaser would appear to be superfluous, as any telephone solicitation would render the recipient a purchaser.

Putting aside the odd drafting choices made by the Texas legislature, the broader definition of purchaser has significant implications for analyzing the expansion of the registration requirement to include SMS. Texas exempts from its registration requirement "a person who (A) is soliciting business from a former or current **customer**; and (B) has operated under the same business name for at least two years."^[5] Further muddying the waters, Texas has not defined the word "customer." Some businesses and industry groups have read this exemption as excluding companies who operate on a strict opt-in basis, on the theory that common uses of the term customer may include individuals who may not yet have made a purchase. We believe this approach entails undue risk. If the legislature had intended to include non-buyers in the exemption, it could have used the term purchaser, rather than customer. The fact that it did not may influence how the courts construe the scope of the exemption. As of the writing of this article, there are no cases where a court has interpreted the meaning of the term customer. And because violations of the registration requirement are actionable under the separate Texas deceptive practices act, which potentially allows for statutory penalties of \$5,000 per call/SMS, assuming a broad interpretation of the exemption is a risky roll of the dice.^[6]

What does this mean? If your business is texting consumers in Texas who have not yet made a purchase, your business should either register as a telemarketer in Texas or pause outbound solicitations to Texas residents until we have more clarity from the courts.

^[1] Texas SB140, Enrolled Version, *available at* <http://capitol.texas.gov/tlodocs/89R/billtext/pdf/SB00140F.pdf> (last visited August 25, 2025) ("SB140").

^[2] SB140, 1:11-16; *see also* Tex. Bus. & Com. Code Ann. § 304.002 (West)

^[3] V.C.T.A., Bus. & C. §§ 302.001, 302.101.

^[4] V.C.T.A., Bus. & C. § 302.001(e) (emphasis added).

^[5] V.C.T.A., Bus. & C. §302.058 (2) (emphasis added)

[6] In addition, the courts are directed to adopt a liberal construction “to promote [the statute’s] underlying purpose to protect persons against false, misleading, or deceptive practices in the telephone solicitation business,” V.C.T.A., Bus. & C. § 302.003

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