LITIGATION MINUTE: TEXT-MESSAGE MARKETING IN TEXAS, ONE YEAR AFTER SB 140

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Texas Senate Bill 140 (SB 140) took effect 1 September 2025, and applies to conduct occurring on or after that date. The bill amended Section 302 of the Texas Business and Commerce Code to extend registration and disclosure requirements to text messages by expanding the definition of “Telephone solicitation,” which previously applied only to a “telephone call,” to include certain transmissions of text or graphic messages and images. In addition, SB 140 added a definition of “Telephone call” that incorporates the definition found in Section 304, which includes certain text or graphic messages and images, but excludes certain agreed-to transmissions.

We summarize below the current state of the law, following litigation over Chapter 302's new requirements. Although the State of Texas (the “State”) has advanced a litigation position and published nonprecedential guidance providing meaningful support for businesses operating consent-based text-message marketing programs, businesses should continue to carefully document consent and evaluate on a campaign-by-campaign basis whether Chapter 302's registration requirements apply.

ECOMMERCE MARKETERS ALLIANCE AND THE STATE'S POSITION

Shortly after enactment of SB 140, an industry group challenged its application to consent-based text-message marketing programs.[1] In opposing preliminary injunctive relief, the State contended that Chapter 302's registration requirements do not apply to consent-based messaging programs. The State cited Chapter 302's use of “call,” which it argued incorporated Chapter 304's definition of “Telephone call,” and the exception in Section 304.002(10)(C) for certain transmissions made as part of an ad-based telephone service when the telephone-service customer has agreed with the provider to receive them.

The court's 17 November 2025 order granted the parties' joint motion to dismiss without prejudice. Reciting the parties' shared representations concerning the State's interpretation of Chapter 302, the court's order stated that consent-based text-message marketing businesses are not subject to Chapter 302 registration and disclosure requirements. In light of the joint motion, however, the court did not resolve the industry group's statutory challenge through adversarial merits briefing and, thus, did not set binding precedent on SB 140's application to consent-based text-message marketing.

THE REMAINING STATUTORY QUESTION

Pursuant to the amendments of SB 140, Section 302.001(7) now defines “Telephone solicitation” as a “call or other transmission,” including certain text or graphic messages and images, and Section 302.001(6-a) now defines “Telephone call,” as having “the meaning assigned by Section 304.002” that includes the Section 304.002(10)(C) exclusion of certain agreed-to transmissions. Since the agreed resolution of the industry group's

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challenge, the Texas Secretary of State updated its registration FAQ to state that a business sending text messages with prior consumer consent need not complete the Chapter 302 registration statement. This FAQ is informational rather than binding judicial precedent, however, and no contested merits decision has yet determined whether, or under what circumstances, the Section 304.002(10) agreed-to transmission language impacts the phrase "other transmission" as used in Section 302.001(7). As a result, the scope of that phrase remains to be determined.

PRIVATE LITIGATION CONTINUES

The post-SB 140 case law remains limited.

Chapter 302 claims have been filed involving allegedly nonconsensual text messages. For example, in a post-SB 140 case involving one call and five allegedly unwanted text messages sent before SB 140's effective date, the court entered a default judgment after the defendant failed to appear, awarding Chapter 302 relief for the call, but not applying Chapter 302 to the texts.[2] The court explained that the 2025 amendment expressly covers text messages, but did not apply retroactively.[3] To date, however, there is no reported decision in a contested case involving consent-based text-message marketing addressing whether the phrase "other transmission" independently brings such messages within Section 302.001(7).

PRACTICAL CONSIDERATIONS FOR BUSINESSES

The Texas Secretary of State's guidance and the position advanced by the State in *Ecommerce Marketers Alliance* provides meaningful support for businesses operating consent-based text-message marketing programs. Nevertheless, because no court appears to have adopted that interpretation as binding precedent, businesses should carefully document consent and evaluate whether each campaign aligns with the State's position or another statutory exemption or falls within Chapter 302's registration requirements. Opt-out mechanisms, do-not-call rules, time-of-day restrictions, consent standards, and registration duties arise under different statutory or regulatory regimes and may vary with the campaign's facts and technology. The analysis should account for the manner in which consent was obtained, the messaging platform used, the identity of the party obtaining consent, and the continuing potential for private litigation.

TAKEAWAYS

Depending on the campaign, the technology used, the recipient's consent, and applicable exemptions, companies should separately assess Chapters 302, 304, and 305 of the Texas Business and Commerce Code, the Texas Deceptive Trade Practice Act remedies added for violations of Chapters 304 and 305, the federal Telephone Consumer Protection Act and its implementing regulations, and any applicable state or federal do-not-call requirements. Relevant measures may include:

- Reviewing existing marketing practices and updating policies.
- Determining whether the business is required to register under Chapter 302 or qualifies for the State's prior-consent position or another exemption.

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- Assessing whether state or federal do-not-call restrictions apply and, if so, scrubbing contact lists as required by applicable law.
- Maintaining contemporaneous records showing when, how, and on what terms the consumer provided consent, together with records of any later revocation or opt-out.
- Providing legally compliant opt-out instructions and timely honoring opt-out requests.
- Identifying and complying with applicable time-of-day restrictions.

As the body of law addressing the impact of SB 140 continues to develop, we continue to counsel our clients on litigation avoidance and compliance strategies. We further intend to provide updates as courts address ambiguities in the application of SB 140.

FOOTNOTES

[1] *Ecommerce Marketers Alliance, Inc. v. State of Texas*, No. 1:25-cv-01401-RP (W.D. Tex.).

[2] *Duron v. Kings Cap. Holding LLC*, No. 3:25-CV-00149-DCG, 2026 WL 319779 (W.D. Tex. Jan. 13, 2026), *report and recommendation adopted*, No. EP-25-CV-00149-DCG, 2026 WL 316037 (W.D. Tex. Feb. 5, 2026).

[3] *Id*. at *6 n. 26.

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