

Client Alert

Texas SB140: Expanded Regulation of Marketing Texts under Texas Telephone Solicitation Act

by Devika Persaud, Esq., Of Counsel, Sills Cummis & Gross P.C.

This alert has been superseded by a newer version. To view the updated alert, [click here](#).

Effective **September 1, 2025**, [Texas Senate Bill 140](#) (SB140) expands the scope of the [Texas Telephone Solicitation Act](#) (TTSA) to explicitly regulate **marketing via text messaging**, including SMS, MMS, and other digital transmissions. This alert focuses on the implications for businesses that use text messages to promote their goods or services to Texas residents.

Q: Does my business need to register to send marketing texts to Texas residents?

A: **Likely yes.** Starting September 1, 2025, businesses that send marketing texts **from within Texas or to individuals located in Texas**—without an existing business relationship—will generally be required to **register with the Texas Secretary of State**.

While the federal Telephone Consumer Protection Act (TCPA) requires that companies obtain **prior express written consent** for marketing texts, SB140 adds a **state-level registration requirement** that applies even when consent has been obtained. SB140 does provide an exemption for businesses soliciting **former or current customers**, provided the business has operated under the same name for at least two years. However, the term “customer” is not defined, leaving room for interpretation.

Texas courts typically apply the ordinary, commonly understood meaning of undefined terms. The ordinary meaning of “customer” could arguably include individuals who visit a business or website with an intent to purchase, even if no transaction occurs. For example, someone who browses an online store and opts in to receive marketing texts might qualify. However, this interpretation has not been tested and cannot be relied upon with any certainty.

Bottom line: The safest approach would be to register, even if every recipient of your marketing texts has visited your store or website and opted in.

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Q: Are there any exemptions to the registration requirement?

A: Yes, SB140 contains several exemptions, including (but not limited to):

1. **Publicly traded corporations** and their subsidiaries or agents
2. Companies that ship merchandise on a **recurring basis** to consumers who have consented in advance to receive it (e.g., subscription services)
3. Companies soliciting business from a **former or current customer** that have operated under the same name for at least two years
4. Companies with a **physical retail store** that has operated under the company's name for at least two years, where in-store sales constitute the **majority** of the business (not online, wholesale, B2B, etc.) *[Note: This provision does not explicitly apply to companies selling through department stores or other outlets not bearing the company's name.]*
5. **One-time telephone solicitations** that are not part of a pattern of repeated transactions

Other exemptions may apply. Consult with legal counsel to determine whether your business qualifies for any of the exemptions provided under the statute.

Q: What is required to register my business with the Texas Secretary of State?

A: There are extensive disclosure and documentation requirements under the statute. These requirements include (but are not limited to):

1. Registration certificate (\$200 fee + \$10,000 deposit)
2. Annual renewal (\$200 fee)
3. Disclosure of:
 - a. Names, titles, addresses, birthdates, and driver's license information of company officers and owners
 - b. Salesperson information or quarterly wage reports
 - c. Financial institution details and account IDs
 - d. Convictions, bankruptcies, and reorganizations involving key personnel
4. Copies of:
 - a. Sales scripts, promotional materials, and training documents
 - b. All written materials sent to any purchaser
 - c. Disclosures related to promotional items (e.g., gifts, prizes)
5. During solicitations:
 - a. Disclosure of the complete street address of the salesperson and, if different, the complete street address of the seller's principal location
 - b. Detailed information if offering free items

Consult with legal counsel to ensure full compliance with the statute.

Q: What happens if my business fails to register when required?

A: Failure to register when required may result in:

- **Civil penalties** of up to **\$5,000 per violation** (enforced by the Attorney General)
- **Statutory damages** of between **\$500 and \$1,500 per violation** (recoverable through lawsuits by private individuals)
- Possible treble damages and attorneys' fees
- Personal liability for salesperson who knowingly works for an unregistered seller in violation of this law

SB140 now classifies telemarketing violations as **false, misleading, or deceptive acts** under the Deceptive Trade Practices Act (DTPA), dramatically increasing litigation risk. Consumers no longer need to file complaints with state agencies before suing—direct lawsuits are now permitted. This private right of action is similar to the types of consumer lawsuits frequently brought against businesses in California.

Additionally, SB140 permits plaintiffs to stack claims under both the TTSA and DTPA. The statute further clarifies that earlier recoveries do not bar future ones, opening the door to serial litigation and multiple damage awards for the same underlying violation.

Note: The penalties outlined above specifically apply to registration violations under the Texas Telephone Solicitation Act. Other provisions of the Act—and additional state or federal laws—may carry separate penalties.

Final Takeaway

SB140 transforms Texas into one of the most aggressive states in regulating marketing texts. Businesses should:

- **Audit** their texting practices
- **Evaluate** exemption eligibility
- **Register** proactively to avoid costly penalties
- **Consult** legal counsel to ensure full compliance

Contact Us

For guidance, contact the team at Sills Cummis & Gross P.C., including:

Michael B. Goldsmith, Esq.

Chair, Fashion, Apparel and Textile Practice Group

mgoldsmith@sillscummis.com | (212) 500-1568

Devika Persaud, Esq.

Client Alert Author; Of Counsel, Intellectual Property Practice Group

dpersaud@sillscummis.com | (212) 500-1516