

## Publications

### Texas SB 140 – Texas’ New and Not-So-Mini TCPA Requirements

#### Related Attorneys

John L. Landolfi

Christopher A. LaRocco

Gretchen Rutz Leist

Celina J. Needle

#### Related Services

Data Strategy, Privacy and Security

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Texas continues the trend of state “mini-TCPA” laws expansion in response to the Supreme Court of the United States’ landmark ruling in *Facebook v. Duguid*, which limited the reach of the TCPA by narrowly defining an “Automatic Telephone Dialing System.”

Starting yesterday (September 1), with certain exceptions, businesses engaging in telemarketing through text messages must register with the Texas Secretary of State and comply with operational and reporting requirements. In June, Texas Governor Greg Abbott signed SB140 into law, expanding the state’s existing telemarketing laws to regulate text messages (SMS and MMS) and voice solicitations sent to Texas residents. The law expands the state’s existing telemarketing framework under the Texas Business and Commerce Code and imposes new registration, bonding, and compliance obligations. Below are the key takeaways:

- **It’s Time to Register:** The amended law requires certain sellers to register with the Texas Secretary of State, pay a \$200 fee, post a \$10,000 security bond, and submit quarterly reports, prior to making any telemarketing solicitations to prospective customers, including text messages. There are several notable exceptions to this requirement, for instance, publicly traded companies, financial institutions, 501(c)(3) nonprofit organizations, and retail sellers with brick-and-mortar locations who conduct a majority of their sales at the retail locations are exempt from the registration requirements.
- **Confirm Consent:** Although Texas’ consent requirements for marketing calls and texts were not significantly expanded by the amendment, penalties for failure to secure consent are now much higher. The law requires that telemarketers secure proper consent, including making certain disclosures, prior to making marketing calls or sending marketing texts to Texas residents.
- **Check the List:** Similarly, there are now higher penalties afforded by Texas law for any telemarketing solicitations sent to numbers on the Texas No-Call list. Numbers used for marketing calls and texts should be double-checked against the No-Call list.

- **Know the Risks:** The amended law comes with a civil penalty of up to \$5,000 per violation. In addition to enforcement through the Texas Attorney General, consumers may also bring a private right of action under the Texas Deceptive Trade Practices Act for violations.

Companies conducting telemarketing activities in Texas, including any marketing via text messages, should carefully review the law to ensure their marketing program complies. Our firm continues to monitor developments under the new Texas law and other “mini TCPA” laws. For further information about these or marketing laws in general, please contact John Landolfi, Chris LaRocco, Gretchen Rutz Leist or Celina Needle.