Business Litigation Update

November 2025

Texas Says Mini-TCPA Exempts Consent-Based Text Communications

Key Notes:

- Texas now states that the Mini-TCPA (as amended by SB 140) does not apply to businesses that send marketing texts only to individuals who have affirmatively consented to receive them.
- The state clarifies that if a business only contacts documented opt-in subscribers, none of SB 140's requirements are triggered, including registration, bonding, and quarterly reporting.
- This is because the law applies only where a "telephone solicitation" occurs, and the state asserts that consent-based communications are not telephone solicitations within the statute's meaning.

As we reported in our recent client alert, Texas SB 140, which became effective September 1, amends Texas' Mini-Telephone Consumer Protection Act (Mini-TCPA) by expanding the state's regulation of "telephone solicitation" to include text messages and other solicitation methods. Among other requirements, covered telemarketers must register with the Secretary of State, pay a $200 fee, post a $10,000 security bond, and submit quarterly reports before soliciting prospective customers. A significant carve-out remains: these requirements do not apply when a business solicits a current or former customer and has operated under the same name for at least two years. The statute defines "purchaser," but not "customer," leaving the ordinary meaning to control. Industry commentary has interpreted "customer" to include those who patronize or otherwise deal with a business, potentially encompassing opt-in subscribers who have not yet purchased.

Last month, an industry association, e-commerce company, and text message marketing company sought preliminary relief in federal court to enjoin parts of SB 140, arguing it is unconstitutional and unreasonably burdens consent-based text programs. The state has now filed its opposition.

What the State's Filing Says About Consent Communications

The state frames SB 140 as a consumer-protection measure against unwanted or deceptive solicitations, not a prohibition on permission-based marketing. Two definitional points are central:

- *Telephone call*. SB 140 points to the definition of "telephone call" in the Mini-TCPA, which excludes transmissions a mobile user agrees to receive as part of an ad-supported service. The state underscores that consent matters and that the definition retains significance for purposes of its regulation of telephone solicitations.
- *Telephone solicitation*. As amended by SB 140, the statute now covers "a call or other transmission," expressly including texts and images. The state maintains that "call," as used in the statute, still refers to a telephone call, therefore preserving the carve-outs for consented transmissions.

This means the state's position is that consented communications fall outside the core conduct SB 140 seeks to police. The filing also notes that the plaintiffs' business model involves consent-based messaging, which it describes as non-deceptive, aligning it with the statute's consumer-protection purpose rather than its enforcement target.

Enforcement Posture and Responsibilities

The state's filing clarifies agency roles:

- The Secretary of State's office administers registrations but does not investigate or enforce violations of the

registration, bonding, or quarterly reporting. The filing states the office has not taken – and does not plan to take – enforcement action under SB 140.
- The Attorney General asserts discretionary authority to seek injunctive relief and civil penalties for violating an injunction. The filing also reflects the AG's understanding that "call" refers to a telephone call.

The AG's emphasis on discretion signals there is no mandatory duty to pursue every technical violation, especially where messaging is consent-based and non-deceptive.

SB 140's Application to Consent-Based Texting and Registration and Bond Requirements

Under the state's reading, consent is the primary dividing line. If a messaging program

- contacts only individuals who affirmatively opted in, and
- the company maintains verifiable records of consent,

then, according to the state's legal interpretation

- SB 140 does not apply, and
- registration, bonding, and quarterly reporting are not required.

If a company's audience contains only *current or former customers* under the two-year same-name rule, the exemption further reinforces non-applicability. Programs that contact non-consenting individuals or prospects who have no relationship with the business remain exposed.

What Remains Unresolved

The court has not yet ruled on the request for preliminary relief, and no ruling has definitively adopted the state's interpretive positions. Open issues include whether there is any private right of action for failure to register and how courts will interpret "customer" and the Mini-TCPA exclusions in practice. Until the court provides guidance, the state's filing is informative but not controlling.

Practical Steps for Businesses

Organizations should proceed on parallel tracks by leveraging the state's consent-centric framing while maintaining robust compliance; prioritizing documented opt-in flows that capture who consented, when, how, and to what disclosures; assessing the two-year same-name customer exemption; maintaining strong recordkeeping; and monitoring developments in litigation and any agency guidance. Newer businesses or those with mixed audiences should consider risk-based decisions about registration while the case proceeds.

Bottom Line

The state's filing draws a meaningful distinction between deceptive, unwanted solicitations and permission-based text marketing. If a company's text message marketing program reaches only current or former customers or those who ask to receive messages – and the company can prove it – it is much closer to the Mini-TCPA's safe side. That said, while the litigation is ongoing, businesses should continue strengthening consent and customer status documentation while awaiting the court's ruling and any subsequent guidance.

FOR MORE INFORMATION

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