

## Data, Privacy & Cybersecurity

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### **Texas 'Mini-TCPA' Goes Into Effect September 1, 2025: What You Need To Know**

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Effective September 1, 2025, Texas Senate Bill 140 (SB 140) materially expands the scope of the Texas Business and Commerce Code §§ 301-305 (Mini-TCPA) governing both telephone and SMS marketing. The statute requires registration and posting of a bond, lowers procedural barriers to private litigation, and increases both private and governmental enforcement exposure. The principal changes and recommended compliance measures are outlined below.

- A violation of any provision of the Mini-TCPA is now expressly deemed an “unfair and deceptive practice” under Texas law, exposing violators to statutory damages of not less than \$500 and not more than \$1,500 per unlawful call or text. In addition, the Texas Attorney General is authorized to seek civil penalties of up to \$5,000 per violation. These monetary enhancements, combined with the removal of the reporting prerequisite, are expected to generate increased class action activity in Texas state and federal courts.
- A seller that makes telephone solicitations either from or into Texas must obtain a separate registration certificate for each physical location from which such solicitations originate. Failure to register constitutes an independent violation of the statute and carries the penalties noted above.

In light of this elevated risk environment, we strongly recommend that clients (i) determine without delay whether their outbound telephone or SMS marketing campaigns trigger the Mini-TCPA, (ii) confirm whether an exemption applies, and (iii) if necessary, complete the statutory registration process in advance of the September 1 effective date.

#### **Texas Mini-TCPA—Statutory Exemptions**

The Mini-TCPA contains narrowly drawn exemptions, summarized here for ease of reference:

1. § 302.052 – Exemptions generally apply only to “sellers,” except as modified by § 302.060.
2. § 302.053 – Entities already regulated under specific state or federal regimes (securities firms, insurance firms, depository institutions, certain utilities, communications carriers, and CFTC-registered parties) are exempt.
3. § 302.054 – Solicitors of media subscriptions, periodic-shipment merchandise (with advance consent), or products offered through qualifying large-format catalogs are exempt.
4. § 302.055 – Educational institutions and § 501(c)(3) nonprofit organizations are exempt.
5. § 302.056 – Sales to purchasers who intend to resell or use goods in a recycling, reuse, remanufacturing, or manufacturing process are exempt.
6. § 302.057 – Persons soliciting the sale of food are exempt.
7. § 302.058 – Solicitations for maintenance or repair of previously purchased goods, or solicitations to former or current customers of a business operating under the same name for at least two years, are exempt.
8. § 302.059 – Parties that limit calls to arranging face-to-face sales presentations, or retailers operating under the same name for at least two years where sales occur primarily at the retail location, are exempt.
9. § 302.060 – A service provider that has operated under the same name for at least three years and derives at least 75 percent of its solicitation business from exempt entities is itself exempt.

10. § 302.061 – Individuals making isolated solicitations that are not part of a pattern of repeated, similar transactions are exempt.

### Recommended Compliance Steps

1. Determine the method by which the required \$10,000 security deposit will be satisfied (surety bond, assignment of certificate of deposit, or cash bond).
2. Complete Form 3401 (Application for Registration) and Form 3406 (Disclosure Statement), together with the appropriate security-related form (Form 3403, Form 3404, or Form 3405). **All** documents must be notarized.
3. File the notarized forms with the Texas Secretary of State and, if using Form 3404, coordinate directly with the issuing financial institution.

### Required Forms

Entities engaging in telephone/SMS advertising in Texas will need to complete the following forms:

1. **Form 3401 – Application for Registration** (available [here](#))
2. **Form 3406 – Disclosure Statement** (available [here](#))
3. One of the following, depending on how you handle the \$10,000 security deposit requirement:
  - o **Form 3403 – Telephone Solicitation Bond** (if obtaining a surety bond, available [here](#))
  - o **Form 3404 – Assignment of Certificate of Deposit** (if processing the deposit through a bank, available [here](#))
  - o **Form 3405 – Security in the Form of a Cash Bond** (if depositing directly with the state, available [here](#))

### Surety Bond Option

Texas permits the \$10,000 security deposit to be satisfied through a third-party surety bond. Qualified providers currently issue three-year bonds for approximately \$250, offering a time- and cost-efficient alternative to cash or certificate-of-deposit options.

### Next Steps

We encourage all clients engaged in, or planning to engage in, telephonic or SMS marketing involving Texas consumers to (i) conduct an assessment of their current practices, (ii) prepare and submit any required registration materials, and (iii) update internal compliance protocols to reflect the increased statutory penalties that are effective September 1. Please contact the authors of this alert with any questions.

## Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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