

BILL ANALYSIS

Senate Research Center

S.B. 315
By: Hall
Business & Commerce
6/5/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2001, the 77th Legislature passed H.B. 472 to create the Texas Telemarketing Disclosure and Privacy Act and required it to be "liberally construed and applied to protect the public against false, misleading, or deceptive practices." With H.B. 2278, the 80th Legislature updated the definition of a "telephone call" to include a call to a mobile phone number. S.B. 1969, from the 81st Legislature, further updated the definition to include text messaging.

Both Chapters 302 ("Regulation of Telephone Solicitation") and 304 ("Telemarketing") of the Business and Commerce Code concern telephone solicitation. However, only Chapter 304 defines "telephone call" to include mobile phone numbers and text messaging. Since Chapter 302 has no such definition, consumers are not adequately protected against unauthorized text messaging.

In a recent court case, *Powers v. One Technologies*, Civil Action No. 3:21-CV-2091 (N.D. Tex. July 28, 2022), the court held that a company sending text messages did not qualify as a telemarketer under the Texas licensing scheme. The statute requires companies that "make a telephone solicitation" to obtain a registration certificate from the office of the Secretary of State. Chapter 302 of the Business and Commerce Code defines "telephone solicitation" as "a telephone call a seller or salesperson initiates to induce a person to purchase, rent, claim, or receive an item. The term includes a telephone call a purchaser makes in response to a solicitation sent by mail or made by any other means." Chapter 302 does not, however, define "call."

This bill amends Chapter 302 of the Business and Commerce Code to add the definition of "telephone call," as is found in Chapter 304.

In Chapter 304 of the Business and Commerce Code: "'Telephone call' means a call or other transmission made to or received at a telephone number, including: (A) a call made by an automated telephone dialing system; (B) a transmission to a facsimile recording device; and (C) a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number serviced by a provider of commercial mobile service, as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended, except that the term does not include a transmission made to a mobile telephone number as part of an ad-based telephone service, in connection with which the telephone service customer has agreed with the service provider to receive the transmission."

S.B. 315 amends current law relating to the definition of telephone call for purposes of regulating telephone solicitations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 302.001, Business and Commerce Code, by adding Subdivision (6-a) to define "telephone call."

SECTION 2. Effective date: September 1, 2023.