

BILL ANALYSIS

C.S.S.B. 140

By: Hall

Trade, Workforce & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 promote its underlying purpose 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, and the 81st Legislature passed S.B. 1969 to further update the definition to include text messaging. Both Chapters 302 and 304 of the Business & Commerce Code concern telephone solicitation. However, only Chapter 304 defines "telephone call" to include both mobile phone numbers and text messaging. The bill sponsor has informed the committee that, since Chapter 302 has no such definition, consumers are not adequately protected against unauthorized text messaging, and, in *Powers v. One Technologies*, the court held that a company sending text messages did not qualify as telemarketing under the Texas statute that requires companies that make a telephone solicitation to obtain a registration certificate from the office of the secretary of state. C.S.S.B. 140 seeks to address this issue by providing for the definition of a telephone call for purposes of regulating telephone solicitations and by establishing that a violation of the Texas Telemarketing Disclosure and Privacy Act or statutory provisions relating to telephone communications made for the purpose of solicitation is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 140 amends the Business & Commerce Code to define "telephone call" for purposes of provisions regulating telephone solicitations by reference to its meaning in provisions governing telemarketing as a call or other transmission made to or received at a telephone number, including the following:

- a call made by an automated telephone dialing system;
- a transmission to a facsimile recording device; and
- 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 certain federal law, as amended, or FCC rules, but excluding 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.

The bill expands the definition of "telephone solicitation" to include a transmission other than a telephone call, including a transmission of a text or graphic message or of an image, initiated by a seller or salesperson to induce a person to purchase, rent, claim, or receive an item.

C.S.S.B. 140 specifies that the underlying purpose of the Texas Telemarketing Disclosure and Privacy Act and statutory provisions relating to the regulation of telephone solicitation is to protect both persons and the public against false, misleading, or deceptive practices in the telephone solicitation business. The bill establishes that a violation of the Texas Telemarketing Disclosure and Privacy Act or a violation of statutory provisions relating to telephone communications made for the purpose of solicitation is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act and authorizes a public or private right or remedy prescribed by the act to be used to enforce the bill's provisions. The bill provides that the fact that a claimant has recovered under a private action arising from a violation of the Texas Telemarketing Disclosure and Privacy Act, statutory provisions relating to the regulation of telephone solicitation, or statutory provisions relating to telephone communications made for the purpose of solicitation more than once may not limit recovery in a future legal proceeding in any manner.

C.S.S.B. 140 establishes that the bill's provisions apply only to conduct that occurs on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 140 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes provisions absent from the engrossed that do the following:

- expand the definition of "telephone solicitation";
- specify that the underlying purpose of the Texas Telemarketing Disclosure and Privacy Act and statutory provisions relating to the regulation of telephone solicitation is to protect both persons and the public against false, misleading, or deceptive practices in the telephone solicitation business;
- prohibit the fact that a claimant has recovered under a private action arising from a violation of the Texas Telemarketing Disclosure and Privacy Act, provisions relating to the regulation of telephone solicitation, or provisions relating to telephone communications made for the purpose of solicitation more than once from limiting recovery in a future legal proceeding in any manner;
- establish that a violation of the Texas Telemarketing Disclosure and Privacy Act or statutory provisions relating to telephone communications made for the purpose of solicitation is a false, misleading, or deceptive act or practice under the Deceptive Trade Practices-Consumer Protection Act;
- authorize a public or private right or remedy prescribed by that act to be used to enforce the bill's provisions; and
- establish that the bill's provisions apply only to conduct that occurs on or after the bill's effective date.