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Category
 SMS Marketing

Published on
 August 21, 2025

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Texas SB 140 Explained: What Texas' new SMS Rules Mean for eCommerce

Effective date: Sept 1, 2025.

Scope expansion: "Telephone solicitation" now explicitly includes **texts, MMS (graphics/images), and calls**. It also ties violations to Texas Deceptive Trade Practices remedies and clarifies that **repeat recoveries don't cap future recovery**.

Disclaimer: This article discusses Texas SB 140 and related regulations for general information only. **It is not legal advice** and may not reflect the most current legal developments. For guidance on how these rules apply to your company, consult a licensed attorney.

TL;DR for ecommerce teams

- **If you text, MMS, or call Texas residents for marketing, SB 140 applies.** It amends the state's mini-TCPA to cover SMS/MMS and strengthens private lawsuits under DTPA. [Texas Legislature Online](#)
- **Registration may be required** under **Chapter 302** unless you fit an exception (e.a.. "customer" or "retail establishment"). Reaistration

involves a \$200 filing, a **\$10,000 security** (bond/CD/LOC), quarterly salesperson updates, annual renewal, appointing the **Texas Secretary of State (SOS) as agent**, and specific disclosures.

- **Risk goes up:** consumers can sue, and DTPA remedies are in play. Expect more plaintiff activity; your defenses will hinge on consent quality and whether you qualify for an exception.

[Texas Legislature Online](#)



What actually changed under SB 140

1. **Definition expanded:** “Telephone solicitation” now means a **call or other transmission**, expressly **including a text, graphic, or image**—not just voice.
[Texas Legislature Online](#)
2. **Private actions & DTPA hook:** The law adds language that **prior recoveries don’t limit future recoveries**, and makes violations of Chapters **304** and **305 DTPA** violations—opening the door to additional remedies.
[Texas Legislature Online](#)
3. **Effective Sept 1, 2025;** changes apply **prospectively**.
[Texas Legislature Online](#)

Do you have to register in Texas? (Chapter 302)

If you’re a **“seller”** making solicitations **from Texas** or **to a purchaser in Texas**, you generally must hold a **registration certificate**—unless an **exemption** applies. Key mechanics:

- **File Form 3401** and pay **\$200**.
[Texas Secretary of State](#)
- **Post \$10,000 security** via **bond (Form 3403)**, **certificate of deposit (Form 3404)**, or **irrevocable letter of credit (Form 3405)**.
[Texas Secretary of State](#)
- **Appoint the Texas SOS as agent for service** (Form 3406).
[Texas Secretary of State](#)
- **Quarterly addenda** naming salespersons; **annual renewal**.
[Texas Statutes](#)

The registration duty and filings live in **Chapter 302 Subchapter C**.
[Texas Statutes](#)

The two big exceptions ecommerce cares about

These are **statutory exemptions** from Chapter 302’s registration and disclosure regime.

1. **“Customer” exception – Sec. 302.058(2)** – No registration if you’re **soliciting business from a former or current customer** and you’ve **operated under the same business name for ≥2 years**. Note: the statute **does not define “customer.”** The term **“purchaser,”** however, is defined



broadly as someone **solicited to become obligated**, i.e., it **doesn't require a completed purchase**—a point courts could read as supporting a broader, ordinary-meaning “customer.”

[Texas Statutes](#)

2. **“Retail establishment” exception – Sec. 302.059** – Exempts persons who **make certain sales presentations or sales at established retail locations** (conditions apply).

[Justia](#)

Agency 75% exception – Sec. 302.060. If you're a **service provider/agency** and **≥75%** of your solicitation work is for **exempt clients**, you may also be exempt.

[Texas Statutes](#)

Brands using **clean, provable double opt-in** and operating **>2 years** have an argument they fit the “customer” exception—but **this is untested**, so risk tolerance matters. (The statute puts the **burden of proving an exemption** on the party claiming it.)

[Texas Statutes](#)

Mandatory disclosures (if Chapter 302 applies)

Before a purchase is consummated, **detailed disclosures** are required in Texas for solicitation—including **complete street address** of the seller/principal location and **additional details** if gifts are offered or if a price is advertised below usual charges (see Subchapter E).

[Texas Statutes](#)

Penalties & exposure

- **Civil penalty up to \$5,000 per violation** under Ch. 302, plus costs and attorneys' fees for the state.

[Texas Statutes](#)

- **DTPA overlay** via SB 140 can add **statutory remedies** to private suits.

[Texas Legislature Online](#)

- **Repeat recoveries aren't capped by prior suits.**

[Texas Legislature Online](#)

What to do now (ecommerce checklist)

1. **Map Texas recipients** – Use **residential address**, not just area code, to flag likely Texas residents; area code alone misses movers and VOIP numbers. (Discussed widely in industry guidance.)
2. **Tighten consent** – Maintain **prior express written consent** (unprechecked box, clear automated-tech disclosure, no purchase required) and **double opt-in**. Keep **timestamped records**. (TCPA baseline; SB 140 doesn't replace federal rules.)
3. **Honor “STOP/UNSUBSCRIBE” instantly** – Your system must **process opt-outs in real time** and suppress future sends.
4. **Respect quiet hours** – Use **local-time throttling** to avoid sends during restricted hours (align with TCPA and counsel's Texas guidance).
5. **Decide: register or rely on an exception**
 - **Register** if your use case clearly **doesn't** fit an exception, or your **risk**

tolerance is low.

- If you **believe you qualify** (e.g., “customer” with double opt-in; **retail establishment**; or **agency 75% rule**), document the rationale and **keep proof handy**. Remember **you bear the burden** in disputes.

[Texas Statutes](#)

6. **If registering:** File **Form 3401 + \$200**; post **\$10,000** security (**3403/3404/3405**); file **3406**; set a **quarterly update** calendar; review your **pre-purchase disclosures** for Chapter 302. [Texas Secretary of State](#)
7. **Harden your T&Cs:** Use **clear, conspicuous assent** at every opt-in point; link the **exact terms** users are accepting. Strong arbitration/class-action waivers (where appropriate) can reduce exposure, but get counsel to vet. (Common defense posture highlighted in practitioner notes.)

Decision guide (fast)

- **You send promos to Texans and can't prove they're "customers" (ordinary-meaning) for ≥2 years** → Register.
- **You have robust double opt-in, operate ≥2 years under same name, and messaging is to your subscribers/customers** → Discuss relying on **Sec. 302.058 with counsel**; document proof.
- **Agency with ≥75% exempt client work** → evaluate **Sec. 302.060**.

FAQs (short)

Is TCPA compliance enough?

No. SB 140 adds **Texas-specific** exposure and definitions you must also meet. [Texas Legislature Online](#)

Does this cover MMS with images?

Yes—texts and **graphic/image transmissions** are explicitly included. [Texas Legislature Online](#)

How fast must opt-outs be processed?

Immediate suppression is the safe posture under Texas guidance and standard best practice. [Bloomreach](#)

Does consent exempt me from SB 140?

Consent **allows** messaging; it doesn't **exempt** you from **Chapter 302** or DTPA exposure. You may still need to **register** unless an **exception** applies. [Texas Statutes](#)
[Texas Legislature Online](#)

Area-code filtering enough to “turn off Texas”?

No. Residency can differ from area code; you'll miss/over-block. [Blank Rome](#)

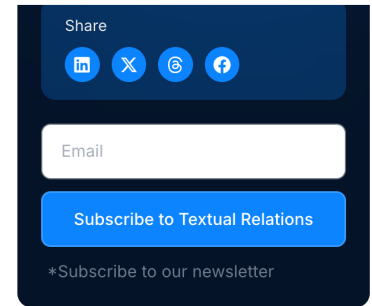
Takeaways you can act on (aligned with the statute)

- **“Customer” is undefined; “purchaser” is defined broadly** (solicited to become obligated). A court could reasonably treat **“customer” at least as broad** as “purchaser,” supporting an exception when you have **solid, provable consent**—but this is **untested**. Keep **clean opt-in records**.

- **Two-year requirement** appears in both **customer** and **retail establishment** exceptions. Plan around it.
- **Agencies:** the **75% exempt-client** rule exists in the statute (Sec. 302.060). Validate your client mix before claiming it.

References & primary sources

- **SB 140 (enrolled text)** – definitions expanded to texts/MMS, DTPA linkage, recovery language; **effective Sept 1, 2025**.
[Texas Legislature Online](#)
- **Texas Business & Commerce Code, Ch. 302 – exemptions** (Sec. 302.058, .059, .060); **registration** (Subch. C); **penalties**.
[Texas Statutes](#)
- **SOS forms** – **3401** registration; **3403** bond; **3404** CD; **3405** LOC; **3406** SOS appointment.
[Texas Secretary of State](#)
- Law firm summaries: [Blank Rome](#), [Kelley Drye & Warren LLP](#), [BCLP](#), [Eversheds Sutherland](#)
- Vendor explainer for marketers: [Bloomreach](#)



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Real revenue, real time, real simple
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