

Date of Hearing: March 25, 2026

Fiscal: Yes

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 1865 (Bauer-Kahan) – As Amended March 17, 2026

**SUBJECT:** Text message advertisements

**SYNOPSIS**

*Text message advertisements have become commonplace in the modern world, with most adults receiving numerous ads throughout the day and night via text. California civil courts have become inundated with consumer protection complaints about telephone solicitations. In 2025 alone, telephone marketing civil action cases more than doubled in the first quarter compared to 2024, and September 2025 saw a 283 percent increase in telephone marketing cases filed compared to September 2024. However, existing law only mandates that text message solicitors must have consent prior to messaging, leaving any consumer with a cell phone vulnerable to a barrage of near constant ads.*

*Modeled after a similar law in Texas that establishes “quiet hours” for text message advertisements, this author-sponsored bill seeks to increase consumer protections by prohibiting the transmission of text message advertisements between 9 p.m. and 9 a.m. Pacific Standard Time. Violators would be subject to a civil action brought by recipients of violative texts or public prosecutors. The author argues that by providing clear standards and enforceable remedies, AB 1865 promotes responsible marketing practices while protecting Californians from pervasive communications.*

*Opponents of the bill, led by California’s Chamber of Commerce, argue that some people may prefer to receive text message advertisements at night. They also assert the bill is unnecessary given existing technologies that allow, for example, “Do Not Disturb” settings on phones to block messages at certain times.*

*If passed by this Committee, the bill will next be heard by the Judiciary Committee.*

**EXISTING LAW:**

- 1) Defines “text message advertisement” as a message, the principal purpose of which is to promote the sale of goods or services, or to promote a political purpose or objective, to the recipient, and consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, or advertising material for political purposes.
- 2) Prohibits a person, business-conducting entity, candidate, or political committee from sending a text message advertisement to any messaging device capable of allowing text message transmission. (Bus. & Prof. Code § 17538.41(a).)
- 3) Exempts entities that meet any of the following:

- a. The text message recipient is offered an option to not receive the text messages from a mobile telephone or messaging service entity. (Bus. & Prof. Code § 17538.41(b).)
  - b. The business, candidate, or political committee has an existing relationship with the text message recipient and offers an option to not receive text messages. (Bus. & Prof. Code § 17538.41(c).)
  - c. An affiliate of a business may send text message advertisements if a business has an existing relationship with the recipient and the recipient provided consent to the business to receive text message advertisements from an affiliated business. (Bus. & Prof. Code § 17538.41(d).)
- 4) Pursuant to federal law, establishes the Telephone Consumer Protection Law, which, among other things, prohibits any person within the United States initiating any call to a residential telephone line and using an artificial or prerecorded voice to deliver a message without the consent of the called party, with specified exceptions. (47 U.S.C. § 227(1)(b).)

**THIS BILL:**

- 1) Expands the definition of “text message advertisement” to include messages with images or videos.
- 2) Prohibits the sending of text message advertisements between 9:00 p.m. and 9:00 a.m. Pacific Standard Time, regardless of whether the recipient consented to receiving advertised messages.
- 3) Authorizes text message advertisement recipients and public prosecutors to bring a civil action against entities that violate the timing requirements described above. Authorizes a civil penalty of \$500 per violation.

**COMMENTS:**

- 1) **Author’s statement.** According to the author:

Unwanted marketing text messages have become an increasingly intrusive and disruptive presence in the daily lives of Californians, with thousands of consumer complaints filed each year. While existing federal law establishes baseline protections, gaps remain in enforcement and consumer recourse. AB 1865 strengthens consumer protections by establishing clear quiet hours during which marketing text message advertisements may not be sent, defines “text message advertisement” to include any promotional message, image or video delivered to a mobile device, and authorizes both public enforcement and private right of action to ensure compliance. By providing clear standards and enforceable remedies, AB 1865 promotes responsible marketing practices while protecting Californians from pervasive communications.

- 2) **Background.** Passed in 1991, the Telephone Consumer Protection Act (TCPA) is a federal law defining and restricting telemarketing calls and texts from businesses to residential phones. Specifically, TCPA prohibits solicitors from making telephone calls using automatic telephone

dialing systems and sending short message service (SMS) text messages to residential phone numbers without establishing prior consent.<sup>1</sup> TCPA set requirements for businesses to receive written consent prior to using autodialed or prerecorded calls and set different standards for telemarketing calls to landlines, cell phones, and residential lines versus business phone lines. TCPA gave the Federal Communications Commission (FCC) regulatory authority and established a private right of action that allowed individuals to pursue civil lawsuits for violations of the law.

Four years later, Congress established the Telemarketing Sales Rule (TSR) to safeguard consumers from abusive telemarketing practices. TSR mandated callers to disclose their identity, purpose, and key product or service terms to call recipients. TSR also prohibits calls to recipients who have asked to be removed from the call list. Importantly, TSR also established “quiet hours” wherein no person or entity is allowed to initiate a telephone solicitation before 8:00 a.m. or after 9:00 p.m. of the recipient’s local time.<sup>2</sup> TSR defines “telemarketing” as involving “more than one interstate telephone call,” thus excluding text messages from the definition. Enforcement of TSR fell to the Federal Trade Commission (FTC). In 2003, the FTC launched the National Do Not Call (DNC) registry, a national registry that goes out to all legitimate telemarketing companies with a list of phone numbers that have requested not to be called.<sup>3</sup> Since 2003, eleven states have adopted their own DNC registries.<sup>4</sup>

*Text message advertisements are a growing problem.* The first SMS text message was sent in 1992 and in the three decades since, text messaging has become ubiquitous. In 2023, six billion text messages were sent every day in the United States alone.<sup>5</sup> Text messages can pose a variety of issues for consumers, especially compared to traditional phone call telemarketing. For one, Americans check their phones incessantly, roughly 96 times a day or once every 10 minutes.<sup>6</sup> The majority of customers prefer texting over phone call marketing (90 percent), with some 36 percent of e-commerce promotional content clicked through when sent over SMS messaging.<sup>7</sup> Given the rate that we all are checking our phones, it’s unsurprising that 95 percent of text messages are read and responded to within three minutes.<sup>8</sup> Thus, telemarketers using SMS messaging have near constant access to their consumers. With all the success of text message marketing, SMS marketing is projected to be worth \$12.6 billion in 2025, demonstrating a compounding annual growth rate of over 20 percent.<sup>9</sup>

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<sup>1</sup> 47 U.S.C. § 227.

<sup>2</sup> 15 U.S.C. §§ 6101-6108.

<sup>3</sup> FTC, “National Do Not Call Registry Opens,” (June 27, 2003), <https://www.ftc.gov/news-events/news/press-releases/2003/06/national-do-not-call-registry-opens#:~:text=The%20registry%20was%20enforced%20on%20October%201%2C,made%20an%20inquiry%20or%20submitted%20an%20application>.

<sup>4</sup> Gryphon.ai, “State-by-State Telemarketing and Do Not Call Restrictions,” (2025), <https://8793964.fs1.hubspotusercontent-na1.net/hubfs/8793964/Infographics/State%20by%20State%20Telemarketing%20and%20Do%20Not%20Call%20Map%20-%20October%202025.pdf>.

<sup>5</sup> Iyanuoluwa Taiwo, “How Many Texts Are Sent Per Day in 2025?” *Expert Beacon*, (Mar 19, 2024), <https://expertbeacon.com/how-many-texts-are-sent-per-day/>.

<sup>6</sup> Max Adler, “SMS Marketing Statistics 2025 For USA Businesses,” *SMS Comparison*, (Nov 27, 2025), <https://www.smscomparison.com/sms-statistics/>.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

As texting has become a preferred form of communication, spam texts and text message advertisements are only growing. According to the FCC, complaints about unwanted text messages have risen in recent years. In 2020, the FCC received 14,000 complaints about text messages, a 146 percent increase from the year before.<sup>10</sup> Robokiller, an app that blocks spam calls, reported that spam texts sent in March 2021 surpassed spam calls by over one billion messages, demonstrating spammers' adoption of text messaging as an effective method for reaching wide audiences.<sup>11</sup> California courtrooms have become inundated with class-action suits surrounding TCPA: filings have skyrocketed 268 percent in 2025 compared to previous years.<sup>12</sup> California's Department of Justice (DOJ)'s 2025 list of "Top Ten Consumer Complaints" cited telephonic scams as the 9<sup>th</sup> most common consumer complaint filed with the DOJ, highlighting growing consumer concerns with telephone marketing scams.<sup>13</sup>

**3) This bill would mandate quiet hours for text message advertising.** Since the inception of TCPA, several states have adopted their own "mini-TCPAs" that extend further protections against the constant barrage of marketing messages. Texas, for instance, expanded the definition of telephone solicitation in 2025 to include marketing by text messages and graphic images.<sup>14</sup> This change effectively adds additional requirements to solicitors using text message advertising such as: completing annual registration; receiving clear consent from consumers to solicit; offering opt-out options in every message; maintaining records of message logs, consents and opt-outs; and observing quiet-hours from 9 a.m. to 9 p.m. local Texas time. The law also provides for a private right of action against text marketers who fail to comply with its requirements.<sup>15</sup>

This bill closely mirrors Texas's quiet hours by imposing a moratorium on text message advertisement from 9 a.m. to 9 p.m. The bill would subject violators to private or public enforcement. Additionally, the bill expands the definition of "text message advertisement" to include messages with images or videos. These expansions will help shield consumers from being spammed at all hours by text message advertisements.

***ARGUMENTS IN OPPOSITION:*** A coalition led by California Chamber of Commerce submitted an opposition letter in response to the prior version of the bill. The letter asserts that the language defining quiet hours is "imprecise and subject to multiple interpretations." However, the bill has since been amended to clarify that the quiet hours are restricted to 9 p.m. to 9 a.m. Pacific Standard Time. Additionally, the coalition asserts that the bill fails to consider different consumer lifestyles such as nurses who work night shift, arguing that the bill compels companies to message these individuals during their resting hours. Finally, the coalition questions the need for AB 1865, arguing that existing technologies provide adequate coverage for Californians as "the technology to enable a 'do not disturb' mode on modern phones is

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<sup>10</sup> FCC, Consumer Advisory Committee, Report on the State of Text Messaging at 9 (Aug 22, 2022), <https://www.theamericanconsumer.org/wp-content/uploads/2022/09/CAC-Text-Blocking-Final-Report-Aug-30-2022.pdf>.

<sup>11</sup> Robokiller, "New record – 7.4 billion spam texts sent in March 2021," (Apr 6, 2021), <https://www.robokiller.com/blog/march-2021-robocall-robotext-trends>.

<sup>12</sup> Paul Williams, "Attorneys Have Their Hands Full with Consumer Complaint Boom," *Los Angeles Times*, (Aug 17, 2025), <https://www.latimes.com/b2b/law-legal/story/2025-08-17/consumer-complaints-lawsuits-surge-california>.

<sup>13</sup> *Ibid.*

<sup>14</sup> Tex. Bus. & Com. Code §§ 301-306.

<sup>15</sup> SB 140, 89<sup>th</sup> Leg., R.S. (Tex. 2025).

ubiquitous. Such technology would seem to address the concern of AB 1865 (text messages disturbing sleeping Californians) without the need for state intervention.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

Association of National Advertisers

Calbroadband

California Chamber of Commerce

California's Credit Unions

Self Storage Association

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