

TEXAS

Tex. Bus. & Com. Code Ann.

§35.47. Prohibited Advertising by Fax

- (a) A person may not make a telephone call or use an automatic dial announcing device to make a telephone call for the purpose of making a sale if:
- (a)(1) the person making the call or using the device knows or should have known that the called number is a mobile telephone for which the called person will be charged for that specific call; and
 - (a)(2) the called person has not given consent to make such a call to the person calling or using the device or to the business enterprise for which the person is calling or using the device.
- (b) A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device or other telecopier for which the person or entity receiving the transmission will be charged for the transmission, unless the person or entity receiving the transmission has given, prior to the transmission, consent to make or cause to be made the transmission.
- (c) A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device after 11 p.m. and before 7 a.m.
- (d) On complaint of a called person that Subsection (a), (b), or (c) of this section has been violated, the county or district attorney of the county in which the person resides shall investigate the complaint and file charges if appropriate. A telephone company serving the caller or called person is not responsible for investigating a complaint or keeping records relating to this section.
- (e) A person who violates Subsection (a), (b), or (c) of this section commits an offense. An offense under this section is a Class C misdemeanor.
- (f) A person who receives a communication that violates 47 U.S.C. §227 [*which governs unsolicited telephone and fax transmissions*], a regulation adopted under that provision, or this section may bring an action against the person who originates the communication in a court of this state for an injunction, damages in the amount provided by this subsection, or both. A plaintiff prevailing in an action for damages under this subsection is entitled to the greater of \$500 for each violation or the person's actual damages, except that the court may increase the amount of the award to not more than the greater of \$1,500 for each violation or three times the person's actual damages if the court finds that the defendant committed the violation knowingly or intentionally.
- Created by Chapter 783, §1, Acts of 1989, effective September 1, 1989. Amended by Chapter 635, §1, Acts of 1999, effective September 1, 1999; and Chapter 1429, § 2, Acts of 2001, effective January 1, 2002.*

§44.001. Short Title: Texas Telemarketing Disclosure and Privacy Act

Effective until April 1, 2009

This chapter [§§44.001 - 44.253] may be cited as the Texas Telemarketing Disclosure and

Privacy Act.

Created as §43.001 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.002. Definitions Pertaining to Telemarketing

Effective until April 1, 2009

In this chapter:

- (1) "Caller identification service" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.
- (2) "Commission" means the Public Utility Commission of Texas.
- (3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by §4, The Securities Act (Article 581-4, Civil Statutes).
- (4) "Established business relationship" means a prior or existing relationship of a person formed by a voluntary two-way communication between a person and a consumer regardless of whether consideration is exchanged, regarding consumer goods or services offered by the person, that has not been terminated by either party.
- (5) "Facsimile recording device" means any device capable of receiving a facsimile transmission.
- (6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.
- (7) "Telemarketer" means a person who makes or causes to be made a telemarketing call.
- (8) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.
- (9) "Telephone call" means a call or other transmission which is made to or received at a telephone number, including:
 - (9)(A) a call made by an automated telephone dialing system;
 - (9)(B) a transmission to a facsimile recording device; and
 - (9)(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 §332(d), Communications Act of 1934 (47 U.S.C. §151 and following), as amended, Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Public Law 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.

Created as §43.002 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002. Amended by Chapter 399, §1, Acts of 2003, effective June 20, 2003. Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Amended by Chapter 206, §1, Acts of 2007, effective September 1, 2007.

§44.003. Scope of Laws Governing Telemarketing

Effective until April 1, 2009

- (a) For the purposes of this chapter, a telemarketing call is an unsolicited telephone call made to:
- (a)(1) solicit a sale of a consumer good or service;
 - (a)(2) solicit an extension of credit for a consumer good or service; or
 - (a)(3) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.
- (b) This chapter does not apply to a call made:
- (b)(1) by a consumer that is the result of a solicitation by a seller or telemarketer or in response to general media advertising by direct mail solicitations that clearly, conspicuously, and truthfully make all disclosures required by federal or state law;
 - (b)(2) in connection with:
 - (b)(2)(A) an established business relationship; or
 - (b)(2)(B) a business relationship that has been terminated, if the call is made before the later of the date the first Texas no-call list in which the consumer's telephone number appears is published or one year after the date of termination;
 - (b)(3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business informed the telemarketer that the business does not wish to receive telemarketing calls from the telemarketer;
 - (b)(4) to collect a debt; or
 - (b)(5) by a state licensee if:
 - (b)(5)(A) the call is not made by an automated telephone dialing system;
 - (b)(5)(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller and the consumer is not required to pay or authorize payment until after the presentation; and
 - (b)(5)(C) the consumer has not informed the telemarketer that the consumer does not wish to receive telemarketing calls from the telemarketer.

Created as §43.003 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.004. Definition of "Making a Telemarketing Call"

Effective until April 1, 2009

In this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another entity if, as a result of the telemarketing call, the other entity:

- (1) can become entitled to receive money or other property of any kind from a sale solicited during the call; or

(2) can receive information that is obtained during the call and that is to be used for the purpose of:

(2)(A) extending or offering to extend credit for a consumer good or service to the person solicited; or

(2)(B) directly soliciting a sale of a consumer good or service or extending credit for the sale.

Created as §43.004 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.151. Information Required to Appear in Faxed Advertisement

Effective until April 1, 2009

In addition to the technical and procedural standards of federal statutes or regulations regarding telephone facsimile machines and transmissions, a person in this state who makes or causes to be made a facsimile solicitation shall include in the document transmitted or on a cover page to the document a statement, in at least 12-point type, stating:

(1) the correct and complete name of the person making the facsimile solicitation and street address of the location of the person's place of business; and

(2) a toll-free or local exchange accessible telephone number of the person that:

(2)(A) is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

(2)(B) automatically and immediately deletes the specified telephone number of the recipient.

Created as §43.151 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.152. Sender's Obligation to Respond to Recipient

Effective until April 1, 2009

On receipt of oral or written notification from a recipient of a facsimile solicitation not to send any further facsimile transmissions to one or more telephone numbers specified by the recipient, the person making the facsimile solicitation:

(1) shall within 24 hours send the recipient a written acknowledgment of the recipient's notification; and

(2) may not make or cause to be made a transmission to a telephone number specified by the recipient, except for a single transmission to comply with Subdivision (1).

Created as §43.152 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.153. Penalties for Unlawfully Sending Faxed Advertisement

Effective until April 1, 2009

(a) Except as provided by Subsection (c), the commission [*Public Utility Commission of Texas*] shall receive and investigate complaints concerning violations of this subchapter [§§44.151 - 44.153] and may assess an administrative penalty not to exceed \$1,000 for each violation. If the complaint alleges that the person violating this subchapter is a telecommunications provider, as defined by §51.002, Utilities Code, the commission has exclusive jurisdiction, notwithstanding Subsection (b), over the violation alleged in the complaint, except that this does not affect the right of a consumer to bring an action under Subsection (e).

(b) Except as provided by Subsection (c), the attorney general may investigate violations of this subchapter and file civil enforcement actions seeking injunctive relief, attorney's fees, and civil penalties in an amount not to exceed \$1,000 for each violation. If the court finds the defendant wilfully or knowingly violated this subchapter, the court may increase the amount of the civil penalties to an amount not to exceed \$3,000 for each violation. A violation of this subchapter is subject to enforcement action by the attorney general's consumer protection division under §§17.47, 17.58, 17.60, and 17.61 [*provisions of the Deceptive Trade Practices-Consumer Protection Act*].

(c) A state agency that issues a license to a state licensee shall receive and investigate complaints concerning violations of this subchapter by the state licensee and may assess an administrative penalty not to exceed \$1,000 for each violation. In addition, if the agency finds that the licensee wilfully or knowingly violated this subchapter, the agency may suspend or revoke the state licensee's license.

(d) Venue for an action based on a violation under this subchapter is in the county where the telemarketing call was made or received, or if brought by the attorney general, commission, or a state agency, in Travis County.

(e) A person may bring a private right of action based on a violation of this subchapter:

(e)(1) to enjoin the violation; and

(e)(2) for damages in an amount equal to the greater of:

(e)(2)(A) the person's actual monetary loss from the violation; or

(e)(2)(B) \$500 for each violation; or

(e)(2)(C) for both an injunction and damages.

(f) If the court finds that the defendant wilfully or knowingly violated this section, the court may increase the amount of the award to an amount equal to not more than three times the amount available under Subsection (e)(2).

Created as §43.153 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.

§44.251. Determination of Amount of Administrative Penalty

Effective until April 1, 2009

The amount of an administrative penalty imposed under this chapter shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

*Created as §43.251 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.
Renumbered by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003.*

§304.001. Short Title: Texas Telemarketing Disclosure and Privacy Act

Takes effect April 1, 2009

This chapter [§§304.001 - 304.259] may be cited as the Texas Telemarketing Disclosure and Privacy Act.

*Created as §43.001 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.
Renumbered as §44.001 by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.*

§304.002. Definitions Pertaining to Telemarketing

Takes effect April 1, 2009

In this chapter:

- (1) "Caller identification service or device" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.
- (2) "Commission" means the Public Utility Commission of Texas.
- (3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by §4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).
- (4) "Established business relationship" means a relationship that:
 - (4)(A) is formed by a voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged;
 - (4)(B) pertains to a consumer good or service offered by the person; and
 - (4)(C) has not been terminated by either party.
- (5) "Facsimile recording device" means a device capable of receiving a facsimile transmission.
- (6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.
- (7) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a

profession or business.

(8) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(9) "Telemarketing call" means an unsolicited telephone call made to:

- (9)(A) solicit a sale of a consumer good or service;
- (9)(B) solicit an extension of credit for a consumer good or service; or
- (9)(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(10) "Telephone call" means a call or other transmission made to or received at a telephone number, including:

- (10)(A) a call made by an automated telephone dialing system;
- (10)(B) a transmission to a facsimile recording device; and
- (10)(C) a call to a mobile telephone number serviced by a provider of commercial mobile service, as defined by §332(d), Communications Act of 1934 (47 U.S.C. §151 and following), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), as amended.

Created as §43.002 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002. Amended by Chapter 399, §1, Acts of 2003, effective June 20, 2003. Renumbered as §44.002 by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Amended by Chapter 206, §1, Acts of 2007, effective September 1, 2007. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.003. Calls Governed by Telemarketing Laws

Takes effect April 1, 2009

For purposes of this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another entity if, as a result of the telemarketing call, the other entity can:

- (1) become entitled to receive money or other property of any kind from a sale solicited during the call; or
- (2) receive information obtained during the call to:
 - (2)(A) extend or offer to extend to the person solicited credit for a consumer good or service; or
 - (2)(B) directly solicit a sale of a consumer good or service or extend credit for the sale.

Created as §43.003(a) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002. Renumbered by as §44.003(a) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.004. Calls Not Governed by Telemarketing Laws

Takes effect April 1, 2009

This chapter does not apply to a call made:

- (1) by a consumer:
 - (1)(A) as the result of a solicitation by a seller or telemarketer; or
 - (1)(B) in response to general media advertising by a direct mail solicitation that clearly, conspicuously, and truthfully makes all disclosures required by federal or state law;
- (2) in connection with:
 - (2)(A) an established business relationship; or
 - (2)(B) a business relationship that has been terminated, if the call is made before the later of:
 - (2)(A)(i) the publication date of the first Texas no-call list in which the consumer's telephone number appears; or
 - (2)(A)(ii) the first anniversary of the date of termination;
- (3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business has informed the telemarketer that the business does not wish to receive a telemarketing call from the telemarketer;
- (4) to collect a debt; or
- (5) by a state licensee if:
 - (5)(A) the call is not made by an automated telephone dialing system;
 - (5)(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller occurs and the consumer is not required to pay or authorize payment until after the presentation; and
 - (5)(C) the consumer has not informed the telemarketer that the consumer does not wish to receive a telemarketing call from the telemarketer.

Created as §43.003(b) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered by as §44.003(b) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.101. Information Required to Appear in Faxed Advertisement

Takes effect April 1, 2009

In addition to complying with the technical and procedural standards established by federal statutes or regulations regarding telephone facsimile machines and transmissions, a person in this state who makes or causes to be made a facsimile solicitation shall include in the transmitted document or on a cover page to the document a statement, in at least 12-point type, containing:

- (1) the complete name of the person making the facsimile solicitation and street address of the person's place of business; and
- (2) a toll-free or local exchange accessible telephone number of the person that:
 - (2)(A) is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

(2)(B) automatically and immediately deletes the specified telephone number of the recipient.

Created as §43.151 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered as §44.151 by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.102. Sender's Obligation to Respond to Recipient

Takes effect April 1, 2009

On receiving oral or written notice from the recipient of a facsimile solicitation not to send any further facsimile transmissions to one or more specified telephone numbers, the person making the solicitation:

(1) shall within 24 hours after receiving the notice send the recipient of the solicitation written acknowledgment of the receipt; and

(2) other than a single transmission to comply with Subdivision (1), may not make or cause to be made a transmission to a telephone number specified by the recipient.

Created as §43.152 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered as §44.152 by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.251. Enforcement by Public Utility Commission

Takes effect April 1, 2009

(a) Except as provided by §304.253, the commission [*Public Utility Commission of Texas*] shall receive and investigate complaints concerning violations of Subchapters B [*§§304.051 - 304.062, which deal with the Texas No-Call List*], C [*§§304.101 - 304.102, which deal with fax transmissions*], and D [*§§304.151 - 304.152, which deal with caller identification*] and may impose an administrative penalty not to exceed \$1,000 for each violation.

(b) Notwithstanding §304.252, if a complaint alleges that the person violating Subchapter B, C, or D is a telecommunications provider, as defined by §51.002, Utilities Code, the commission has exclusive jurisdiction over the violation alleged in the complaint.

Created as §43.153(a) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered as §44.153(a) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.252. Enforcement by Attorney General

Takes effect April 1, 2009

(a) Except as provided by §304.253, the attorney general may investigate violations of Subchapters B, C, and D and file civil enforcement actions seeking:

(a)(1) a civil penalty in an amount not to exceed \$1,000 for each violation, except as

provided by Subsection (b);
(a)(2) injunctive relief; and
(a)(3) attorney's fees.

(b) If the court finds the defendant wilfully or knowingly violated Subchapter B, C, or D, the court may increase the amount of the civil penalty to an amount not to exceed \$3,000 for each violation.

(c) A violation of Subchapter B, C, or D is subject to enforcement action by the attorney general's consumer protection division under §§17.47, 17.58, 17.60, and 17.61 [provisions of the Deceptive Trade Practices-Consumer Protection Act].

Created as §43.153(b) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered as §44.153(b) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.253. Enforcement by Professional or Occupational Licensing Agency

Takes effect April 1, 2009

(a) A state agency that issues a license to a state licensee shall:
(a)(1) receive and investigate complaints concerning violations of Subchapters B and C by the state licensee; and
(a)(2) may receive and investigate complaints concerning violations of Subchapter D by the state licensee.

(b) The state agency may:
(b)(1) impose an administrative penalty not to exceed \$1,000 for each violation;
(b)(2) order restitution for any monetary damages of the complainant in the case of a violation of Subchapter B or D; and
(b)(3) suspend or revoke the state licensee's license, if the agency finds that the licensee wilfully or knowingly violated Subchapter B, C, or D.

Created as §43.153(c) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.

Renumbered as §44.153(c) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.

§304.254. Determination of Amount of Administrative Penalty

Takes effect April 1, 2009

The amount of an administrative penalty imposed under this subchapter [§§304.251 - 304.258, which deal with enforcement] must be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) any history of previous violations;
- (3) the amount necessary to deter a future violation;

(4) any effort to correct the violation; and

(5) any other matter that justice may require.

*Created as §43.251 by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.
Renumbered as §44.251 by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.*

§304.258. Fax Recipient's Right to Sue

Takes effect April 1, 2009

(a) A person may bring a civil action based on a violation of Subchapter C:

(a)(1) for damages in an amount equal to the greater of:

(a)(1)(A) the person's actual monetary loss from the violation; or

(a)(1)(B) \$500 for each violation;

(a)(2) to enjoin the violation; or

(a)(3) for both damages and an injunction.

(b) If the court finds that the defendant wilfully or knowingly violated Subchapter C, the court may increase the amount of the damages awarded to an amount equal to not more than three times the amount available under Subsection (a)(1).

(c) §304.251(b) does not affect the right of a consumer to bring an action under Subsection (a).

*Created as §43.153(e)-(f) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.
Renumbered as §44.153(e)-(f) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.*

§304.259. Venue for Action Against Fax Transmitter

Takes effect April 1, 2009

(a) Venue for an action based on a violation of Subchapter B or C is in:

(a)(1) the county in which the telemarketing call was made or received; or

(a)(2) Travis County, if the action is brought by the commission, the attorney general, or a state agency.

(b) Venue for an action under Subchapter D is in Travis County.

*Created as §43.153(d) by Chapter 1429, §1, Acts of 2001, effective January 1, 2002.
Renumbered as §44.153(d) by Chapter 1275, §2(3), Acts of 2003, effective September 1, 2003. Renumbered and amended by Chapter 885, §2.01, Acts of 2007, effective April 1, 2009.*