

**SUBJECT:** Applying the Texas no-call list to unsolicited text messages or graphics

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 9 ayes — Giddings, Elkins, Darby, Bailey, Bohac, Castro, Martinez, Solomons, Zedler

0 nays

**WITNESSES:** For — (*Registered, but did not testify:* Ron Hinkle, Verizon Wireless)

Against — None

**BACKGROUND:** In 2001, the 77th Legislature enacted HB 472 by Solomons, the Texas Telemarketing Disclosure and Privacy Act, which required the Public Utility Commission (PUC) to establish a telemarketer no-call list containing phone numbers of residential customers who do not wish to receive unsolicited telemarketing calls. It granted enforcement authority to the PUC, the Office of the Attorney General, and state licensing agencies to investigate complaints and assess civil penalties and increased public access to civil remedies. The 78th Legislature in 2003 enacted HB 147 by Solomons, adding mobile telephone numbers to the definition of telemarketing calls, thus prohibiting telemarketers from placing calls to individuals' cellular phone numbers on the no-call list.

The federal Telephone Consumer Protection Act of 1991, 47 U.S.C. sec. 227, prohibits using a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a fax machine. The federal Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003, 15 U.S.C. 7701, and FCC rules adopted in 2004 protect consumers against unwanted e-mail messages sent to cellular phones and pagers, if the message uses an Internet address that includes an Internet domain name.

**DIGEST:** CSHB 143 would expand the definition of “telephone call” in the Texas no-call act to include transmission of a text or graphic message or image to a mobile telephone number. The bill would allow an exception for ads transmitted in connection with the customer's telephone service, as long as the customer had agreed with the service provider to receive such ads.

The PUC would have to include a notice on its Web site explaining the application of the Texas no-call list to a call or other transmission, including a text or graphic message to a mobile telephone number.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 143 would extend the Texas no-call list to protect mobile phone customers from unsolicited text and photo messages. Currently, federal laws in conjunction with FCC rules reach the problem of unsolicited commercial messages going directly to consumers through wireless devices, such as cell phones or pagers. The state, however, has no separate provisions should the FCC rules change. The Legislature should be particularly vigilant on this issue because unsolicited, incoming messages and graphics can generate a cost for the customer.

The proliferation of e-mail “spam” suggests that the next wave will be an onslaught of unsolicited text messages on wireless phones and pagers. Aside from being a nuisance and a consumer expense, such messages and graphics could affect public safety if they generated a number of unexpected, audible alerts and thus, distracted drivers.

CSHB 143 would prohibit the transmission of a commercial text message or image to a mobile telephone or pager number assigned to a Texas resident, unless the customer consented to receive such transmissions through an existing business relationship. For example, if retail stores chose to send customers discounts in the form of text messages, as some now do in certain European countries, a wireless customer could opt to receive them. In addition, the bill would not include a transmitted message or ad made to a mobile telephone number from the customer's service provider as long as the customer had agreed to receive such communications. That way, a wireless telephone provider could text message a customer to remind the person that a bill was due or that new offers were available.

**OPPONENTS  
SAY:**

CSHB 143 could create unintended consequences as wireless phone technology develops. For example, technology experts predict that within a few years mobile telephones will be able to transmit television broadcasts. By including language regarding “transmission of an image,” the bill could interfere eventually with customers’ access to such television reception, which could contain advertisements.

NOTES:

The committee substitute differs from the introduced version by permitting an exception for ads transmitted in connection with the customer's telephone service as long as the customer had agreed with the service provider to receive such transmitted ads.

The companion bill, SB 1730 by Carona, has not yet been referred to committee.