

Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1865 (Bauer-Kahan) – As Amended March 17, 2026

SUBJECT: TEXT MESSAGE ADVERTISEMENTS

KEY ISSUE: SHOULD TEXT MESSAGE ADVERTISEMENTS ONLY BE SENT BETWEEN THE HOURS OF 9:00 A.M. AND 9:00 P.M.?

SYNOPSIS

Complaints about unwanted text messages have increased over recent years, becoming more of an intrusion in the daily lives of Californians. Current federal and state law provides some consumer protection against this annoyance, however there are still gaps in enforcement and recourse. This bill establishes “quiet hours” for text message advertisements and provides recipients a private right of action against any sender who violates those hours. Specifically, this bill would prohibit text message advertisement from 9:00 p.m. to 9:00 a.m., even if the message recipient has consented to receive text message advertisements. If a message recipient prevails in a civil action against the sender, for a violation of the quiet hours, the recipient may receive \$500 per text message violation.

This bill is supported by Consumer Watchdog and opposed by a coalition of business advocacy groups, including the California Chamber of Commerce. The bill was previously heard by the Assembly Committee on Privacy and Consumer Protection which voted unanimously to approve the bill.

SUMMARY: Prohibits text message advertisements from being sent during the hours of 9:00 p.m. and 9:00 a.m. Specifically, **this bill:**

- 1) 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.
- 2) Authorizes text message advertisement recipients and public prosecutors to bring a civil action against entities that knowingly violate the timing requirements described in 1).
 - a) Authorizes a civil penalty of \$500 per violation if an action is brought by a public prosecutor.
 - b) Authorizes a recipient who prevails in a civil action to be awarded \$500 per text message advertisement, actual damages, or statutory damages, whichever amount is greater.
- 3) Defines “text message advertisement” as a message, image, or video 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.

EXISTING LAW:

- 1) Prohibits a person, business entity, candidate, or political committee from sending a text message advertisement to a mobile device that receives text messages. (Business & Professions Code Section 17538.41 (a).)
- 2) 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. (Business & Professions Code Section 17538.41 (a).)
- 3) Allows for the following exceptions to 1):
 - a) The text message recipient is offered an option to not receive the text messages from a mobile telephone or messaging service entity. (Business & Professions Code Section 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. (Business & Professions Code Section 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. (Business & Professions Code Section 17538.41 (d).)
- 4) Prohibits, pursuant to federal law, 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).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Complaints about unwanted text messages have increased over recent years, becoming more of an intrusion in the daily lives of Californians. Current federal and state law provides some consumer protection against this annoyance, however there are still gaps in enforcement and recourse. This bill establishes “quiet hours” for text message advertisements and provides recipients a private right of action against any sender who violates those hours.

In support of the bill, the author writes:

This bill seeks to address the growing problem of intrusive text message marketing being sent to consumers during late-night or early-morning hours, when individuals reasonably expect privacy from disruptions. Because mobile phones are constantly within reach, unwanted marketing texts outside normal waking hours are more intrusive than other forms of advertising. AB 1865 is intended to close these gaps by creating clear, uniform standards governing when marketing texts may be sent, strengthening consumer protection while giving businesses predictable compliance rules.

Background. The Telephone Consumer Protection Act (TCPA) was signed into law in 1991. The TCPA attempted to provide greater protection to consumers from unsolicited telemarketing. One of the key restrictions in the TCPA is on automatic dialing systems (ATDS). ATDS have the ability to store or produce, then dial, large amounts of telephone numbers. However, if a human is involved in the process in some way, for example, a human operator has to click on the next number to dial, then the equipment is likely not considered an ATDS. (Jessica Livingston & Felix Shipkevich, *An Overview of the Federal Telephone Consumer Protection Act (TCPA)* JDSUPRA (Oct. 5, 2022) available at: <https://www.jdsupra.com/legalnews/what-is-the-tcpa-5195949/>.) The TCPA also restricts solicitors from sending text messages to residential phone numbers if no prior consent has been established.

The TCPA granted regulatory powers to the Federal Communication Commission (FCC). Under federal regulation, solicitation calls are prohibited between 9:00 p.m. and 8:00 a.m. of the recipient's local time zone. (47 C.F.R. Section 64.1200 (2026).) In addition to federal legislation, states have enacted their own versions of the TCPA. Florida enacted its own TCPA with a private right of action. Other states—such as Washington, Oklahoma, and Texas—have enacted their own versions as well. (Livingston & Shipkevich, *supra*.) Michigan introduced a bill that would allow for a private right of action that allows for a \$1,000 penalty and \$25,000 per violation if the action is brought by the Attorney General. (Puja Amin, *Michigan's Super TCPA Returns*, TCPAWorld (Feb. 9, 2026) available at: <https://tcpaworld.com/2026/02/09/michigans-super-tcpa-returns-the-2022-bill-with-a-25000-per-violation-refuses-to-die-passes-senate-and-now-in-the-house/>.)

Short message services (SMS) text messaging has become one of the most prevalent ways people communicate. According to *SMS Comparison*, in 2025, 97% of U.S. adults own a mobile phone, 85% of which are smartphones. (Max Adler, *Text Messaging Statistics 2025 USA* (Nov. 27, 2025) available at: <https://www.smscomparison.com/sms-statistics/>.) Nearly half of U.S. customers prefer communications from businesses to be sent via text message. The SMS market is estimated to be worth over \$12 billion and projected to grow by about 20% every year. (*Ibid.*) According to an FCC report, unwanted text messages have become a fast-growing problem in the United States, with consumer complaints increasing each of the three years prior to the report. (FCC, Consumer Advisory Committee, Report on the State of Text Messaging (Aug. 22, 2022) p. 9.) Unwanted text messages have quickly become the junk mail of the modern era.

This bill would prohibit text message advertisement from 9:00 p.m. to 9:00 a.m., even if the message recipient has consented to receive text message advertisements. The bill provides a dual enforcement pathway: private rights of action and public enforcement. As the author writes, “[a private right of action] can expand access to justice by allowing individuals to enforce their rights directly, rather than relying solely on government agencies.” Specifically, this bill gives the text message recipient the ability to bring an action against the text message sender for any text messages transmitted between 9 p.m. and 9 p.m. If the text message recipient prevails, they can receive \$500 per text message sent during the prohibited hours. The statute is clear that all remedies are cumulative and do not preclude claims under other laws.

The standard used for liability in this bill is a knowing standard. This means the text message recipient must prove the transmitter “knew, or should have known” the text message advertisement was sent during the prohibited hours. This standard is a higher standard than strict liability—which just requires the prohibited act (sending a text message advertisement during prohibited hours)—but will likely be fairly easy for recipients to prove. Ignorance of the law is

not a valid defense for liability, so a text message recipient would not have a difficult time proving this knowing standard.

Opposition concerns. The coalition of organizations that submitted an opposition letter outlines three key concerns: (1) text messages responding to consumer conduct; (2) concerns related to consumer preference and lifestyle; (3) uncertain need for this bill. Each are analyzed below.

The first issue the opposition raises is the potential issue of a user completing a transaction after 9 p.m. and before 9 a.m. and being sent a confirmation text of the transaction. If the text message receipt of the transaction contains links to a website that contains the receipt, but also there are advertisements on the website, the opposition contends this will be a violation of this bill. This concern appears unwarranted, as the definition of “text message advertisement” does not include language regarding links to websites. *However, if the bill moves out of the Committee the author may wish to consider, if it is the author’s intent to not penalize text messages that contain hyperlinks to a business’s homepage, language that clarifies hyperlinks to homepages contained in receipts or other confirmation text messages are not prohibited.*

The second issue raised by the opposition is that the bill fails to consider that different consumers live and work on different schedules. They provide an example of someone who works a night shift and may be signing up for advertisements during night hours. This argument is unpersuasive as there is a history of regulating advertising during specific hours of the day, as discussed above. (47 C.F.R. Section 64.1200 (2026).) Of course, there are individuals who do not work and sleep during traditional hours, but most Californians fall under the protection of this bill.

Lastly, opponents of this bill argue existing technology contains “do not disturb” features, which allow the user to set specific times to silence calls and messages. However, as the bill author notes, senior citizens “disproportionately experience aggressive or predatory marketing” and many in this group may not own the newest smartphones or may not be experienced in utilizing all the phone’s features. Even if someone has agreed to receive text message advertisements, that does not mean they want to receive them at all hours of the day and may not know how to utilize all their phone’s features.

Footnoted in the opposition’s letter is the suggestion to amend the bill’s language on how 9 p.m. to 9 a.m. is measured. Currently, this bill states message timing is determined by “Pacific standard time.” As the opposition notes, Pacific Standard Time (PST) is the time used in California from November to March. During the rest of the year, California uses Pacific Daylight Time (PDT). *Therefore, if the bill moves out of the Committee the author may wish to consider adjusting the timing to encompass both standard and daylight savings time.*

ARGUMENTS IN SUPPORT: In support of this bill, Consumer Watchdog writes:

Unrestricted text message advertising has increasingly become a source of disruption and intrusion into individuals’ daily lives. Messages sent outside reasonable hours not only inconvenience consumers but erode their sense of privacy. Advances in mass-texting technology have made it cheap and easy for marketers to reach people instantly at all hours, and unlike email or traditional advertising, these messages go directly to personal devices, making them especially intrusive.

According to the Federal Communications Commission (FCC), unwanted text complaints are rising, with 14,000 reported in 2020, and the National Law Review noted in 2025 that TCPA complaints have more than doubled year-over-year.

AB 1865 prohibits text message advertisements from being sent between the hours of 9PM and 9AM and establishes enforcement mechanisms, including remedies for violations under existing consumer protection laws. Without meaningful accountability, consumers are vulnerable to persistent marketing that violates their privacy. The absence of quiet hours and clear avenues for enforcement undermines consumer choice and limits individuals' ability to control how and when they are contacted.

AB 1865 establishes reasonable limits and meaningful enforcement to ensure companies respect consumers' time, privacy, and ability to choose when they are contacted. Strengthening these protections is an important step toward holding businesses accountable and preventing abusive marketing practices.

ARGUMENTS IN OPPOSITION: This bill is opposed by the California Chamber of Commerce and other business advocacy organizations. In opposition to this bill, a coalition letter from these groups states:

We are sympathetic with the author's goal of preventing advertisements at inappropriate times. Particularly in election season, text message advertisements for candidates can be incessant and overwhelming.

Context: California's Existing Law Regarding Text Message Advertisements.

Under current law, California forbids text message advertisements, except in certain limited exceptions (Business & Professions Code 17538.41(a) - (e)). Generally speaking, these exceptions allow advertisements where the consumer was offered the ability to opt out (for mobile phone advertisements – 17538.41(b)) or has affirmatively opted in (for most businesses, affiliates, or political candidates – 17538.41(c)/(d)).

This bill would further limit such advertisements, so that even in those allowed cases, they must be sent between 9:00 a.m. and 9:00 p.m. based "Pacific Standard Time."

AB 1865 is then enforced by a new private right of action, including civil penalties of \$500 per advertisement, punitive damages, and attorney's fees.

Concerns Related to Unintentional Violations of **AB 1865**.

To be very clear: we do not oppose **AB 1865** out of a desire among the business community to send late-night advertisements to consumers who are not interested in them.

As the bill has been amended since our prior letter, and we have received new feedback, the concerns below are new as of the date of this letter.

- 1) Text Messages Responding to Consumer Conduct.

Presently, **AB 1865** does not consider a text message that may be responsive to conduct by the user during the forbidden hours (9 pm to 9am). For example – if a user completes a transaction at 10pm (after the permitted 9am-to-9pm range) and the business sends a confirmation text, with a link to the company’s website showing the full details of the transaction – that conduct is not problematic. However, if the receipt (or the website which is linked) incidentally contains offers for other similar products, then such a confirmatory text would be a violation of this bill. We do not see this conduct as problematic, and hope that we can find language to ensure that such confirmatory or responsive texts are not considered a violation.

2) Concerns related to Consumer Preference and Lifestyle.

AB 1865 also seems to fail to consider that different consumers live and work on different schedules. For example: a nurse working the night shift might sleep from 9am to 5pm and be awake for most of the night. During these hours, that nurse may visit various websites and sign up for advertisements from various companies. However, the companies would now be compelled to text that nurse during her sleeping hours.

We understand that such concerns are somewhat innate to the method of **AB 1865** and may be difficult to address. Nevertheless, we hope that, by addressing companies’ ability to send responsive texts during the forbidden hours, we will somewhat address the issue of those with nocturnal schedules.

3) Uncertain Need for **AB 1865**.

At this time, we are uncertain of the need for **AB 1865** – particularly in light of the ability of existing technology to resolve whatever occurrences are at issue. Specifically, the technology to enable a “do not disturb” mode on modern phones is ubiquitous. Such technology would seem to address the concern of **AB 1865** (text messages disturbing sleeping Californians) without the need for state intervention and without creating questions as to how to implement the proposed time zone-based restrictions or address the different circadian rhythms of Californians.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Federation of California
Consumer Watchdog

Opposition

Association of National Advertisers
CalBroadband
California Association of Realtors
California Chamber of Commerce
California’s Credit Unions
California Travel Association
Civil Justice Association of California

Self Storage Association
TechNet
USTELECOM – The Broadband Association

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