



March 31, 2023

Via Electronic Mail

Chairman Jeff Leach
House Judiciary Committee
Room GN.11
P.O. Box 2910
Austin, TX 78768

Dear Chairman Leach:

The undersigned Better Business Bureaus serving Texas and the International Association of Better Business Bureaus write to express our concerns with House Bill 2781, and to support amending the bill. As currently written, HB 2781 would endanger the important free-speech protections in the Texas Citizens Participation Act (“TCPA”). Weakening those protections could harm the thousands of Texas consumers who provide reviews of local businesses on BBB websites and the Texas consumers and trustworthy businesses who rely on BBB to identify untrustworthy marketplace practices.

About BBB

The BBBs serving Texas are part of a network of nonprofit organizations throughout North America with the common mission of advancing marketplace trust. For more than 100 years, consumers and businesses have relied on BBB self-regulation to set standards for marketplace trust, encourage best practices, identify role models, and call out substandard marketplace behavior. Trustworthy businesses know BBB levels the playing field by alerting consumers to the practices of unethical competitors, and consumers know BBB is an unbiased source of pre-purchase information and fraud alerts.

BBB Business Profiles and other publications include a wealth of information to help consumers make wise buying decisions. BBB issues press releases to advise consumers about significant warning signs or indicators of fraud. BBB publishes a rating that represents BBB’s opinion of how a business will interact with its customers. BBB publishes alerts describing information we believe to be important for consumers when deciding whether to transact with a business, such as patterns of consumer complaints, bankruptcy filings, manipulation of consumer reviews, or legal actions by governmental agencies. BBB also allows consumers to publish the narratives of their complaints and

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reviews, remaining neutral in these public conversations between a business and its customer to retain the protections provided by Section 230 of the Federal Communications Decency Act.

To effectively serve the business and consumer communities and honestly call out questionable or fraudulent marketplace behavior, BBB often publishes facts or reports of consumer experiences that some businesses find objectionable. Some businesses go so far as to threaten or initiate legal action to try to coerce BBB to remove an alert, rating, or consumer complaints and reviews. Although BBBs are nonprofit organizations with limited resources, we also recognize that we must maintain the integrity of the information we publish and cannot give in to intimidation. For these reasons, we vigorously defend our right to publish important information that protects consumers and trustworthy businesses.

The TCPA is an essential tool that places Texas BBBs in a stronger position to fight intimidation. The TCPA increases costs for businesses who file unwarranted lawsuits and allows BBBs to recover litigation costs that we use to fund our nonprofit mission. TCPA cases send a warning to untrustworthy businesses that attempting to sanitize an accurately unfavorable BBB report can be costly.

Consumer Reviews

Consumer reviews provide the public with important information regarding the experiences of actual customers and their interactions with local businesses. The best reviews provide accurate, unvarnished information about a consumer's experience. Maintaining the integrity of these reviews—both positive and negative—helps prospective customers make informed purchasing decisions and distinguish between trustworthy and untrustworthy businesses.

In some cases, companies who receive a bad review try to bully consumers into revising or removing these reviews. While these reviews are typically protected under the law, a company may nonetheless file a legal action to intimidate the consumer into rescinding their review. The TCPA is vital to protecting these consumers when businesses attempt to chill their speech. Similarly, businesses that respond to consumer reviews could face legal action for their comments in response. The TCPA recognizes the harm that this may cause, and specifically applies to speech “related to the communication, gathering, receiving, posting, or processing of consumer opinions or commentary, evaluations of consumer complaints, or reviews or ratings of businesses.”¹

¹ TEX. CIV. PRAC. & REM. CODE § 27.010(b)(2).

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HB 2781

Because BBB's marketplace impartiality is essential to our nonprofit mission and benefits all consumers and trustworthy businesses, BBB is scrupulously non-partisan and rarely takes a position supporting or opposing particular legislation. However, we believe we must express our concerns about HB 2781. Revising the law to eliminate the automatic stay could force consumers, small businesses, and BBBs to incur ongoing legal costs as they seek redress of an erroneous decision by a trial court. Recovering these fees is uncertain, and even in the best case, requires a consumer, small business, or BBB to pay out-of-pocket until the case is ultimately resolved.

Faced with these mounting legal bills, consumers and small businesses may simply relent and remove their comments. Increasing the costs of defending unjustified lawsuits would encourage unscrupulous businesses to threaten BBBs with defamation claims to remove true but unfavorable information that consumers need to know. This in turn would cause BBBs to be unnecessarily cautious about publicizing untrustworthy marketplace behavior, leaving trustworthy businesses to be undercut by dishonest competitors and withholding information that would help Texas consumers stay safe from unethical operators and scams. The TCPA was designed, in part, to prevent these outcomes.

These concerns are not hypothetical. BBBs and IABBB frequently receive legal demands relating to consumer reviews and the accurate reports published in Business Profiles.

The BBBs serving Texas and IABBB support amending the bill to eliminate subsections (c-1)(1) and (c-1)(3). This would allow for courts to proceed with cases when a TCPA motion is determined to be frivolous, but maintain the anti-SLAPP protections for consumers, businesses, and BBBs when a trial court makes an error related to timeliness or incorrectly applies an exemption.

Thank you for your consideration.

(Signatories on the following page.)

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Best regards,

Darren Erwin
President/CEO
BBB Serving Southeast Texas
P.O. Box 2988
Beaumont, TX 77704

Carrie Hurt
President/CEO
BBB Serving the Heart of Texas
1805 Rutherford Lane, Suite 100
Austin, TX 78754

Jay Newman
President & CEO
BBB Serving North Central Texas
1601 Elm Street, Suite 1600
Dallas, TX 75201

Dan Parsons
CEO
BBB of Greater Houston and South Texas
1333 West Loop South, Suite 1200
Houston, TX 77027

Marybeth Stevens
President
BBB of El Paso
550 East Paisano Drive
El Paso, TX 79901

Kip Morse
Chief Executive Officer
International Association of Better Business Bureaus
4250 N. Fairfax Drive, Suite 600
Arlington, VA 22203