

Texas Takes Big Step Toward Passing Data Privacy Legislation

/ April 11, 2023 / Bryan Sanyi and Michael Twomey

On April 5, 2023, the Texas House of Representatives passed the Texas Data Privacy and Security Act, moving the bill to the Texas Senate for consideration and bringing data privacy legislation one step closer to reality in Texas.^[1] This year has seen several significant developments in privacy legislation across the country, which will have significant and far-reaching effects on businesses.

The Texas Data Privacy and Security Act (HB 4)^[2] is a comprehensive bill that aims to regulate the collection, use, processing, and treatment of consumers' personal data by certain business entities. The bill was introduced by Representative Capriglione on February 3, 2023, and cleared the Business & Industry Committee on March 28, 2023. The Texas Speaker of the House identified the bill (originally filed as HB 1844) as a priority, re-numbering it HB 4. The prioritization indicates Texans' growing, bipartisan demand for data privacy regulation.

The bill is modeled after the Virginia Consumer Data Protection Act^[3] and grants consumers various rights over their personal data, such as the right to access, correct, delete, and obtain a copy of their data. It also imposes obligations on businesses regarding data protection, transparency, and accountability. For example, businesses must conduct data protection assessments for high-risk processing activities, obtain opt-in consent for processing sensitive data, and refrain from selling personal data or using it for targeted advertising without consent. The bill also sets forth requirements for third-party data sharing and contractual obligations. The bill proposes imposing a civil penalty for non-compliance (prosecuted by the Texas Attorney General), making it crucial for businesses to ensure they adhere to the new requirements. Some good news for businesses is that the bill does not provide a private right of action, and small businesses are largely excluded from the bill's requirement.

The Texas Senate will likely finish its consideration of the bill in the next couple of months before it moves to the Governor's desk with any negotiated changes. The current effective date of the bill is March 1, 2024, but is subject to amendment as it makes its way through the legislative process. Other filed bills in Texas that are receiving less attention include the Limited Consumer Privacy Bill (HB 4854). This bill is more limited and addresses some key aspects of data privacy, such as providing consumers with the right to access their personal data and request deletion under certain conditions. The bill also requires businesses to implement reasonable security measures to protect personal data. HB 4948 addresses children's privacy and aims to strengthen protections for children's personal data, including more stringent parental consent requirements for the collection, use, and disclosure of personal information of children under the age of 13. HB 4412 proposes protections for privacy on social media platforms, such as providing users with greater control over their personal data and requiring platforms to implement measures to secure user information. HB 4917 and its companion, SB 2105, seek to regulate data brokers by requiring them to register with the state, provide transparency about their data collection and sharing practices, and allow consumers to opt out of the sale of their personal information. While the Texas Data Privacy and Security Act is progressing rapidly through the legislature, it is unclear whether any of the other bills will advance past initial considerations.

Texas is the latest among many states that are establishing or have established a comprehensive data privacy framework that affects businesses and consumers. As of this writing, California, Colorado, Connecticut, Virginia, Utah, and most recently Iowa, have enacted comprehensive data privacy laws. We will continue to monitor the developments of these bills and provide updates as they progress. In the meantime, if you have any questions or concerns about the proposed Texas data privacy legislation or need assistance in preparing for compliance, please do not hesitate to contact us. Our experienced attorneys are here to help you navigate the complex landscape of data privacy law.

[1] Texas Legislature Online - 88(R) History for HB 4.

[2] Texas Legislature Online - 88(R) Text for HB 4.

[3] [Texas_Data_Privacy_and_Security_Act_vs._Virginia_.pdf](#) (tab.org)

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Bryan Sanyi
Michael Twomey

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