

# TEXAS JOINS THE PRIVACY PARTY

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# Comparison of Business Obligations under TDPSA and other States

State Law	Opt-in consent for certain types of data processing	Opt-out consent for certain types of data processing	Must present users with a privacy policy (or notice)	Requires Data Protection Assessments	Outlines Contractual Obligation with Third-Party Processors	Allows for civil lawsuits or private right of action	Must honor Global Privacy Controls/browser privacy settings
TDPSA		✓	✓	✓	✓		✓
CCPA/CPRA	✓	✓	✓	✓	✓	✓	✓
CPA		✓	✓	✓	✓		✓
CTDPA		✓	✓	✓	✓		✓
DPDPA	✓	✓	✓	✓	✓		✓
FDBR		✓	✓	✓	✓		
Indiana CDPA		✓	✓	✓	✓		
Iowa CDPA		✓	✓		✓		
KCDPA	✓	✓	✓	✓	✓		
MN CDPA	✓	✓	✓	✓	✓		✓
MT CDPA		✓	✓	✓	✓		✓
MODPA	✓	✓	✓	✓	✓		✓
NHDPL	✓	✓	✓	✓	✓		✓
NJDPA	✓	✓	✓	✓	✓		✓
OCPA		✓	✓	✓	✓		✓

# Maintenance of comprehensive compliance with number of state consumer data privacy laws

- Ashley
  - How do you recommend that internal compliance teams leverage efforts to comply with other state consumer data privacy laws, e.g., California and Colorado, that have been in effect prior to the Texas laws effective date?
    - As just one example, Data Subject Rights Requests, what diligence steps do you recommend taking, if any, as each new state law takes effect with the same obligations that have already been in effect?
    - Any other recommended steps for maintaining a comprehensive privacy program (e.g., Privacy Policy updates)?

# Covered Entities and Required Thresholds

The TDPISA's requirements apply to persons that meet all the following conditions:

- Conduct business in Texas or produce products or services that Texas residents consume.
- Process any volume of personal data or engage in personal data sales.
- Do not qualify as a small business, as defined by the US Small Business Administration, with one exception. A small business must obtain a consumer's prior consent to sell sensitive personal data.
- (Tex. Bus. & Com. Code Ann. §§ 541.002(a) and 541.107.)

# Coverage Exclusions or Exceptions

The TDPSA contains numerous coverage exclusions and exceptions. Some common exclusions include:

- State agencies or political subdivisions, nonprofits, and institutions of higher education.
- Electric utilities, power generation companies, and retail electric providers.
- Employment-related data.
- Entities or data regulated by other sector-specific laws, such as in the health (Health Insurance Portability and Accountability Act of 1996 (HIPAA)), finance (Gramm-Leach-Bliley Act (GLBA)), or credit (Fair Credit Reporting Act (FCRA)) sectors or that involve children (Children's Online Privacy Protection Act of 1998 (COPPA)).

# Personal Data Definition

The TDPSA protects personal data, defined as any information linked to or reasonably linkable to an identified or identifiable individual, including pseudonymous data when used or combined with additional information that reasonably links the data to an identified or identifiable individual (Tex. Bus. & Com. Code Ann. § 541.002(19)).

The TDPSA's personal data definition excludes:

- De-identified data.
- Publicly available information, defined as information:
  - lawfully made available from federal, state, or local government records; or
  - that a business reasonably believes is lawfully made available to the general public through widely distributed media by the consumer or a person the consumer has disclosed the information to without restricting the information to a specific audience.

(Tex. Bus. & Com. Code Ann. § 541.002(19), (27).)

# Sensitive Data Definition

The TDPSA defines sensitive data as a personal data category that includes:

- Personal data revealing an individual's:
  - racial or ethnic origin;
  - religious beliefs;
  - mental or physical health diagnosis;
  - sexuality; or
  - citizenship or immigration status.
- Genetic or biometric data processed to uniquely identify an individual.
- Personal data collected from a known child.
- Precise geolocation data.

(Tex. Bus. & Com. Code Ann. § 541.002(29).)

# Consumer Rights

The TDPSA provides consumers with certain rights regarding their personal data, including rights to:

- Access.
- Correction.
- Deletion.
- Data portability.
- Opt out of:
  - personal data sales;
  - targeted advertising; or
  - profiling for decisions producing legal or similarly significant effects.

(Tex. Bus. & Com. Code Ann. § 541.051.)



# Controller Obligations

The TDPSA's controller obligations (duties) include:

- Transparency (privacy notice, with specific disclaimers for controllers that engage in the sale of sensitive or biometric data).
- Data minimization.
- Purpose specification and limitation.
- To limit personal data use to purposes reasonably necessary to or compatible with the disclosed processing purpose unless the consumer consents to the secondary use.
- Reasonable data security to protect the personal data's confidentiality, integrity, and accessibility.

# Controller Obligations

- To avoid unlawful discrimination when processing personal data.
- To not discriminate (retaliate) when a consumer exercises rights, including by denying goods or services, charging different prices or rates, or providing a different level of quality.
- To obtain consent before processing sensitive data. This requirement applies to all controllers, including small businesses, which are exempt from the rest of the TDPSA (Tex. Bus. & Com. Code Ann. § 541.107(a)).
- To process children's sensitive data consistent with COPPA.

(Tex. Bus. & Com. Code Ann. §§ 541.101 and 541.102.)

Controllers must also act on and respond to a consumer's request to exercise their personal data rights (Tex. Bus. & Com. Code Ann. § 541.052).

# Processor Obligations

The TDPSA's processor obligations include to:

- Adhere to the controller's instructions.
- Help the controller meet its TDPSA obligations, considering the nature of the processing and available information, including the controller's obligations to:
  - respond to consumer rights requests;
  - comply with data security and breach notification requirements; and
  - conduct data protection assessments.
- Enter into binding contracts with controllers that contain specific terms.

(Tex. Bus. & Com. Code Ann. § 541.104.)

# Processor Contract Requirements

The TDPSA requires written processor contracts to include provisions that:

- Provide clear processing instructions and describe:
- the nature and purpose of processing;
- the types of personal data processed; and
- the duration of processing.
- Describe the rights and obligations of both parties.

# Processor Contract Requirements

- Require the processor to:
  - ensure the duty of confidentiality;
  - return or destroy all personal data when the services end at the controller's direction, unless the law requires retention;
  - make available all information necessary to demonstrate compliance with its data protection obligations, on the controller's reasonable request, or provide appropriate audit reports from independent assessors; and
  - only engage a subcontractor under a written contract that requires it to meet the processor's data protection obligations.

(Tex. Bus. & Com. Code Ann. § 541.104(b)-(c).)

The processing contract cannot relieve a controller or processor from liabilities imposed on them by virtue of its role in the processing relationship (Tex. Bus. & Com. Code Ann. § 541.104(d)).

# Data Protection Assessment (DPA) Requirements

The TDPSA requires DPAs when:

- Processing personal data for targeted advertising.
- Selling personal data.
- Processing sensitive data.
- Performing any processing activities that present a heightened risk of consumer harm, including for profiling activities that present a reasonably foreseeable risk to consumers of:
  - unfair or deceptive treatment or unlawful disparate impacts;
  - financial, physical, or reputational injury;
  - physical or other intrusions on solitude, seclusion, private affairs, or private concerns that would offend a reasonable person; or
  - other substantial injury.

(Tex. Bus. & Com. Code Ann. § 541.105.)

# Consumer rights

The following rights are granted to consumers under the TDPSA:

- Access (Tex. Bus. & Com. Code Ann. § 541.051(b)(1).)
- Correction (Tex. Bus. & Com. Code Ann. § 541.051(b)(2).)
- Deletion (Tex. Bus. & Com. Code Ann. § 541.051(b)(3).)
- Data Portability (Tex. Bus. & Com. Code Ann. § 541.051(b)(4).)
- Sales Opt-Out (Tex. Bus. & Com. Code Ann. § 541.051(b)(5)(B).)
- Targeted Advertising Opt-Out (Tex. Bus. & Com. Code Ann. § 541.051(b)(5)(A).)
- Automated Decision Making Limits (Tex. Bus. & Com. Code Ann. § 541.051(b)(5)(C).)
- Sensitive Data Use Limits (Tex. Bus. & Com. Code Ann. § 541.101(b)(4).)
- Non-Discrimination (Tex. Bus. & Com. Code Ann. § 541.101(b)(2).)
- Additional Profiling (Tex. Bus. & Com. Code Ann. § 541.051(b)(5)(C).)

# Response time frame

The TDPSA requires that controllers respond to consumer rights requests without undue delay and within 45 days. Controller may extend the response period by up to 45 more days if reasonably necessary considering the complexity and number of the consumer's requests. However, the controller must tell the consumer about any extension and its reason within the initial 45-day period. (Tex. Bus. & Com. Code Ann. § 541.052(b).)



# Excluded entities or data

The following entity types and data types are excluded:

- Nonprofit, Government, or Other Similar Entities (Tex. Bus. & Com. Code Ann. §§ 541.001(18), (30) and 541.002(b)(1), (4).)
- Health & Medical Entities and Data (Tex. Bus. & Com. Code Ann. §§ 541.001(4), (9), and (13)-(14), 541.002(b)(3), and 541.003(1)-(3), (7)-(10).)
- Clinical Trial or Research Entities (Tex. Bus. & Com. Code Ann. § 541.003(4)-(8).)
- Financial or Credit Entities or Data (Tex. Bus. & Com. Code Ann. §§ 541.002(b)(2) and 541.003(11).)
- Education-Related Entities or Data (Tex. Bus. & Com. Code Ann. §§ 541.001(16), (30), 541.002(b)(1), (5), and 541.003(13).)
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# Excluded entities or data

- Employment-Related Data (Tex. Bus. & Com. Code Ann. § 541.003(15)-(17)).
- Business-to-Business Data (Tex. Bus. & Com. Code Ann. § 541.001(7).)
- Entities or Data Regulated by Other Federal or State Laws
  - The Driver's Privacy Protection Act of 1994 (18 U.S.C. §§ 2721 to 2725).
  - The Farm Credit Act of 1971 (12 U.S.C. §§ 2001 to 2279cc).(Tex. Bus. & Com. Code Ann. § 541.003(12), (14).)

Complying with COPPA's parental consent obligations meets the TDPSA's parental consent requirements (Tex. Bus. & Com. Code Ann. § 541.005).

# Excluded entities or data

- Other Entities
  - Small Businesses, as defined by the US Small Business Administration, from all but one of the TDPSA's requirements. Like all controllers, small businesses must obtain consumer consent to sell sensitive data (Tex. Bus. & Com. Code Ann. §§ 541.002(a)(3) and 541.107).
  - Electric Utilities, Generators, and Retail Electric Providers, as Tex. Util. Code Ann. Section 31.002 defines those terms (Tex. Bus. & Com. Code Ann. § 541.002(b)(6)).

# • Data Privacy & Security Team's Enforcement Tools

- TDPSA
  - Civil investigative demands (CIDs)
  - Requests for sworn written statements (Interrogatories)
  - Requests for Examination (Depositions)
- Texas Deceptive Trade Practices Act

# Enforcement authority & monetary penalties

- The Texas Attorney General has exclusive enforcement authority under the TDPSA (Tex. Bus. & Com. Code Ann. § 541.151).
- The TDPSA specifically states that violations of the Act do not provide a basis for a private right of action (Tex. Bus. & Com. Code Ann. § 541.156).
- TDPSA violations may result in potential civil penalties of up to \$7,500 per violation (Tex. Bus. & Com. Code Ann. § 541.155).
- Restricting or enjoining the violator
- Seeking injunctive relief
- Recovering attorney's fees and other expenses

# Timeline for Effective Dates

Currently effective	Effective October 1, 2024	Effective January 1, 15, 2025	Effective July 1, 31, 2025	Effective October 1, 2025	Effective January 1, 2026
California Consumer Protection Act (CCPA), as amended by the California Privacy Rights Act (CPRA)	Montana Consumer Data Privacy Act (MCDPA)	Delaware Personal Data Privacy Act (DPDPA) (1.1.25)	Tennessee Information Protection Act (TIPA) (7.1.25)	Maryland Online Data Privacy Act (MODPA)	Indiana Consumer Data Protection Act (Indiana CDPA)
Colorado Privacy Act (CPA)		Iowa Consumer Data Protection Act (Iowa CDPA) (1.1.25)	Minnesota Consumer Data Privacy Act (MCDPA) (7.31.25)		Kentucky Consumer Data Protection Act (KCDPA)
Connecticut Data Privacy Act (CTDPA)		New Hampshire Data Privacy Law (NHDPL) (1.1.25)			
Utah Consumer Privacy Act (UCPA)		New Jersey Data Privacy Act (NJDPa) (1.15.25)			
Virginia Consumer Data Protection Act (VCDPA)					
Florida Digital Bill of Rights (FDBR)					

**Questions?**