



# TEXAS

## Data Privacy and Security Act

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*Please note this is a highlighted overview and not a complete overview of privacy laws for this state. If you would like a complete review of this state's privacy laws or a multi-state privacy compliance cheat sheet on specific topics, please contact Vivien Peaden at [vpeaden@bakerdonelson.com](mailto:vpeaden@bakerdonelson.com).*

*Disclaimer: These materials do not constitute legal advice and should not be substituted for the advice of legal counsel.*

# The Texas Data Privacy and Security Act (TXDPSA)

**Effective Date:** July 1, 2024

1. **Applicability Thresholds:** Subject to certain entity-level and data-level exemptions, the TXDPSA applies to a person conducting business in Texas or producing products or services that are targeted to residents of Texas that meet the below thresholds:



Processes personal data or engages in the sale of personal data; and



Is not a small business as defined under the federal Small Business Act.

Notably, the Texas Data Privacy and Security Act (TXDPSA) does not provide for a minimum threshold of consumers' personal information a business must process or a percentage of revenue to be derived from the sale of personal data in order for the law to apply. Small businesses exempted from the TXDPSA are still prohibited from selling sensitive data without the consumers' prior consent.

2. **Key Definitions:**



**Personal Data:** Is defined "as any information that is linked to or reasonably linkable to an identified or identifiable individual" and expressly includes **pseudonymous data** when the data is used by a controller or processor in conjunction with additional information that reasonably links the data to an identified or identifiable individual.

Excludes de-identified data and publicly available information, as specifically defined under the TXDPSA.



**Sales of Personal Data:** Like California, Texas has opted for a broader definition of the "sale of personal data," including both the exchange of personal data for monetary consideration and other valuable consideration by the controller to a third party (subject to some exceptions).

3. **Business Obligations:** The TXDPSA imposes additional obligations on individuals or legal entities that determine the purpose and means of processing personal information (**Controller**).



**Data Processing Agreement (DPA):** Processing activities by a supplier (known as **Processor**) shall be governed by a DPA between the Controller and Processor.



**Data Protection Assessment:** Controllers must conduct and document a data protection assessment for certain processing activities that present a higher risk of harm to consumers.



**Privacy Notice:** Yes, a Controller must provide consumers with a privacy notice. If a Controller sells sensitive personal data or biometric data, additional disclosure and posting requirements will apply.



**Universal Opt-out Mechanism:** Effective **January 1, 2025**, Controllers must recognize a consumer's opt-out signal, including "a link to an internet website, an internet browser setting or extension, or a global setting on an electronic device, which allows the consumer to opt out of target advertising, sales of personal data, or profiling.

4. **Consumer Rights:** Under the TXDPSA, Texas consumers have the right to:



**Confirm** whether a Controller is processing their personal data and **access** such personal data;



**Correct** inaccuracies in their personal data;



**Delete** personal data provided by or obtained about the consumer;



**Obtain** a copy of or summary of certain categories of personal data that the consumer previously provided to the Controller in a readily usable format only if the data is available in a digital format;



**Opt-out** of targeted advertising, sales of personal data, and "profiling in furtherance of a decision that produces a legal or similarly significant effect concerning the consumer"; and



**Appeal** the Controller's decision to refuse to take action on a request.

5. **Enforcement and Penalties:**



**Private Right of Action:** None.



**Penalties:** The state attorney general has sole authority to enforce the statute, at a maximum of \$7,500 per violation.



**Cure Period:** There is a 30-day cure period; unlike some states, this is a permanent cure period that does not have a cutoff date.