

The TDPSA (effective July 1, 2024) governs certain entities that control (“controllers”) or process (“processors”) and, as applicable, sell, the personal data of Texas residents, other than in the commercial and employment contexts (“consumers”). It also grants Texas residents certain rights with respect to their personal data.

Applicability

The TDPSA applies to persons that:

1. conduct business in Texas or produce a product or service consumed by Texas residents;
2. process or engage in the sale of personal data; and
3. are not a small business (as defined by the U.S. Small Business Administration).¹

Practical Application for Businesses

Consumer Rights:

- (1) **Right to Access:** the right to confirm whether a controller is processing personal data and access such data.
- (2) **Right to Correct:** the right to correct inaccuracies in the consumer’s personal data.
- (3) **Right to Delete:** the right to delete personal data concerning the consumer.
- (4) **Right to Data Portability:** the right to obtain the personal data in a portable and, to the extent technically feasible, readily usable format that allows the consumer to transmit the data to another entity without hindrance.
- (5) **Right to Opt Out:** the right to opt out of the processing of personal data for purposes of (i) targeted advertising, (ii) the sale of personal data, or (iii) profiling for decisions that significantly affect a consumer.

Controller Obligations:

- Publish a privacy notice that is reasonably accessible and clear and includes the necessary details, including specific disclosures for the sale of sensitive personal data or biometric data on the business website.
- Obtain consent to collect sensitive data, including personal data of any consumers under **13**.²
- Provide consumers with sufficient methods to exercise the above-listed rights, including a website link that enables the right to opt out, and effective **January 1, 2025**, an “opt-out preference signal.”
- Act on consumer requests within **45 days**; provide notice of extensions and the appeals process as necessary.
- Enter into binding data processing agreements with requisite limitations for third-party processors.
- Conduct and document an impact assessment for each processing activity that poses a “heightened risk of harm” to the consumer (e.g., selling personal data, processing sensitive data, or targeted advertising or profiling with certain foreseeable risks).

Recommendations for Controllers:

- Regularly update data maps to detail personal data collection, including sensitive data and targeted advertising.
- Train employees how to handle consumer inquiries and requests.
- Maintain clear and executable data retention policies and procedures.

Penalties:

- The Texas Attorney General has exclusive enforcement authority. A violation of the TDPSA could result in civil penalties up to **\$7,500 per violation**.
- There is a 30-day cure period to correct violations following notice from the Texas Attorney General.

¹ The Small Business Administration uses detailed industry-level definitions that include employee thresholds and revenue thresholds which should be taken into consideration.

² This also applies to businesses otherwise exempt under the small business exception.