



## TEXAS PUBLIC POLICY FOUNDATION

# BILL ANALYSIS – HOUSE BILL 4

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### PURPOSE

House Bill 4 ([2023](#)) proposes to regulate the collection, use, processing, and treatment of consumers' personal data and equip Texans with digital rights that may be exercised.

### BACKGROUND

As Texans spend an increasing amount of time online, more digital personal information is produced by consumers and obtained by businesses. Further, the rise in data collection, sale, and distribution practices have become increasingly more precise, granular, and commonplace, considerably increasing the risks to individual privacy and security.

The Texas Privacy Protection Advisory Council, a bipartisan council of lawmakers and industry tasked with studying data privacy laws and recommending actions on personal privacy and security, released a report that outlines the problem facing Texas.

Under current law, Texans generally have little knowledge of how their personal information is used, even with current safeguards such as privacy notices. This is further accentuated by the finding that Texans are hardly ever given the choice to consent to data collection. Rarely are consumers afforded accessible means of opting out of data collection, and there are many situations where the consent is implicit for organizations to share personal information. And with the information that is collected, existing protections do not go far enough to safeguard sensitive personal information. Finally, bad actors persistently use deceptive means of collecting personal information, and then may use private personal information for reasons that have not been conveyed to Texans ([Texas Privacy Protection Advisory Council, 2020](#)).

Texas currently has no comprehensive data privacy law, meaning Texans have minimal control over their data and little to no recourse if their personal information ends up in the wrong hands ([Dunmoyer & Whiting, 2022](#)). While federal data privacy bills have been introduced, efforts continue to fall short, leaving it to the states to lead on this issue.

### PROPOSAL

House Bill 4 would empower Texans to have more control over their data while enhancing safeguards to sensitive personal information. Importantly, this bill introduces strong definitions for key elements of individual digital privacy and security, makes clear the scope of the rights that Texans would have under this proposal, and is technically and legally sound. The proposal outlines consumer personal data rights that may be exercised at any time, including the right to *know* if personal data is being processed, to *access* any personal data, to *correct* inaccurate



data, to *delete* personal data held by a controller,<sup>1</sup> to access an *accessible copy* of data held by a controller, and to *opt out* of certain data processing.

Data minimization and protection requirements are also included, requiring best practices for securing Texans' data and limiting what data can be collected as a default. House Bill 4 also requires data protection assessments to be undertaken by controllers, which provides transparency and accountability, ensuring that companies are complying with the bill and broader best practices.

This would be enforced by the Office of the Attorney General. First, in instances where the attorney general believes that an entity is in violation of this bill, the attorney general may issue a civil investigative demand and request that the entity produce a data protection assessment to gauge compliance. Second, for Texans who request to exercise their digital rights and are denied, the data controller must provide an appeal process as well as an online mechanism to contact the attorney general to submit a complaint. After the attorney general receives and assesses the complaint, it must notify the entity of the alleged violations. The alleged violator then has 30 days to cure the problem and provide written confirmation that the alleged violation has been cured and will not happen again. If a violation occurs after this cure period, the violating entity is subject to a civil penalty not to exceed \$7,500 for each violation.

## REFERENCES

Dunmoyer, D., & Whiting, Z. (2022). *Why Texas needs a digital bill of rights*. Texas Public Policy Foundation. <https://www.texaspolicy.com/why-texas-needs-a-digital-bill-of-rights/>

HB 4. Introduced. 88th Texas Legislature. Regular. (2023). <https://capitol.texas.gov/tlodocs/88R/billtext/pdf/HB00004I.pdf>

Texas Privacy Protection Advisory Council. (2020). *Report*. <https://www.house.texas.gov/media/pdf/committees/Texas-Privacy-Protection-Advisory-Council-Report.pdf>

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<sup>1</sup> House Bill 4 defines "controller" as "an individual or other person that, alone or jointly with others, determines the purpose and means of processing personal data" ([HB 4, 2023, p. 3](#)).

