

By: Capriglione

H.B. No. 4390

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of personal identifying information;  
imposing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 11, Business & Commerce Code, is amended by  
adding Subtitle C to read as follows:

SUBTITLE C. PRIVACY OF PERSONAL IDENTIFYING INFORMATION

CHAPTER 541. PERSONAL IDENTIFYING INFORMATION PROCESSED BY CERTAIN

BUSINESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001. SHORT TITLE. This chapter may be cited as the  
Texas Privacy Protection Act.

Sec. 541.002. DEFINITIONS. In this chapter:

(1) "Business" means a for-profit entity, including a  
sole proprietorship, partnership, limited liability company,  
corporation, association, or other legal entity that is organized  
or operated for the profit or financial benefit of the entity's  
shareholders or other owners.

(2) "Collect" means:

(A) buying, renting, gathering, obtaining,  
receiving, inferring, creating, or accessing any personal  
identifying information pertaining to an individual by any means;  
or

(B) obtaining personal identifying information

1 relating to an individual, actively or passively, or by observing  
2 the individual's behavior.

3 (3) "Device" means any physical object capable of  
4 connecting to the Internet, directly or indirectly, or to another  
5 device and transmitting information.

6 (4) "Personal identifying information" means a  
7 category of information relating to an identified or identifiable  
8 individual. The term does not include a specific category of  
9 personal identifying information that the attorney general exempts  
10 from this definition by rule. The term includes:

11 (A) a social security number;

12 (B) a driver's license number, passport number,  
13 military identification number, or any other similar number issued  
14 on a government document and used to verify an individual's  
15 identity;

16 (C) a financial account number, credit or debit  
17 card number, or any security code, access code, or password that is  
18 necessary to permit access to an individual's financial account;

19 (D) unique biometric information, including a  
20 fingerprint, voice print, retina or iris image, or any other unique  
21 physical representation;

22 (E) physical or mental health information,  
23 including health care information;

24 (F) the private communications or other  
25 user-created content of an individual that is not publicly  
26 available;

27 (G) religious affiliation or practice

1 information;  
2 (H) racial or ethnic origin information;  
3 (I) precise geolocation data; and  
4 (J) unique genetic information.  
5 (5) "Privacy risk" means potential adverse  
6 consequences to an individual or society at large arising from the  
7 processing of personal identifying information, including:  
8 (A) direct or indirect financial loss or economic  
9 harm;  
10 (B) physical harm;  
11 (C) psychological harm, including anxiety,  
12 embarrassment, fear, or other demonstrable mental trauma;  
13 (D) significant inconvenience or expenditure of  
14 time;  
15 (E) adverse outcomes or decisions with respect to  
16 an individual's eligibility for a right, benefit, or privilege in  
17 employment, including hiring, firing, promotion, demotion, or  
18 compensation;  
19 (F) credit or insurance harm, including denial of  
20 an application or obtaining less favorable terms related to  
21 housing, education, professional certification, or health care  
22 services;  
23 (G) stigmatization or reputational harm;  
24 (H) disruption and intrusion from unwanted  
25 commercial communications or contacts;  
26 (I) price discrimination; and  
27 (J) any other adverse consequence that affects an

1 individual's private life, private family matters, actions or  
2 communications within an individual's home or similar physical,  
3 online, or digital location, if an individual has a reasonable  
4 expectation that personal identifying information will not be  
5 processed.

6 (6) "Processing" means any operation or set of  
7 operations that are performed on personal identifying information  
8 or on sets of personal identifying information, including the  
9 collection, creation, generation, recording, organization,  
10 structuring, storage, adaptation, alteration, retrieval,  
11 consultation, use, disclosure, transfer, or dissemination of the  
12 information or otherwise making the information available.

13 (7) "Third party" means a person engaged by a business  
14 to process, on behalf of the business, personal identifying  
15 information collected by the business.

16 Sec. 541.003. APPLICABILITY. (a) This chapter applies  
17 only to a business that:

18 (1) does business in this state;

19 (2) has more than 50 employees;

20 (3) collects the personal identifying information of  
21 more than 5,000 individuals, households, or devices or has that  
22 information collected on the business's behalf; and

23 (4) satisfies one or more of the following thresholds:

24 (A) has annual gross revenue in an amount that  
25 exceeds \$25 million; or

26 (B) derives 50 percent or more of the business's  
27 annual revenue by processing personal identifying information.

1        (b) Except as provided by Subsection (c), this chapter  
2 applies only to personal identifying information that is:

3            (1) collected over the Internet or any other digital  
4 network or through a computing device that is associated with or  
5 routinely used by an end user; and

6            (2) linked or reasonably linkable to a specific end  
7 user.

8        (c) This chapter does not apply to personal identifying  
9 information that is:

10            (1) collected solely for facilitating the  
11 transmission, routing, or connections by which digital personal  
12 identifying information and other data is transferred between or  
13 among businesses; or

14            (2) transmitted to and from the individual to whom the  
15 personal identifying information relates if the collector of the  
16 information does not access, review, or modify the content of the  
17 information, or otherwise perform or conduct any analytical,  
18 algorithmic, or machine learning processes on the information.

19        Sec. 541.004. EXEMPTIONS. This chapter does not apply to:

20            (1) publicly available information;

21            (2) protected health information governed by Chapter  
22 181, Health and Safety Code, or collected by a covered entity or a  
23 business associate of a covered entity, as those terms are defined  
24 by 45 C.F.R. Section 160.103, that is governed by the privacy,  
25 security, and breach notification rules in 45 C.F.R. Parts 160 and  
26 164 adopted by the United States Department of Health and Human  
27 Services under the Health Insurance Portability and Accountability

1 Act of 1996 (Pub. L. No. 104-191) and Title XIII of the American  
2 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);

3 (3) personal identifying information collected by a  
4 consumer reporting agency, as defined by Section 20.01, if the  
5 information is to be:

6 (A) reported in or used to generate a consumer  
7 report, as defined by Section 1681a(d) of the Fair Credit Reporting  
8 Act (15 U.S.C. Section 1681 et seq.); and

9 (B) used solely for a purpose authorized under  
10 that Act;

11 (4) personal identifying information processed in  
12 accordance with the Gramm-Leach-Bliley Act (Pub. L. No. 106-102)  
13 and its implementing regulations; or

14 (5) education information that is not publicly  
15 available personally identifiable information under the Family  
16 Educational Rights and Privacy Act of 1974 (20 U.S.C. Section  
17 1232g) (34 C.F.R. Part 99).

18 Sec. 541.005. RULES. The attorney general shall adopt  
19 rules necessary to implement, administer, and enforce this chapter.

20 SUBCHAPTER B. BUSINESS DUTIES

21 Sec. 541.051. COLLECTION OF PERSONAL IDENTIFYING  
22 INFORMATION. A business may not collect personal identifying  
23 information unless:

24 (1) the collection of the information is relevant and  
25 necessary to accomplish the purpose for which the information was  
26 collected; and

27 (2) that purpose is specifically disclosed by the

1 business in the notice required under Section 541.054.

2 Sec. 541.052. PROCESSING OF PERSONAL IDENTIFYING  
3 INFORMATION. (a) A business may only process personal identifying  
4 information if:

5 (1) the information is relevant to accomplish the  
6 purposes for which the information is to be processed;

7 (2) those purposes are specifically disclosed by the  
8 business in the notice required under Section 541.054; and

9 (3) the information is processed only to the extent  
10 necessary to achieve one or more of those purposes.

11 (b) A business may not process personal identifying  
12 information unless:

13 (1) the individual whose personal identifying  
14 information is collected by the business explicitly consents to the  
15 processing of the information; or

16 (2) the business is required by law to process the  
17 information.

18 (c) Notwithstanding Subsection (a), a business may not  
19 process personal identifying information if:

20 (1) the business knows processing the information will  
21 likely:

22 (A) violate state or federal law; or

23 (B) interfere with or deny a right or privilege  
24 of an individual granted under the United States Constitution; or

25 (2) the information is to be processed using automated  
26 processing, including algorithmic, machine learning, or artificial  
27 intelligence processing or predictive analysis, unless the

1 processing is performed after the business:

2 (A) conducts an objective and documented  
3 assessment of the automated processing and the results of the  
4 processing and determines the processing is reasonably free from  
5 bias and error;

6 (B) analyzes the privacy risk of using automated  
7 processing and takes reasonable steps to mitigate that risk; and

8 (C) concludes that, after all reasonable steps  
9 are taken to mitigate any privacy risk, the automated processing of  
10 the personal identifying information does not cause or is not  
11 likely to cause a substantial privacy risk.

12 Sec. 541.053. DATA SECURITY PROGRAM. (a) A business shall  
13 develop, implement, and maintain a comprehensive data security  
14 program that contains administrative, technical, and physical  
15 safeguards for personal identifying information.

16 (b) The safeguards required under Subsection (a) must be:

17 (1) documented by the business; and

18 (2) appropriate considering the:

19 (A) size and complexity of the business;

20 (B) nature and scope of the business's  
21 activities; and

22 (C) sensitivity of the personal identifying  
23 information processed by the business.

24 Sec. 541.054. NOTICE REQUIRED. (a) A business in a  
25 conspicuous manner shall provide a notice that includes a  
26 reasonably full and complete description of the business's  
27 practices governing the processing of personal identifying



1 information before collecting personal identifying information.

2 The notice must include:

3 (1) the categories of personal identifying  
4 information processed by the business;

5 (2) details on the type of processing used by the  
6 business;

7 (3) the purposes for which the business processes  
8 personal identifying information; and

9 (4) the involvement of any third party in processing  
10 personal identifying information on behalf of the business.

11 (b) The notice required by Subsection (a) must be:

12 (1) clear, drafted in plain language, and easy to  
13 understand; and

14 (2) located in a prominent location at the business  
15 and on the business's Internet website if the business has an  
16 Internet website.

17 (c) If a business processes geolocation data, biometric  
18 information, genetic information, racial or ethnic origin  
19 information, religious affiliation or practice information,  
20 physical or mental health information, or other personal  
21 identifying information that when processed is likely to create a  
22 significant privacy risk, the business must, before collecting the  
23 information, explicitly specify in the notice required under  
24 Subsection (a):

25 (1) the categories or items of personal identifying  
26 information processed by the business, as applicable; and

27 (2) the purposes for processing that information.

1       (d) The information required under Subsection (c) must be  
2 included in the notice in a manner that is conspicuous, readily  
3 available, accessible, accurate, and easy to understand.

4       (e) The notice required under this section may be included  
5 in the privacy policy required by Section 541.055.

6       Sec. 541.055. PRIVACY POLICY. A business shall make  
7 publicly available on an ongoing basis a privacy policy that:

8           (1) generally articulates the processing practices of  
9 the business for personal identifying information, including any  
10 analysis or predictions made by the business based on the  
11 processing of personal identifying information by the business;

12           (2) includes an accurate and easy method for an  
13 individual to access the individual's personal identifying  
14 information that the business has processed about the individual;  
15 and

16           (3) states that the business is required to:

17                   (A) stop processing personal identifying  
18 information on the date an individual closes the individual's  
19 account with the business; and

20                   (B) not later than the 30th day after the date the  
21 individual closes the account, delete the individual's personal  
22 identifying information unless retention of the information is  
23 required by other law or is necessary to comply with other law.

24       Sec. 541.056. ACCESS TO INFORMATION. A business shall  
25 allow an individual to promptly and reasonably obtain:

26           (1) confirmation of whether personal identifying  
27 information concerning the individual is processed by the business;

1           (2) a description of the categories of personal  
2 identifying information processed by the business;

3           (3) an explanation in plain language of the specific  
4 types of personal identifying information collected by the  
5 business; and

6           (4) access to the individual's personal identifying  
7 information.

8           Sec. 541.057. DELETION OF PERSONAL IDENTIFYING  
9 INFORMATION. If an individual who maintains an account with a  
10 business closes the account, the business shall:

11           (1) stop processing the individual's personal  
12 identifying information on the date the individual closes the  
13 account;

14           (2) not later than the 30th day after the date the  
15 account is closed, delete the individual's personal identifying  
16 information unless retention of the information is required by  
17 other law or is necessary to comply with other law; and

18           (3) if the business engages a third party to process  
19 personal identifying information, notify the third party that the  
20 individual is closing the account.

21           Sec. 541.058. ACCOUNTABILITY PROGRAM. To ensure compliance  
22 with this chapter, a business shall implement an ongoing  
23 accountability program and maintain an internal publication of the  
24 written policies and procedures necessary to implement the program.  
25 The program must include:

26           (1) a process to identify, assess, and mitigate any  
27 reasonably foreseeable privacy risk;

1           (2) procedures to provide remedies for privacy risk;

2           (3) an annual assessment of the program and  
3 supporting policies and procedures;

4           (4) methods and procedures for responding to data  
5 breaches and for addressing inquiries and complaints concerning  
6 personal identifying information; and

7           (5) procedures for internal enforcement of the  
8 business's policies and discipline for noncompliance.

9           Sec. 541.059. INFORMATION SHARED WITH THIRD PARTY. (a) A  
10 business that engages a third party to process personal identifying  
11 information collected by the business shall:

12           (1) use due diligence in selecting the third party and  
13 shall ensure that the third party complies with the requirements of  
14 this chapter that apply to the third party; and

15           (2) annually obtain from the third party verification  
16 that the third party is complying with the requirements.

17           (b) Notwithstanding Subsection (a), a business may not  
18 share with any third party who the business engages to process the  
19 information an individual's biometric, health, or genetic  
20 information unless the individual consents to the sharing of the  
21 information.

22           (c) A third party that processes personal identifying  
23 information received from a business may only process the  
24 information to the extent the business is authorized to process the  
25 information under Section 541.052 and shall:

26           (1) implement a data security program described by  
27 Section 541.053;

1           (2) implement an accountability program described by  
2 Section 541.058; and

3           (3) if the business notifies the third party under  
4 Section 541.057 that an individual is closing the individual's  
5 account with the business:

6                   (A) stop processing the individual's personal  
7 identifying information on the date the individual closes the  
8 account; and

9                   (B) not later than the 30th day after the date the  
10 account is closed, delete the individual's personal identifying  
11 information unless retention of the information is required by  
12 other law or is necessary to comply with other law.

13                                   SUBCHAPTER C. ENFORCEMENT

14           Sec. 541.101. CIVIL PENALTY. (a) A business that violates  
15 this chapter or a third party that violates Section 541.059(c) is  
16 liable to this state for a civil penalty in an amount of not more  
17 than \$10,000 for each violation, not to exceed a total amount of \$1  
18 million.

19                   (b) The attorney general may bring an action in the name of  
20 the state against the business or third party to recover the civil  
21 penalty imposed under this section.

22                   (c) The attorney general is entitled to recover reasonable  
23 expenses, including reasonable attorney's fees, court costs, and  
24 investigatory costs, incurred in bringing an action under this  
25 section.

26           Sec. 541.102. BUSINESS IMMUNITY FROM LIABILITY. A business  
27 that is in compliance with this chapter and engages a third party to

1 process on behalf of the business personal identifying information  
2 collected by the business may not be held liable for a violation of  
3 Section 541.059(c) by the third party if the business does not have  
4 actual knowledge or a reasonable belief that the third party  
5 intends to violate that section.

6 SECTION 2. Subchapter Z, Chapter 2252, Government Code, is  
7 amended by adding Section 2252.909 to read as follows:

8 Sec. 2252.909. SALE OF PERSONAL IDENTIFYING INFORMATION  
9 PROHIBITED. Notwithstanding any other law, a governmental entity  
10 may not sell or offer to sell personal identifying information, as  
11 defined by Section 541.002, Business & Commerce Code, that is:

- 12 (1) unique genetic information;  
13 (2) precise geolocation data; or  
14 (3) unique biometric information, including a  
15 fingerprint, voice print, retina or iris image, or any other unique  
16 physical representation.

17 SECTION 3. This Act takes effect September 1, 2019.