



BILL ANALYSIS: SB 726 & HB 3285

PURPOSE

Companion bills SB 726 and HB 3285 amend Title 12, Business & Commerce Code by adding new Chapter 611. These bills establish new requirements for operators of smart devices to provide information to users on the nature of personal data collected and used, affording the users more control over the personal information obtained and used by operators. Chapter 611 provides definitions for terms associated with these bills, including “personal data,” “smart device,” “smart device operator,” and “user.” These bills build on existing Texas data privacy laws, applying to manufacturers, operators, or sellers of smart devices, as well as those processing personal information generated through smart devices, insofar as the processor or operator does business in the state of Texas. These bills explicitly exclude state agencies, political subdivisions, and utility providers. Entities to whom these bills apply are required to develop and offer users a mobile application that provides Texans information such as types of data collected, the purpose for collection, methods of data collection, how the data is stored and accompanying security measures, and a list of who has access to a user’s personal data, including third parties with which it is shared. Information provided in the app must be updated at least monthly, and it must afford Texans the ability to view this information, to stop the acquisition of personal data through the associated smart device, and to stop the use of any audio, biometric, or video recording feature.

BACKGROUND

In the 88th Legislature, the Texas Data and Privacy Security Act (TDPSA) was passed and signed into law. Importantly, TDPSA allows Texans to exercise more control over personal information collected by certain business entities, giving users “digital rights” such as the ability to know what information is being collected on them, access it, correct and delete personal data, and the ability to opt out of certain data collection. Already, the Texas Attorney General has brought lawsuits against companies violating this law, and has used it to open an investigation into at least one major company. TDPSA applies to certain businesses, namely those that have a digital service in concert with their product or service. After the law went into effect, the Texas Department of Information Resources issued a report in December 2024 following implementation of HB 4 (88R), which includes feedback from the public through an online portal created to solicit comments on how the law is working and opportunities for improvement.



Consumer feedback is summarized in the report as follows:

- 77% of consumers remain concerned about how businesses use the data collected about them.
- Consumer feedback recommended providing consumers with clear guidance on how to opt out of the processing of personal data for the purposes of targeted advertising, the sale of personal data, or profiling.
- Most of the consumers providing feedback recommended simplifying the process for opting out of data processing.
- Respondents discussed requiring controllers to honor a universal opt-out mechanism, similar to the National Do Not Call Registry.
- Multiple respondents commented on the challenges that they faced while exercising their privacy rights due to the inability to find the process or form for doing so.

SB 726 and HB 3285 address many of the challenges identified by consumers, offering a singular, more accessible source for consumers to exercise their digital rights. These bills also explicitly cover the data collection vector of smart devices.

As defined by these companion bills, a smart device is a home appliance, consumer electronic device, or wearable device that connects to the internet; it collects and stores biometrics, data, images, sound, video, or voice recordings in the course of its operation; and it has the ability to transmit data to the device's manufacturer or retailer or to a third party, regardless of whether this feature is enabled. This includes items such as smart phones and watches, robot vacuums, smart appliances (e.g., refrigerators and thermostats), smart speakers, and more.

Extensive research suggests the need for robust consumer protection with these product lines. For example, one study conducted by Surfshark Research confirms that 1 in 10 smart home apps collected data for user tracking. In aggregate, this is even more troubling given that households have, on average, 21 connected devices. Many of these apps also track consumers and share sensitive information with third parties and data brokers. Major incumbents such as Google and Amazon are noted in the study as some of the worst offenders, collecting 22 out of 32 possible data points and 28 out of 32 data points, respectively. In one harrowing incident, videos recorded by a smart vacuum cleaner captured a woman using her own bathroom, and the recordings were ultimately leaked by third-party contractors who had access to this sensitive data.

Ultimately, this bill responds to consumer feedback in Texas for more accessible and intuitive means of controlling one's personal data, while enhancing protections within the smart device category.

SECTION-BY-SECTION ANALYSIS

Section 1

Amends Title 12, Business & Commerce Code, adding new Chapter 611. New definitions are included for “personal device,” “smart device,” “smart device operator,” and “user.”

Section 611.002 of Business & Commerce Code is added to outline applicability, applying to smart device operators who do business, manufacture, sell, or operate a smart device in Texas, or process or sell personal data obtained by such devices. This section exempts state agencies, political subdivisions, and utility providers in Texas from applicability.

Section 611.003 concerns the operators’ requirement to summarize collected personal data. Smart device operators are responsible for providing users with a mobile application that provides information on the nature of personal data collected, the purpose for collection and storage, methods for capturing data, what personal data is stored by the operator, whether data is stored locally or transmitted, any security or privacy policies governing personal data storage, who can access said personal data, and specific third parties with whom data is shared. The information on the app is required to be updated monthly, and must enable users to view all the aforementioned information, stop the smart device from obtaining personal data, and stop the use of any audio, biometric, or video recording features on the smart device.

Section 611.004 stipulates that, at least quarterly, smart device operators shall notify users of the availability of a mobile application and how it can be used to customize their data collection and sharing.

Section 2

Establishes an enactment date of September 1, 2025.



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