

SENATE AMENDMENTS

2nd Printing

By: Capriglione, Martinez Fischer, Rodriguez,
Collier

H.B. No. 4390

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of personal identifying information and the
creation of the Texas Privacy Protection Advisory Council.

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

SECTION 1. Section 521.053, Business & Commerce Code, is
amended by amending Subsection (b) and adding Subsection (i) to
read as follows:

(b) A person who conducts business in this state and owns or
licenses computerized data that includes sensitive personal
information shall disclose any breach of system security, after
discovering or receiving notification of the breach, to any
individual whose sensitive personal information was, or is
reasonably believed to have been, acquired by an unauthorized
person. The disclosure shall be made without unreasonable delay and
in each case not later than the 60th day after the date on which the
person determines that the breach occurred ~~[as quickly as~~
~~possible]~~, except as provided by Subsection (d) or as necessary to
determine the scope of the breach and restore the reasonable
integrity of the data system.

(i) A person who is required to disclose or provide
notification of a breach of system security under this section
shall notify the attorney general of that breach not later than the
60th day after the date on which the person determines that the
breach occurred if the breach involves at least 250 residents of

1 this state. The notification under this subsection must include:

2 (1) a detailed description of the nature and
3 circumstances of the breach or the use of sensitive personal
4 information acquired as a result of the breach;

5 (2) the number of residents of this state affected by
6 the breach at the time of notification;

7 (3) the measures taken by the person regarding the
8 breach;

9 (4) any measures the person intends to take regarding
10 the breach after the notification under this subsection; and

11 (5) information regarding whether law enforcement is
12 engaged in investigating the breach.

13 SECTION 2. (a) In this section, "council" means the Texas
14 Privacy Protection Advisory Council created under this section.

15 (b) The Texas Privacy Protection Advisory Council is
16 created to study data privacy laws in this state, other states, and
17 relevant foreign jurisdictions.

18 (c) The council is composed of members who are residents of
19 this state and appointed as follows:

20 (1) five members appointed by the speaker of the house
21 of representatives, two of whom must be representatives of an
22 industry listed under Subsection (d) of this section and three of
23 whom must be members of the house of representatives;

24 (2) five members appointed by the lieutenant governor,
25 two of whom must be representatives of an industry listed under
26 Subsection (d) of this section and three of whom must be senators;
27 and

1 (3) five members appointed by the governor, three of
2 whom must be representatives of an industry listed under Subsection
3 (d) of this section and two of whom must be either:

4 (A) a representative of a nonprofit organization
5 that studies or evaluates data privacy laws from the perspective of
6 individuals whose information is collected or processed by
7 businesses; or

8 (B) a professor who teaches at a law school in
9 this state or other institution of higher education, as defined by
10 Section 61.003, Education Code, and whose books or scholarly
11 articles on the topic of data privacy have been published.

12 (d) For purposes of making appointments of members who
13 represent industries under Subsection (c) of this section, the
14 speaker of the house of representatives, lieutenant governor, and
15 governor shall appoint members from among the following industries
16 and must coordinate their appointments to avoid overlap in
17 representation of the industries:

- 18 (1) medical profession;
- 19 (2) technology;
- 20 (3) Internet;
- 21 (4) retail and electronic transactions;
- 22 (5) consumer banking;
- 23 (6) telecommunications;
- 24 (7) consumer data analytics;
- 25 (8) advertising;
- 26 (9) Internet service providers;
- 27 (10) social media platforms;

1 (11) cloud data storage; or

2 (12) virtual private networks.

3 (e) The speaker of the house of representatives and the
4 lieutenant governor shall each designate a co-chair from among
5 their respective appointments to the council who are members of the
6 legislature.

7 (f) The council shall convene on a regular basis at the
8 joint call of the co-chairs.

9 (g) The council shall:

10 (1) study and evaluate the laws in this state, other
11 states, and relevant foreign jurisdictions that govern the privacy
12 and protection of information that alone or in conjunction with
13 other information identifies or is linked or reasonably linkable to
14 a specific individual, technological device, or household; and

15 (2) make recommendations to the members of the
16 legislature on specific statutory changes regarding the privacy and
17 protection of that information, including changes to Chapter 521,
18 Business & Commerce Code, as amended by this Act, or to the Penal
19 Code, that appear necessary from the results of the council's study
20 under this section.

21 (h) Not later than September 1, 2020, the council shall
22 report the council's findings and recommendations to the members of
23 the legislature.

24 (i) The Department of Information Resources shall provide
25 administrative support to the council.

26 (j) Not later than the 60th day after the effective date of
27 this Act, the speaker of the house of representatives, the

H.B. No. 4390

1 lieutenant governor, and the governor shall appoint the members of
2 the council.

3 (k) The council is abolished and this section expires
4 December 31, 2020.

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

ADOPTED

MAY 22 2019

Letay Graw
Secretary of the Senate

By: Nelson

H.B. No. 4390

Substitute the following for ____B. No. ____:

By: *Robert J. Nichols*

C.S. ____B. No. ____

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2 relating to the privacy of personal identifying information and the
3 creation of the Texas Privacy Protection Advisory Council.

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6 amended by amending Subsection (b) and adding Subsection (i) to
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9 licenses computerized data that includes sensitive personal
10 information shall disclose any breach of system security, after
11 discovering or receiving notification of the breach, to any
12 individual whose sensitive personal information was, or is
13 reasonably believed to have been, acquired by an unauthorized
14 person. The disclosure shall be made without unreasonable delay and
15 in each case not later than the 60th day after the date on which the
16 person determines that the breach occurred [~~as quickly as~~
17 ~~possible~~], except as provided by Subsection (d) or as necessary to
18 determine the scope of the breach and restore the reasonable
19 integrity of the data system.

20 (i) A person who is required to disclose or provide
21 notification of a breach of system security under this section
22 shall notify the attorney general of that breach not later than the
23 60th day after the date on which the person determines that the
24 breach occurred if the breach involves at least 250 residents of

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1 this state. The notification under this subsection must include:

2 (1) a detailed description of the nature and
3 circumstances of the breach or the use of sensitive personal
4 information acquired as a result of the breach;

5 (2) the number of residents of this state affected by
6 the breach at the time of notification;

7 (3) the measures taken by the person regarding the
8 breach;

9 (4) any measures the person intends to take regarding
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12 engaged in investigating the breach.

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18 (c) The council is composed of members who are residents of
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24 (2) five members appointed by the lieutenant governor,
25 two of whom must be representatives of an industry listed under
26 Subsection (d) of this section and three of whom must be senators;
27 and

1 (3) five members appointed by the governor, three of
2 whom must be representatives of an industry listed under Subsection
3 (d) of this section and two of whom must be either:

4 (A) a representative of a nonprofit organization
5 that studies or evaluates data privacy laws from the perspective of
6 individuals whose information is collected or processed by
7 businesses; or

8 (B) a professor who teaches at a law school in
9 this state or other institution of higher education, as defined by
10 Section 61.003, Education Code, and whose books or scholarly
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12 (d) For purposes of making appointments of members who
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15 governor shall appoint members from among the following industries
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- 25 (8) advertising;
- 26 (9) Internet service providers;
- 27 (10) social media platforms;

- (11) cloud data storage;
- (12) virtual private networks; or
- (13) retail electric.

(e) The speaker of the house of representatives and the lieutenant governor shall each designate a co-chair from among their respective appointments to the council who are members of the legislature.

(f) The council shall convene on a regular basis at the joint call of the co-chairs.

(g) The council shall:

(1) study and evaluate the laws in this state, other states, and relevant foreign jurisdictions that govern the privacy and protection of information that alone or in conjunction with other information identifies or is linked or reasonably linkable to a specific individual, technological device, or household; and

(2) make recommendations to the members of the legislature on specific statutory changes regarding the privacy and protection of that information, including changes to Chapter 521, Business & Commerce Code, as amended by this Act, or to the Penal Code, that appear necessary from the results of the council's study under this section.

(h) Not later than September 1, 2020, the council shall report the council's findings and recommendations to the members of the legislature.

(i) The Department of Information Resources shall provide administrative support to the council.

(j) Not later than the 60th day after the effective date of

1 this Act, the speaker of the house of representatives, the
2 lieutenant governor, and the governor shall appoint the members of
3 the council.

4 (k) The council is abolished and this section expires
5 December 31, 2020.

6 SECTION 3. (a) Except as provided by Subsection (b) of this
7 section, this Act takes effect September 1, 2019.

8 (b) Section 521.053, Business & Commerce Code, as amended by
9 this Act, takes effect January 1, 2020.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 22, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.), **As Passed 2nd House**

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| No significant fiscal implication to the State is anticipated. |
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Based on analysis by the Department of Information Resources, it is assumed that the provisions of the bill relating to administrative support for the Texas Privacy Protection Advisory Council could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State, 313
Department of Information Resources

LBB Staff: WP, JMO, CLo, NV, LCO, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 20, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.), **Committee Report 2nd House, Substituted**

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|---|
| No significant fiscal implication to the State is anticipated. |
|---|

Based on analysis by the Department of Information Resources, it is assumed that the provisions of the bill relating to administrative support for the Texas Privacy Protection Advisory Council could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State, 313
Department of Information Resources

LBB Staff: WP, JMO, CLo, NV, LCO, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 14, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.), **As Engrossed**

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|---|
| No significant fiscal implication to the State is anticipated. |
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Based on analysis by the Department of Information Resources, it is assumed that the provisions of the bill relating to administrative support for the Texas Privacy Protection Advisory Council could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State, 313
Department of Information Resources

LBB Staff: WP, CLo, NV, JMO, LCO, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION
Revision 1

April 23, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information and the creation of the Texas Privacy Protection Advisory Council.), **Committee Report 1st House, Substituted**

| |
|---|
| No fiscal implication to the State is anticipated. |
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Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State

LBB Staff: WP, CLo, NV, JMO, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 18, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information; creating the Texas Privacy Protection Advisory Council.), **Committee Report 1st House, Substituted**

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| No fiscal implication to the State is anticipated. |
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Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State

LBB Staff: WP, JMO, CLo, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 30, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB4390 by Capriglione (Relating to the privacy of personal identifying information; imposing a civil penalty.), **As Introduced**

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| No significant fiscal implication to the State is anticipated. |
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Based on analysis by the Office of the Attorney General and the Secretary of State, it is assumed that the provisions of the bill relating to personal identifying information could be absorbed using existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 307 Secretary of State

LBB Staff: WP, CLo, NV, JMO