

AMENDED IN SENATE JUNE 26, 2019
AMENDED IN ASSEMBLY MAY 22, 2019
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AMENDED IN ASSEMBLY APRIL 8, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1395

**Introduced by Assembly Member Cunningham
(Coauthors: Assembly Members Gallagher, Lackey, Limón, Mayes,
and Wicks)**

February 22, 2019

An act to amend Sections 22948.20, 22948.21, and 22948.23 of, and to amend the heading of Chapter 35 (commencing with Section 22948.20) of Division 8 of, the Business and Professions Code, relating to information privacy.

LEGISLATIVE COUNSEL’S DIGEST

AB 1395, as amended, Cunningham. Information privacy: other connected device with a voice recognition feature.

Existing law prohibits a person or entity from providing the operation of a voice recognition feature of a connected television within the state without prominently informing the specified user of the connected television during the initial setup or installation. Existing law prohibits any actual recordings of spoken word collected for a specified purpose through the operation of a voice recognition feature by the manufacturer of a connected television, or a contracting third party, from being sold or used for any advertising purpose. Existing law prohibits a person or entity from compelling a manufacturer or other entity providing the

operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature. Existing law limits the liability of a manufacturer to functionality provided at the time of the original sale of a connected television and specifically excludes liability for functionality provided by applications the user chooses to use in the cloud or that are downloaded and installed by a user. Existing law prohibits a waiver of these prohibitions and authorizes their enforcement by injunction or civil penalty in a court of competent jurisdiction by the Attorney General or a district attorney. Existing law defines terms for these purposes.

This bill would include ~~other connected devices with a voice recognition feature~~, *smart speaker devices*, as defined, in those provisions, thereby prohibiting, among other things, a person or entity from providing the operation of a voice recognition feature within the state without prominently informing the user during the initial setup or installation of ~~the other connected device with a voice recognition feature~~. *a smart speaker device*. The bill would prohibit any actual recordings or transcriptions collected *or retained* through the operation of a voice recognition feature ~~for the purpose of improving the voice recognition feature~~, by the manufacturer of a connected television or ~~other device with a voice recognition feature, or by a contracting third party, smart speaker device, that qualify as personal information or that are not deidentified~~, from being used for any advertising purpose, ~~retained, or being shared with, or sold to, a third party, or both shared with, and sold to, a third party, unless the user first provides affirmative written or electronic consent. or being shared with, or sold to, a third party. The bill would also prohibit them from being retained by the manufacturer, as specified, without affirmative written or electronic consent, as defined.~~ The bill would revise existing definitions and define additional terms for its purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature that this act shall
- 2 not be construed to limit consumer privacy protection required
- 3 pursuant to the California Consumer Privacy Act of 2018 (Title

1 1.81.5 (commencing with Section 1798.100) of Part 4 of Division
2 3 of the Civil Code).

3 SEC. 2. The heading of Chapter 35 (commencing with Section
4 22948.20) of Division 8 of the Business and Professions Code is
5 amended to read:

6
7 CHAPTER 35. CONNECTED TELEVISIONS AND DEVICES
8

9 SEC. 3. Section 22948.20 of the Business and Professions
10 Code is amended to read:

11 22948.20. (a) A person or entity shall not provide the operation
12 of a voice recognition feature within this state without prominently
13 informing, during the initial setup or installation of a connected
14 television or ~~other connected device with a voice recognition~~
15 ~~feature~~, *smart speaker device*, either the user or the person
16 designated by the user to perform the initial setup or installation
17 of the connected television or ~~other connected device with a voice~~
18 ~~recognition feature~~. *smart speaker device*.

19 (b) ~~Any actual recordings or transcriptions~~ *A recording or*
20 *transcription collected or retained* through the operation of a voice
21 recognition feature by the manufacturer of a connected television
22 or ~~other connected device with a voice recognition feature for the~~
23 ~~purpose of improving the voice recognition feature~~, *smart speaker*
24 *device*, including, but not limited to, the operation of an accessible
25 user interface for people with disabilities, ~~shall not be used for any~~
26 ~~advertising purpose, retained, or shared with, or sold to, a third~~
27 ~~party, or both shared with, and sold to, a third party, unless the~~
28 ~~user first provides affirmative written or electronic consent. if the~~
29 ~~recording or transcription qualifies as personal information or is~~
30 ~~not deidentified, shall not be:~~

31 (1) *Used for any advertising purpose.*

32 (2) *Shared with, or sold to, a third party.*

33 (3) *Retained at any location, either electronically or otherwise,*
34 *other than the connected television or smart speaker device that*
35 *is under the control of the user for personal or household purposes,*
36 *such as backup, unless the user first provides affirmative written*
37 *or electronic consent.*

38 (c) ~~Any actual recordings or transcriptions collected through~~
39 ~~the operation of a voice recognition feature by a third party~~
40 ~~contracting with a manufacturer for the purpose of improving the~~

~~voice recognition feature, including, but not limited to, the operation of an accessible user interface for people with disabilities, shall not be used for any advertising purpose, retained, or shared with, or sold to, a third party, or both shared with, and sold to, a third party, unless the user first provides affirmative written or electronic consent.~~

~~(d)~~

(c) A person or entity shall not compel a manufacturer or other entity providing the operation of a voice recognition feature to build specific features for the purpose of allowing an investigative or law enforcement officer to monitor communications through that feature.

~~(e)~~

(d) A manufacturer shall only be liable for functionality provided at the time of the original sale of a connected television or ~~other connected device with a voice recognition feature~~ smart speaker device and shall not be liable for functionality provided by applications that the user chooses to use in the cloud or are downloaded and installed by a user.

~~(f)~~

(e) This chapter shall not apply to any product or service provided by a company covered under Section 637.5 of the Penal Code.

SEC. 4. Section 22948.21 of the Business and Professions Code is amended to read:

22948.21. For purposes of this chapter, the following definitions shall apply:

(a) *“Affirmative written or electronic consent” means that a manufacturer of a connected television or smart speaker device provided the following disclosure to a user during installation of a device, separate from the device terms of use:*

This device may be used to process and retain user recordings and transcriptions of spoken words. Those recordings may be analyzed by the manufacturer and its employees for the purpose of improving the device. Please indicate whether or not you give your consent for the device to be used in this way. This consent is not required to use the basic functions of this device.

I authorize [manufacturer name] to retain my recordings and I understand that the recordings may be analyzed by the manufacturer and its employees.

1 *I do not authorize [manufacturer name] to retain my recordings*
2 *and I do not want to have access to the enhanced smart features*
3 *of this device.*

4 (b) *“Cloud computing storage service” has the same definition*
5 *as the term is defined by the National Institute of Standards and*
6 *Technology Special Publication 800-145, or a successor*
7 *publication, and includes the service and deployment models*
8 *referenced therein.*

9 (a)

10 (c) *“Connected television” means a video device designed for*
11 *home use to receive television signals and reproduce them on an*
12 *integrated, physical screen display that exceeds 12 inches, except*
13 *that this term shall not include a personal computer, portable*
14 *device, or a separate device that connects physically or wirelessly*
15 *to a television, including, but not limited to, a set-top box, video*
16 *game console, or digital video recorder.*

17 ~~(b) “Other connected device with a voice recognition feature”~~
18 ~~means any device equipped with a voice recognition feature sold~~
19 ~~in this state, including, but not limited to, a wireless speaker and~~
20 ~~voice command device sold in this state with an integrated virtual~~
21 ~~assistant that offers interactive actions and hands-free activation,~~
22 ~~or a cellular telephone, tablet, or other device sold in this state with~~
23 ~~an integrated virtual assistant that offers interactive actions and~~
24 ~~hands-free activation.~~

25 (d) *“Deidentified” has the same meaning as set forth in*
26 *subdivision (h) of Section 1798.140 of the Civil Code.*

27 (e) *“Personal information” has the same meaning as set forth*
28 *in subdivision (o) of Section 1798.140 of the Civil Code.*

29 (e)

30 (f) *“Retained” means saving or storing, or both saving and*
31 *storing, voice recorded data longer than the minimum time*
32 *necessary to complete a requested command by the user.*

33 (g) *“Smart speaker device” means a speaker and voice*
34 *command device offered for sale in this state with an integrated*
35 *virtual assistant connected to a cloud computing storage service*
36 *that uses hands-free verbal activation. A smart speaker device*
37 *does not include a cellular telephone, tablet, laptop computer with*
38 *mobile data access, a pager, or a motor vehicle, as defined in*
39 *Section 415 of the Vehicle Code, or any speaker or device*
40 *associated with, or connected to, a vehicle.*

(h) “Third party” has the same meaning as set forth in subdivision (w) of Section 1798.140 of the Civil Code.

(d)

(i) “User” means a person who originally purchases, leases, or takes ownership of a connected television or ~~other connected device with a voice recognition feature~~ smart speaker device or another person designated by the user to perform the initial setup or installation of the connected television or ~~other connected smart speaker device~~. A person who is incidentally recorded when a voice recognition feature is activated by a user shall not be deemed to be a user.

(e)

(j) “Voice recognition feature” means the function of a connected television or ~~other connected smart speaker device with a voice recognition feature that allows the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds, except that this term shall not include voice commands~~ spoken words or other sounds that are not ~~recorded~~ recorded, retained, or transmitted beyond the connected television or ~~other connected device with a voice recognition feature~~ smart speaker device.

(f)

(k) “Voice recorded data” means audio recordings or transcriptions of those recordings collected through the operation of a voice recognition feature by the manufacturer of a connected television or other connected device with a voice recognition feature.

SEC. 5. Section 22948.23 of the Business and Professions Code is amended to read:

22948.23. (a) Actions for relief pursuant to this chapter may be prosecuted exclusively in a court of competent jurisdiction in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney. This chapter shall not be deemed to create a private right of action, or limit any existing private right of action.

(b) A court may enjoin a person who knowingly engages, has engaged, or proposes to engage, in a violation of this chapter. The court may make any orders or judgments as may be necessary to prevent a violation of this chapter.

1 (c) A person who knowingly engages, has engaged, or proposes
2 to engage, in a violation of this chapter shall be liable for a civil
3 penalty not to exceed two thousand five hundred dollars (\$2,500)
4 for each connected television or ~~other connected device with a~~
5 ~~voice recognition feature~~ *smart speaker device* sold or leased in
6 violation of this chapter. If the action is brought by the Attorney
7 General, the penalty shall be deposited into the General Fund. If
8 the action is brought by a district attorney, the penalty shall be
9 paid to the treasurer of the county in which the judgment was
10 entered.

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