ASSEMBLY, No. 3441

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Prohibits television voice recognition features from collecting or recording users without notice; prohibits use or sale of recordings for advertising purposes.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning televisions and consumer notification and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. Except for voice commands that are not recorded or transmitted beyond the connected television, it shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for a person to sell or offer for sale voice recognition features in a connected television without clearly and conspicuously:

(1) notifying the user, or a person designated by the user, of the voice recognition features prior to the installation or initial setup of the connected television and its voice recognition features; and

(2) obtaining consent from the user to activate the voice recognition features and any associated data collection at the time of installation or initial setup of the connected television and its voice recognition features.

b. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for a manufacturer, or a third party that contracts with a manufacturer, to provide voice recognition features and use or sell any spoken word or other sound recorded by a connected television or its voice recognition features for any advertising purpose, including for the purpose of improving the function, operation, or features of the connected television, or for the provision of an accessible user interface for people with disabilities.

c. A manufacturer shall be liable only for functionality provided at the time of the original sale of a connected television and its voice recognition features and shall not be liable for functionality provided by applications downloaded and installed by a user.

d. A manufacturer shall establish privacy controls to limit risks associated with the collection and protection of confidential personal information.

e. As used in this section:

"Connected television" means a video device designed for home use to receive television signals and reproduce them on an integrated, physical screen display that exceeds 12 inches. A "connected television" excludes any personal computer, portable device, or a separate device that connects physically or wirelessly to a television, including, but not limited to, a set-top box, video game console, or digital video recorder.

"Manufacturer" means a manufacturer of connected televisions.

"User" means a person who purchases, leases, or takes ownership of a connected television. A person who is incidentally recorded when a voice recognition feature is activated by a user shall not be deemed to be a user.

"Voice recognition feature" means the function of a connected television 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 that are not recorded or transmitted beyond the connected television.

2. This act shall take effect on the first day of the fifth month next following the date of enactment.

STATEMENT

This bill makes it an unlawful practice and a violation of the consumer fraud act to sell or offer for sale voice recognition features in a connected television without clearly and conspicuously notifying the user, or a person designated by the user, and obtaining consent prior to or at the time of installation or initial setup of the connected television and its voice recognition features. The bill defines a connected television as a video device designed for home use to receive television signals and reproduce them on an integrated, physical screen display that exceeds 12 inches, and excludes any personal computer, portable device, or a separate device that connects physically or wirelessly to a television, such as a set-top box, video game console, or digital video recorder. Voice commands that are not recorded or transmitted beyond the connected television would not be subject to the bill's provisions.

This bill also makes it an unlawful practice for a manufacturer of connected televisions, or a third party that contracts with a manufacturer, to provide voice recognition features and use or sell any spoken word or other sound recorded by the connected television or its voice recognition features for any advertising purpose, including for the purpose of improving the function, operation, or features of the connected television.

The bill 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 downloaded and installed by a user. The bill further requires a manufacturer to establish privacy controls to limit risks associated with the collection and protection of confidential personal information.

Under the bill, a "voice recognition feature" is defined to mean the function of a connected television that allows the collection, recording, storage, analysis, transmission, interpretation, or other use of spoken words or other sounds, and excludes voice commands that are not recorded or transmitted beyond the connected television.

An unlawful practice under the consumer fraud act is punishable by a monetary penalty of not more than $10,000 for a first offense

and not more than $20,000 for any subsequent offense. Additionally, violations can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured party.

It is the sponsor's intent to protect consumers' personal privacy, as underscored by the recent settlement between VIZIO, Inc. and the Federal Trade Commission and the New Jersey Attorney General and Director of Consumer Affairs. The court determined that VIZIO participated in deceptive, unfair, and unconscionable practices, in violation of federal law and the State's consumer fraud act, by collecting and sharing consumers' viewing data and misleading consumers about its "Smart Interactivity" feature. The complaint alleged that VIZIO smart TVs captured second-by-second information about video displayed on the smart TV, and then VIZIO facilitated appending specific demographic information to the viewing data, such as sex, age, income, marital status, household size, education level, home ownership, and household value. According to the complaint, VIZIO subsequently sold this information to third parties who used it for various purposes, including targeting advertising to consumers across devices. VIZIO's "Smart Interactivity" was marketed as enabling "program offers and suggestions" but failed to inform consumers that the settings also enabled the collection of consumers' viewing data. Under the court's order, VIZIO is to prominently disclose and obtain affirmative express consent for its data collection and sharing practices. Further, VIZIO is directed to delete data collected before March 1, 2016, and implement a comprehensive data privacy program.