SYNOPSIS

“Microphone-Enabled Devices Act”; requires user consent before enabling device microphone.

CURRENT VERSION OF TEXT

As introduced.
AN ACT concerning consumer electronics 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. This act shall be known and may be cited as the
“Microphone-Enabled Devices Act.”

2. The Legislature finds and declares:
   a. An increasing number of everyday household devices, such
      as smartphones, televisions, motor vehicles, toys, and home
      appliances, are being enhanced by speech recognition and other
      technologies that use microphones to listen for environmental
      triggers.
   b. As a result of the increased use of microphone-enabled
      device technology, private companies are gaining unprecedented
      and near constant access to consumers’ private lives, including what
      consumers do in their homes and their daily habits.
   c. While there are tremendous benefits of microphone-enabled
      device technology, the growing prevalence of this technology in
      everyday devices enables companies to collect, store, analyze, and
      share increasing amounts of personal data, often without consumers
      ever knowing, which poses serious privacy risks to the public.
   d. The public welfare, security, and safety will be enhanced by
      regulating the use, collection, and sharing of information derived
      from this technology.

3. As used in this act:
   “Digital device” means a smartphone, tablet, television,
   computer, motor vehicle, toy, home appliance, or any other device
   that contains a microphone.
   “User” means a person who purchases, leases, or otherwise
   regularly uses a digital device.

4. It is an unlawful practice and a violation of P.L.1960, c.39
   (C.56:8-1 et seq.) to activate or enable, cause to be turned on or
   enabled, or otherwise use the microphone of a digital device to
   listen or collect information before:
   a. informing the user in writing:
      (1) that the microphone in the user’s digital device will be
      activated, enabled, or used;
      (2) of the frequency and length of time the microphone will be
      activated, enabled, or used;
      (3) of the specific categories of information the microphone will
      be detecting, collecting, and storing; and
      (4) of the specific purpose for which the information will be
      collected, used, stored, and disclosed; and
b. receiving the informed, written consent of the user, or the user’s authorized agent, representative, or guardian, including through an electronic means using the Internet, that is:
   (1) in a form distinct and separate from any document setting forth other legal or financial obligations of the user; and
   (2) given in advance of or at the time the microphone is activated, enabled, or used, for a set period of time or until consent is withdrawn by the user, whichever is sooner.

5. a. Any waiver of the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be void and unenforceable.
   b. Any agreement that does not comply with the applicable provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be void and unenforceable.
   c. Nothing in P.L. , c. (C. ) (pending before the Legislature as this bill) shall be construed to apply to a contractor, subcontractor, or agent of the State or a local government in the course of the person’s official duties.

6. This act shall take effect immediately.

STATEMENT

This bill, to be known and cited as the “Microphone-Enabled Devices Act,” requires a user to consent to a digital device microphone listening or collecting information before being enabled or activated.

The bill makes it an unlawful practice under the consumer fraud act to activate or enable, cause to be activated or enabled, or otherwise use a digital device’s microphone to listen or collect information before informing the user and receiving her or his informed, written consent. The bill defines a “digital device” as a smartphone, tablet, television, computer, vehicle, toy, home appliance, or any other device that contains a microphone.

Under the bill, a user is to be informed:
(1) that the microphone in the device will be turned on, enabled, or used;
(2) of the frequency and length of time the microphone will be activated, enabled, or used;
(3) of the specific categories of information the microphone will be detecting, collecting, and storing; and
(4) of the specific purpose for which the information will be collected, used, stored, and disclosed.

The user, or the user’s authorized agent, representative, or guardian, is required to provide informed, written consent, including through an electronic means using the Internet, that is in a
distinct and separate form. This consent is to be given by a consumer in advance of or at the time the microphone is used, for a set period of time, or until consent is withdrawn by the user, whichever is sooner.

Further, any agreement that does not comply with or waives the bill’s provisions is void and unenforceable.

An unlawful practice 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. In addition, violations may 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.