

LC 648/HB2395
2019 Regular Session
2/14/19

Draft language still under negotiation

SUMMARY

Requires person that manufactures, ~~sells or offers to sell~~ connected device to equip connected device with reasonable security features that protect information that connected device collects, contains, stores or transmits from access, destruction, modification, use or disclosure that consumer does not authorize.

A BILL FOR AN ACT

Relating to security measures required for devices that connect to the Internet; creating new provisions; and amending ORS 646.607.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Connected device" means a device or other physical object that can:

(1) connect, directly or indirectly, to the Internet ~~or to another connected device~~ **and that is assigned an Internet Protocol address or Bluetooth address; and**
(2) that is primarily for personal, family or household purposes.

(b) "Consumer" means a resident of this state ~~who purchases or obtains a connected device for personal, family or household use.~~

~~(b)~~ **"Manufacturer" means the person who**

(1) makes a connected device, and

(2) sells or offers to sell that connected device in Oregon.

(c) **"Reasonable security features" means:**

(a) All of the following:

(1) Appropriate to the nature and function of the device,

(2) Appropriate to the information it may collect, contain, or transmit, and

(3) Designed to protect of the connected device and any information contained therein from unauthorized access, destruction, use, modification, or disclosure.

(b) If a connected device is equipped with a means for authentication outside a local area network:

(i) The preprogrammed password is unique to each device manufactured; or

(ii) The device contains a security feature that requires a user to generate a new means of authentication before access is granted to the device for the first time.

(2) A manufacturer of a connected device shall equip a connected device with reasonable security features.

~~(2) A person that manufactures, sells or offers to sell a connected device to a consumer shall equip the connected device with reasonable security features that are appropriate to the nature of the connected device and that protect the connected device and any information the connected device collects, contains, stores or transmits from access, destruction,~~

~~modification, use or disclosure that the consumer who owns or possesses the connected device does not authorize.~~

(5) This section does not:

(a) Require a provider of an electronic store, gateway, marketplace or other means for purchasing or downloading software or firmware to verify or enforce compliance with the provisions of this section.

(b) Require a person to prevent a consumer from having or obtaining full control over a connected device, including the ability to modify the connected device or any software or firmware installed on the connected device.

(c) Limit the authority of a law enforcement officer or law enforcement agency to obtain information from a person that manufactures, sells or offers to sell a connected device as provided by law or authorized in an order from a court of competent jurisdiction.

(d) Impose any duty upon the manufacturer of a connected device related to unaffiliated third-party software or applications that a consumer chooses to add to a connected device.

(6) This section does not apply to:

~~(a) A connected device on which a consumer installs or otherwise adds software or other devices that the manufacturer of the connected device does not approve for use with the connected device or that damages, evades, disables or otherwise modifies the security features that a manufacturer person that manufactures, sells or~~

~~(a)~~ A covered entity, a health care provider, a business associate, a health care service plan, a contractor, an employer or another person that is subject to the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191, 110 Stat. 1936) or implementing regulations promulgated under the Act, as each may be amended from time to time with respect to any action that the Act regulates,

(b) A connected device, the functionality of which is subject to and compliant with the requirements, regulations, and guidance promulgated by the Food and Drug Administration (FDA) under the authority of the Quality System Regulation, 21 CFR Part 820, or consistent with 21 CFR Parts 800-1299, or other requirements, regulations, and guidance as may be promulgated by the FDA from time to time with respect to medical devices, including software as a medical device.

(7) The duties and obligations that this section imposes are in addition to and not in lieu of any other duties and obligations imposed under other applicable law and do not relieve any person from the person's duties and obligations under any other applicable law.

~~(8) A person that manufactures, sells or offers to sell~~ manufacturer of a connected device without the security features described in subsection (2) of this section engages in an unlawful trade practice under ORS 646.607.

(9) This Act shall take effect January 1, 2020.

SECTION 2. ORS 646.607 is amended to read:

646.607. A person engages in an unlawful trade practice if in the course of the person's

business, vocation or occupation the person:

- (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation[;].
 - (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a customer's request, fails to refund money that the customer gave to the person to purchase the undelivered real estate, goods or services and that the person does not retain pursuant to any right, claim or defense the person may assert in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer[;].
 - (3) Violates ORS 401.965 (2)[;].
 - (4) Violates a provision of ORS 646A.725 to 646A.750[;].
 - (5) Violates ORS 646A.5301[;].
 - (6) Employs a collection practice that is unlawful under ORS 646.639[;].
 - (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2)[;].
 - (8) Violates ORS 646A.093[;].
 - (9) Violates a provision of ORS 646A.600 to 646A.6281[;].
 - (10) Violates ORS 646A.808 (2)[;].
 - (11) Violates ORS 336.184[; or].
 - (12) Publishes on a website related to the person's business, or in a consumer agreement related to a consumer transaction, a statement or representation of fact in which the person asserts that the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain, delete or dispose of information that the person requests, requires or receives from a consumer and the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner that is materially inconsistent with the person's statement or representation.
 - (13) Violates section 1 (2) of this 2019 Act.**
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