

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3009 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Collin Walke

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3009

By: Walke

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to technology; creating a new title;
9 creating the Voice Recognition Privacy Act of 2022;
10 defining terms; requiring online businesses,
11 operators of voice recognition devices, or websites
12 to make posting of certain consumer information to be
13 collected; listing information to be provided to
14 consumer; listing information to be provided to
15 consumer if consumer information is to be sold;
16 exempting certain instances of use of voice
17 recordings by third parties from suit; exempting
18 manufacturer liability for applications downloaded by
19 users; exempting instances where affirmative consent
20 has been granted; providing penalties for violations;
21 providing for certain civil action; allowing parties
22 to seek guidance; authorizing the promulgation of
23 rules; providing for noncodification; providing for
24 codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

In publishing the decennial Oklahoma Statutes, and the
cumulative supplements after July 1, 2022, West Publishing Company
shall include in such decennial statutes and supplements a new Title
75A, to be designated "Technology".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 101 of Title 75A, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Voice
5 Recognition Privacy Act of 2022".

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 102 of Title 75A, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "Affirmative consent" means that a manufacturer of a
11 connected television or smart speaker device has done all of the
12 following:

13 a. clearly and conspicuously disclosed to the user,
14 separate from the device terms of use, all of the
15 following to the extent applicable:

16 (1) that the device may be used to process and retain
17 user recordings,

18 (2) that the recordings described in division (1) of
19 this subparagraph may be analyzed or shared with
20 third parties,

21 (3) that the device may be used to process and retain
22 transcriptions of spoken words, and

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1 (4) that the transcriptions described in division (3)
2 of this subparagraph may be analyzed or shared
3 with third parties,

4 b. clearly and conspicuously disclosed to the user,
5 separate from the device terms of use, the extent to
6 which the device can operate in the absence of consent
7 for each practice described in the disclosure required
8 by subparagraph a of this paragraph, and

9 c. received a freely given, specific, informed, and
10 unambiguous indication of the user's wishes by which
11 the user, including by a statement or by a clear
12 affirmative action, signifies agreement to the
13 processing of personal information relating to the
14 user for each practice described in the disclosure
15 required by subparagraph a of this paragraph. The
16 following shall not satisfy the requirements of this
17 paragraph:

18 (1) user's acceptance of a general or broad terms of
19 use, or similar document, that contains
20 descriptions of personal information processing
21 along with other, unrelated information,

22 (2) user's hovering over, muting, pausing, or closing
23 a given piece of content, and
24

1 (3) user's agreement obtained through the use of dark
2 patterns;

3 2. "Business" means a sole proprietorship, partnership, limited
4 liability company, corporation, association, or other legal entity
5 that is organized or operated for the profit or financial benefit of
6 its shareholders or other owners that collects consumers' personal
7 information, or on the behalf of whom such information is collected,
8 and that alone, or jointly with others, determines the purposes and
9 means of the processing of consumers' personal information, that
10 does business in the State of Oklahoma;

11 3. "Business purposes" means the use of personal information
12 for the business' or a service provider's operational purposes, or
13 other notified purposes; provided, that the use of personal
14 information shall be reasonably necessary and proportionate to
15 achieve the operational purpose for which the personal information
16 is collected or processed or for another operational purpose that is
17 compatible with the context in which the personal information is
18 collected. Business purposes shall include:

- 19 a. auditing related to a current interaction with the
20 consumer and concurrent transactions, including, but
21 not limited to, counting ad impressions to unique
22 visitors, verifying positioning and quality of ad
23 impressions, and auditing compliance with this
24 specification and other standards,

- 1 b. detecting security incidents, protecting against
2 malicious, deceptive, fraudulent, or illegal activity,
3 and prosecuting those responsible for such activity,
4 c. debugging to identify and repair errors that impair
5 existing intended functionality,
6 d. short-term transient use, provided the personal
7 information that is not disclosed to another third
8 party and is not used to build a profile about a
9 consumer or otherwise alter an individual consumer's
10 experience outside the current interaction, including,
11 but not limited to, the contextual customization of
12 ads shown as part of the same interaction,
13 e. performing services on behalf of the business or
14 service provider, including maintaining or servicing
15 accounts, providing customer service, processing or
16 fulfilling orders and transactions, verifying customer
17 information, processing payments, providing financing,
18 providing advertising or marketing services, providing
19 analytic services or providing similar services on
20 behalf of the business or service provider,
21 f. undertaking internal research for technological
22 development and demonstration, and
23 g. undertaking activities to verify or maintain the
24 quality or safety of a service or device that is

1 owned, manufactured, manufactured for, or controlled
2 by the business, and to improve, upgrade, or enhance
3 the service or device that is owned, manufactured,
4 manufactured for, or controlled by the business;

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

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

16 6. "Collects", "collected", or "collection" means buying,
17 renting, gathering, obtaining, receiving, or accessing any personal
18 information pertaining to a consumer by any means. This shall
19 include receiving information from the consumer, either actively or
20 passively, or by observing the consumer's behavior;

21 7. "Commercial purposes" means to advance a person's commercial
22 or economic interests, such as by inducing another person to buy,
23 rent, lease, join, subscribe to, provide, or exchange products,
24 goods, property, information, or services, or by enabling or

1 effecting, directly or indirectly, a commercial transaction.

2 Commercial purposes shall not include for the purpose of engaging in
3 speech that state or federal courts have recognized as noncommercial
4 speech, including political speech and journalism;

5 8. "Consumer" means a natural person who is an Oklahoma
6 resident;

7 9. "Dark pattern" means a user interface designed or
8 manipulated with the substantial effect of subverting or impairing
9 user autonomy, decision-making, or choice;

10 10. "De-identified" means information that cannot reasonably
11 identify, relate to, describe, be capable of being associated with,
12 or be linked, directly or indirectly, to a particular consumer;
13 provided that a business that uses de-identified information:

14 a. has implemented technical safeguards that prohibit re-
15 identification of the consumer to whom the information
16 may pertain,

17 b. has implemented business processes that specifically
18 prohibit re-identification of the information,

19 c. has implemented business processes to prevent
20 inadvertent release of de-identified information, and

21 d. makes no attempt to re-identify the information;

22 11. "Device" means any physical object that is capable of
23 connecting to the Internet, directly or indirectly, or to another
24 device;

1 12. "Home page" means the introductory page of an Internet
2 website and any Internet web page where personal information is
3 collected. In the case of an online service, such as a mobile
4 application, home page means the application's platform page or
5 download page, a link within the application, such as from the
6 application configuration "About", "Information", or settings page,
7 and any other location that allows consumers to review the posting
8 required by Section 4 of this act;

9 13. "Person" means an individual, proprietorship, firm,
10 partnership, joint venture, syndicate, business trust, company,
11 corporation, limited liability company, association, committee, and
12 any other organization or group of persons acting in concert;

13 14. a. "Personal information" means information that
14 identifies, relates to, describes, is capable of being
15 associated with, or could reasonably be linked,
16 directly or indirectly, with a particular consumer or
17 household. Personal information shall include, but is
18 not limited to, the following:

19 (1) identifiers such as a real name, alias, postal
20 address, unique personal identifier, online
21 identifier, Internet Protocol address, email
22 address, account name, Social Security number,
23 driver license number, passport number, or other
24 similar identifiers,

- 1 (2) characteristics of protected classifications
- 2 under Oklahoma or federal law,
- 3 (3) commercial information, including records of
- 4 personal property, products or services
- 5 purchased, obtained, or considered, or other
- 6 purchasing or consuming histories or tendencies,
- 7 (4) biometric information,
- 8 (5) Internet or other electronic network activity
- 9 information, including, but not limited to,
- 10 browsing history, search history, and information
- 11 regarding a consumer's interaction with an
- 12 Internet website, application, or advertisement,
- 13 (6) geolocation data,
- 14 (7) audio, electronic, visual, thermal, olfactory, or
- 15 similar information,
- 16 (8) professional- or employment-related information,
- 17 (9) education information, defined as information
- 18 that is not publicly available personally
- 19 identifiable information as defined in the Family
- 20 Educational Rights and Privacy Act pursuant to 20
- 21 U.S.C., Section 1232g, 34 C.F.R. Part 99, and
- 22 (10) inferences drawn from any of the information
- 23 identified in this subparagraph to create a
- 24 profile about a consumer reflecting the

1 consumer's preferences, characteristics,
2 psychological trends, predispositions, behavior,
3 attitudes, intelligence, abilities, and
4 aptitudes.

5 b. Personal information does not include publicly
6 available information. For these purposes, "publicly
7 available" means information that is lawfully made
8 available from federal, state, or local government
9 records, if any conditions associated with such
10 information. Publicly available does not mean
11 biometric information collected by a business about a
12 consumer without the consumer's knowledge.

13 Information is not publicly available if that data is
14 used for a purpose that is not compatible with the
15 purpose for which the data is maintained and made
16 available in the government records or for which it is
17 publicly maintained;

18 15. "Processing" means any operation or set of operations that
19 is performed on personal data or on sets of personal data, whether
20 or not by automated means;

21 16. "Retained" means saving, storing, or both saving and
22 storing voice recorded data longer than the minimum time necessary
23 to complete a requested command by the user; and
24

1 17. "Sell", "selling", or "sold" means selling, renting,
2 releasing, disclosing, disseminating, making available,
3 transferring, or otherwise communicating orally, in writing, or by
4 electronic or other means, a consumer's personal information by the
5 business to another business or a third party for monetary or other
6 valuable consideration;

7 18. "Smart speaker device" means a speaker and voice command
8 device offered for sale in this state with an integrated virtual
9 assistant connected to a cloud-computing storage service that uses
10 hands-free verbal activation. A smart speaker device does not
11 include a cellular telephone, tablet, laptop computer with mobile
12 data access, pager, or motor vehicle, or any speaker or device
13 associated with, or connected to, a vehicle;

14 19. "Third party" means a person who is not any of the
15 following:

- 16 a. the business that collects personal information from
17 consumers under this act,
- 18 b. a person to whom the business discloses a consumer's
19 personal information for a business purpose pursuant
20 to a written contract, provided that the contract:
 - 21 (1) prohibits the person receiving the personal
22 information from:
 - 23 (a) selling the personal information,

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1 (b) retaining, using, or disclosing the personal
2 information for any purpose other than for
3 the specific purpose of performing the
4 services specified in the contract,
5 including retaining, using, or disclosing
6 the personal information for a commercial
7 purpose other than providing the services
8 specified in the contract, or

9 (c) retaining, using, or disclosing the
10 information outside of the direct business
11 relationship between the person and the
12 business, and

13 (2) includes a certification made by the person
14 receiving the personal information that the
15 person understands the restrictions in division
16 (1) of this subparagraph and will comply with the
17 restrictions.

18 A person covered by this paragraph who violates any of the
19 restrictions set forth in this act shall be liable for the
20 violations. A business that discloses personal information to a
21 person covered by this paragraph in compliance with this paragraph
22 shall not be liable under this act if the person receiving the
23 personal information uses it in violation of the restrictions set
24 forth in this act; provided that, at the time of disclosing the

1 personal information, the business does not have actual knowledge,
2 or reason to believe, that the person intends to commit such a
3 violation;

4 20. "User" means a person who originally purchases, leases, or
5 takes ownership of a connected television or smart speaker device,
6 or another person designated by the user to perform the initial
7 setup or installation of the connected television or smart speaker
8 device. A person who is incidentally recorded when a voice
9 recognition feature is activated by a user shall not be deemed to be
10 a user;

11 21. "Voice recognition feature" means the function of a
12 connected television or smart speaker device with a voice
13 recognition feature that allows the collection, recording, storage,
14 analysis, transmission, interpretation, or other use of spoken words
15 or other sounds; except that this term shall not include spoken
16 words or other sounds that are not recorded, retained, or
17 transmitted beyond the connected television or smart speaker device;
18 and

19 22. "Voice recorded data" means audio recordings or
20 transcriptions of those recordings collected through the operation
21 of a voice recognition feature by the manufacturer of a connected
22 television or smart speaker device.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 103 of Title 75A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any person, business, entity, or website that operates an
5 online business, provides the operation of a voice recognition
6 feature, or operates a web page in this state that collects a
7 consumer's personal digital information or data shall, before the
8 point of collection, conspicuously post on its website home page,
9 and on the device to be used during initial setup or installation,
10 in a plain readable format, as to the categories of personal
11 information to be collected and the purposes for which the
12 categories of personal information shall be used. A business shall
13 not collect additional categories of personal information or use
14 personal information collected for additional purposes without
15 providing the consumer with notice consistent with this section.

16 B. The website and installation notification posting described
17 in subsection A of this section shall provide the consumer the
18 following:

19 1. The categories of personal information it will collect about
20 that consumer;

21 2. The categories of sources from which the personal
22 information is collected;

23 3. The business or commercial purpose for collecting or selling
24 personal information;

1 4. The categories of third parties with whom the business will
2 share personal information;

3 5. The specific pieces of personal information it will collect
4 about that consumer; and

5 6. A description of the process for an individual consumer who
6 uses or visits the Internet website or online service to review and
7 request changes to any of his or her consumer information that is
8 collected through the Internet website or online service.

9 C. Voice recognition devices shall also notify the user of the
10 following:

11 1. That the connected television or smart speaker device
12 contains a voice recognition feature; and

13 2. What actions or commands will activate the voice recognition
14 feature to record or transcribe audio.

15 D. If the business or website sells the consumer's personal
16 data information, or discloses such information for a business
17 purpose, the website posting described in subsection A of this
18 section shall provide the consumer the following:

19 1. The categories of personal information that the business
20 will collect about the consumer;

21 2. The categories of personal information that the business
22 will sell about the consumer and the categories of third parties to
23 whom the personal information will be sold, by category or
24 categories of personal information for each third party to whom the

1 personal information will be sold. If the information to be
2 collected will not be sold, the business shall disclose that fact;
3 and

4 3. The categories of personal information that the business
5 plans to disclose about the consumer for a business purpose. If the
6 information to be collected will not be disclosed for a business
7 purpose, the business shall disclose that fact.

8 SECTION 5. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 104 of Title 75A, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A recording or transcription collected or retained through
12 the operation of a voice recognition feature by the manufacturer of
13 a connected television or smart speaker device, including, but not
14 limited to, the operation of an accessible user interface for people
15 with disabilities, if the recording or transcription qualifies as
16 personal information or is not de-identified, shall not be:

- 17 1. Used for any advertising purpose;
- 18 2. Shared with, or sold to, a third party, unless the user has
19 provided affirmative consent; or
- 20 3. Retained electronically, unless the user opts in to having
21 that recording retained by the manufacturer either during
22 installation or at a later time in the device settings.

23 B. Notwithstanding paragraph 2 of subsection A of this section,
24 a manufacturer may share information with a third party without

1 affirmative consent to the extent sharing that information is
2 necessary to execute a function or provide a service specifically
3 requested by the user; provided the third party does not use that
4 information for any purpose other than to facilitate the execution
5 of that function or provision of that service.

6 C. If a user has provided affirmative consent for the sharing
7 or sale of a recording or transcription as provided in paragraph 2
8 of subsection A of this section, the manufacturer shall provide the
9 user with the option to revoke that consent at any time in a manner
10 reasonably accessible to the user.

11 D. If a user has declined to provide affirmative consent for
12 the sharing or sale of a recording or transcription as provided in
13 paragraph 2 of subsection A of this section, the person or entity
14 seeking consent shall not request that affirmative consent for a
15 period of at least twelve (12) months after the user has declined to
16 provide that affirmative consent.

17 E. If a person or entity providing the operation of a device
18 with a voice recognition feature within this state retains voice
19 recordings that qualify as personal information or are not de-
20 identified, that person or entity shall provide users with both of
21 the following:

22 1. An interface to review and delete those voice recordings.
23 The interface shall be easily accessible and the user's rights with
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1 respect to these recordings shall be clearly communicated to the
2 user; and

3 2. The ability to delete those voice recordings automatically.

4 F. If a person or entity providing the operation of a voice
5 recognition feature that can be activated by a voice command
6 determines that the voice recognition feature was incorrectly
7 activated, the person or entity shall not use the associated audio
8 recording for any purpose, except as specified in subsection B of
9 this section.

10 G. A person or entity providing the operation of a voice
11 recognition feature that can be activated by a voice command may use
12 an audio recording associated with an incorrect activation of a
13 voice recognition feature to improve the accuracy of the voice
14 recognition feature; provided that the user has provided affirmative
15 consent for the use of the audio recording for that purpose.

16 H. A person or entity shall not compel a manufacturer or other
17 entity providing the operation of a voice recognition feature to
18 build specific features for the purpose of allowing an investigative
19 or law enforcement officer to monitor communications through that
20 feature.

21 I. A manufacturer shall not be liable for functionality
22 provided by applications that the user chooses to use in the cloud
23 or are downloaded and installed by a user, unless the manufacturer
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1 collects, controls, or has access to any personal information
2 collected or elicited by the applications.

3 J. This act shall not apply to any device regulated by the
4 United States Food and Drug Administration.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 105 of Title 75A, unless there
7 is created a duplication in numbering, reads as follows:

8 A. Actions for relief pursuant to this act may be prosecuted
9 exclusively in a court of competent jurisdiction in a civil action
10 brought in the name of the people of the State of Oklahoma by the
11 Attorney General or by any district attorney. This act shall not be
12 deemed to create a private right of action or limit any existing
13 private right of action.

14 B. A court may enjoin a person who knowingly engages, has
15 engaged, or proposes to engage in a violation of this act. The
16 court may make any orders or judgments as may be necessary to
17 prevent a violation of this act.

18 C. A person who knowingly engages, has engaged, or proposes to
19 engage in a violation of this act shall be liable for a civil
20 penalty not to exceed Two Thousand Five Hundred Dollars (\$2,500.00)
21 for each connected television or smart speaker device sold or leased
22 in violation of this act. If the action is brought by the Attorney
23 General, the penalty shall be deposited into the Governmental Budget
24 Account. If the action is brought by a district attorney, the

1 penalty shall be paid to the treasurer of the county in which the
2 judgment was entered.

3 D. Any party subject to the provisions of this act may seek
4 information from the Office of the Attorney General for guidance on
5 how to comply with the provisions of this act. The Office of the
6 Attorney General is authorized to promulgate rules to effectuate the
7 provisions of this act.

8 SECTION 7. This act shall become effective November 1, 2022.

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