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AB-2392 Information privacy: connected devices: labeling. (2021-2022)

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Assembly Bill No. 2392

CHAPTER 785

An act to amend Sections 1798.91.04 and 1798.91.05 of, and to repeal Title 1.81.26 (commencing with Section 1798.91.04) of Part 4 of Division 3 of, the Civil Code, relating to information privacy.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2392, Irwin. Information privacy: connected devices: labeling.

Existing law requires a manufacturer of a connected device to equip the device with a reasonable security feature or features that are appropriate to the nature and function of the device, appropriate to the information it may collect, contain, or transmit, and designed to protect the device and information contained in the device from unauthorized access, destruction, use, modification, or disclosure.

This bill would provide that a manufacturer of a connected device may elect to satisfy the above-described provisions by ensuring the connected device meets or exceeds the baseline product criteria of a labeling scheme that conforms to specified guidance published by the National Institute of Standards and Technology (NIST) for consumer Internet of Things (IoT) products, satisfies a conformity assessment as described by a NIST conforming labeling scheme, as specified, and bears the binary label as described by a NIST conforming labeling scheme.

This bill would also make nonsubstantive changes that remove provisions redundant to the above-described existing provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) On May 12, 2021, President Joseph Biden issued the Executive Order on Improving the Nation's Cybersecurity (E.O. 14028) directing the National Institute of Standards and Technology (NIST) to develop cybersecurity criteria and labeling approaches for consumer software and Internet of Things (IoT) products and then to initiate pilots based on those criteria.

(b) On February 4, 2022, NIST published "Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products" to fulfill the requirements of the Executive Order.

(c) NIST's recommended criteria aim to identify key elements of labeling in terms of minimum recommendations and desirable attributes for use by a labeling scheme owner.

(d) NIST decided against establishing its own labeling program in favor of allowing various schemes owned by various public or private sector organizations.

SEC. 2. Section 1798.91.04 of the Civil Code, as added by Section 1 of Chapter 860 of the Statutes of 2018, is amended to read:

1798.91.04. (a) A manufacturer of a connected device shall equip the device with a reasonable security feature or features that are 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.
- (3) Designed to protect the device and any information contained therein from unauthorized access, destruction, use, modification, or disclosure.

(b) Subject to all of the requirements of subdivision (a), if a connected device is equipped with a means for authentication outside a local area network, it shall be deemed a reasonable security feature under subdivision (a) if either of the following requirements are met:

- (1) The preprogrammed password is unique to each device manufactured.
- (2) 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.

(c) A manufacturer of a connected device may elect to satisfy the requirements of subdivision (a) by ensuring the connected device does all of the following:

- (1) Meets or exceeds the baseline product criteria of a NIST conforming labeling scheme.
- (2) Satisfies a conformity assessment as described by a NIST conforming labeling scheme that includes a third-party test, inspection, or certification.
- (3) Bears the binary label as described by a NIST conforming labeling scheme.

SEC. 3. Section 1798.91.05 of the Civil Code, as added by Section 1 of Chapter 860 of the Statutes of 2018, is amended to read:

1798.91.05. For the purposes of this title, the following terms have the following meanings:

(a) "Authentication" means a method of verifying the authority of a user, process, or device to access resources in an information system.

(b) "Connected device" means any device, or other physical object that is capable of connecting to the internet, directly or indirectly, and that is assigned an internet protocol address or Bluetooth address.

(c) "Manufacturer" means the person who manufactures, or contracts with another person to manufacture on the person's behalf, connected devices that are sold or offered for sale in California. For the purposes of this subdivision, a contract with another person to manufacture on the person's behalf does not include a contract only to purchase a connected device, or only to purchase and brand a connected device.

(d) "NIST conforming labeling scheme" means a labeling scheme conforming to the Cybersecurity White Paper titled "Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products" published by the National Institute of Standards and Technology (NIST) on February 4, 2022, including any revisions or successor publications.

(e) "Security feature" means a feature of a device designed to provide security for that device.

(f) "Unauthorized access, destruction, use, modification, or disclosure" means access, destruction, use, modification, or disclosure that is not authorized by the consumer.

SEC. 4. Title 1.81.26 (commencing with Section 1798.91.04) of Part 4 of Division 3 of the Civil Code, as added by Section 1 of Chapter 886 of the Statutes of 2018, is repealed.