

INFORMING CONSUMERS ABOUT SMART DEVICES ACT

SEPTEMBER 28, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 4081]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4081) to require the disclosure of a camera or recording capability in certain internet-connected devices, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 4081, the “Informing Consumers about Smart Devices Act,” requires manufacturers of internet-connected devices (e.g., smart appliances) that are equipped with a camera or microphone to disclose to consumers that a camera or microphone is part of the device. The legislation does not apply to mobile phones, laptops, or other devices that a consumer would reasonably expect to include

a camera or microphone. The legislation also requires the Federal Trade Commission (FTC) to issue guidance to assist entities that manufacture covered devices with compliance and provides authority for the FTC to enforce violations, including the authority to seek civil penalties for violations.

II. BACKGROUND AND NEED FOR LEGISLATION

Consumer devices capable of connecting to the internet, including Internet of Things (IoT) devices, are increasingly common in American homes. According to one survey, the average American home has 11 IoT devices, 28 percent of consumers have at least one home automation device connected to the internet, and 11 percent of consumers claim to use at least three connected home automation devices.¹ Moreover, leading researchers have found that some IoT devices, such as Amazon’s Alexa, Apple’s Siri, Google Assistant, and Microsoft’s Cortana, can be tricked into recording when they hear certain words that may not have come directly from the end user or with their consent, and these errors could happen at least once an hour.² These problems are particularly acute in the context of IoT and other internet-connected devices due to their ability to transmit such information, including possibly to the People’s Republic of China (PRC).

It appears that over the last few years the PRC has explored new avenues for collecting American’s information. In 2020, former Acting Department of Homeland Security Secretary Chad Wolf warned Americans that China may be using TCL Technology, a Chinese based television manufacturer, as a way to collect information from their users through backchannels incorporated in all of their televisions. Such backdoors exposed users to cyber breaches and data exfiltration.³ As technology continues to advance in devices and consumer goods, it is imperative that consumers have full transparency over the features and functionality of such devices, including whether they are operating in the background when not in use by consumers and whether or not information is collected in ways not apparent to consumers. Consumers should not be forced to choose between enjoying the modern benefits and conveniences of IoT devices and the comfort of knowing they are not being monitored by cameras or microphones without their knowledge or consent.

III. COMMITTEE HEARINGS

For the purposes of section 3(c) of rule XIII of the Rules of the House of Representatives, the following hearing was used to develop or consider H.R. 4081:

The Subcommittee on Digital Commerce and Consumer Protection held a hearing on June 13, 2017, entitled, “Disruptor Series: Update on IoT Opportunities and Challenges.” The Subcommittee received testimony from the following witnesses:

- William S. Marras, Ph.D., Executive Director and Scientific Director of the Spine Research Institute, The Ohio State University;

¹ Deloitte Insights, *Build It and They Will Embrace It* (2019).

² Consumer Reports, *Yes, Your Smart Speaker Is Listening When It Shouldn’t* (July 9, 2021) (<https://www.consumerreports.org/smart-speakers/yes-your-smart-speaker-is-listening-when-it-should-not/>).

- Gary D. Butler, Ph.D., Founder, Chairman and CEO, Camgian Microsystems Corporation;
- Mark Bachman, Ph.D., CTO and Co-Founder, Integra Devices;
- Peter B. Kosak, Executive Director, Urban Active Solutions, General Motors North America;
- Cameron Javdani, Director of Sales and Marketing, Louroe Electronics; and
- Bill Kuhns, President, Vermont Energy Control Systems LLC.

The Subcommittee on Digital Commerce and Consumer Protection held a hearing on January 18, 2018, entitled, “Disruptor Series: The Internet of Things, Manufacturing and Innovation.” The Subcommittee received testimony from the following witnesses:

- Rodney Masney, Vice President, Technology Service Delivery, Information Technology, Owens-Illinois;
- Sanjay Poonen, Chief Operating Officer, VMWare;
- Thomas D. Bianculli, Chief Technology Officer, Zebra Technology; and
- Thomas R. Kurfess, Ph.D., P.E., Professor and HUSCO/Ramirez Distinguished Chair in Fluid Power and Motion Control, George W. Woodruff School of Mechanical Engineering, Georgia Institute of Technology.

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on May 26, 2022, entitled, “Legislative Hearing to Protect Consumers and Strengthen the Economy.” The Subcommittee received testimony from the following witnesses:

- Katlin Kraska, Director of Federal Legislation, Government Relations, American Society for the Prevention of Cruelty to Animals;
- Julie Menin, Former Commissioner, New York City Department of Consumer Affairs;
- Hadley Heath Manning, Vice President for Policy, Independent Women’s Forum; Partner, Wiley Rein LLP;
- Michael O’Neal, Vice President—Corporate Underwriting, First American Title Insurance Company;
- Trista Hamsmith, Founder and Reese’s Mom, Reese’s Purpose;
- Eric D. Hagopian, CEO and President, Pilot Precision Products; and
- Tori Barnes, Executive Vice President, Public Affairs and Policy, U.S. Travel Association.

IV. COMMITTEE CONSIDERATION

H.R. 4081, the “Informing Consumers About Smart Devices Act”, was introduced on June 23, 2021, by Representatives Curtis (R-UT) and Moulton (D-MA) and was referred to the Committee on Energy and Commerce. Subsequently, on June 24, 2021, the bill was referred to the Subcommittee on Consumer Protection and Commerce. A legislative hearing was held on May 26, 2022.

On June 23, 2022, the Subcommittee on Consumer Protection and Commerce met in open markup session, pursuant to notice, to consider H.R. 4081 and seven other bills. No amendments were offered during consideration of the bill. Upon conclusion of consideration of the bill, the Subcommittee on Consumer Protection and

Commerce agreed to report the bill favorably to the full Committee, without amendment, by a roll call vote of 21 yeas to zero nays.

On July 20, 2022, the full Committee met in open markup session, pursuant to notice, to consider H.R. 4081 and five other bills. During consideration of the bill, no amendments were offered. Upon conclusion of consideration of the bill, the full Committee agreed to a motion on final passage offered by Representative Pallone, Chairman of the Committee, to order H.R. 4081 reported favorably to the House, without amendment, by a roll call vote of 53 yeas to zero nays.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were two record votes taken on H.R. 4081, including a motion by Mr. Pallone ordering H.R. 4081 favorably reported to the House, as amended. The motion on final passage of the bill was approved by a record vote of 53 yeas to zero nays. The following are the record votes taken during Committee consideration, including the names of those members voting for and against:

Committee on Energy and Commerce
117th Congress

Subcommittee on Consumer Protection and Commerce
(ratio: 14-10)

ROLL CALL VOTE #6

Bill: **H.R. 4081**, the “Informing Consumers about Smart Devices Act”

Motion: A motion by Ms. Schakowsky of Illinois to order **H.R. 4081** transmitted favorably to the full Committee, without amendment.

Disposition: **AGREED TO** by a roll call vote of 21 yeas to 0 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Ms. Schakowsky	X			Mr. Bilirakis	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Castor	X			Mr. Latta	X		
Ms. Trahan	X			Mr. Guthrie	X		
Mr. McNerney	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Dunn	X		
Mr. Cárdenas	X			Ms. Lesko	X		
Mrs. Dingell	X			Mr. Pence			
Ms. Kelly	X			Mr. Armstrong	X		
Mr. Soto	X			Mrs. Rodgers	X		
Ms. Rice	X						
Ms. Craig							
Ms. Fletcher	X						
Mr. Pallone							

Committee on Energy and Commerce
117th Congress

Full Committee

(ratio: 32-26)

ROLL CALL VOTE #132

Bill: **H.R. 4081**, the "Informing Consumers About Smart Devices Act"

Vote: Final Passage

Disposition: **AGREED TO** by a roll call vote of 53 yeas to 0 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Pallone	X			Mrs. Rodgers	X		
Mr. Rush	X			Mr. Upton	X		
Ms. Eshoo	X			Mr. Burgess	X		
Ms. DeGette	X			Mr. Scalise			
Mr. Doyle	X			Mr. Latta	X		
Ms. Schakowsky	X			Mr. Guthrie	X		
Mr. Butterfield	X			Mr. McKinley			
Ms. Matsui	X			Mr. Kinzinger			
Ms. Castor	X			Mr. Griffith			
Mr. Sarbanes	X			Mr. Bilirakis	X		
Mr. McNerney	X			Mr. Johnson	X		
Mr. Welch	X			Mr. Long	X		
Mr. Tonko	X			Mr. Bucshon	X		
Ms. Clarke	X			Mr. Mullin	X		
Mr. Schrader	X			Mr. Hudson	X		
Mr. Cárdenas	X			Mr. Walberg	X		
Mr. Ruiz	X			Mr. Carter	X		
Mr. Peters	X			Mr. Duncan	X		
Mrs. Dingell	X			Mr. Palmer	X		
Mr. Veasey				Mr. Dunn	X		
Ms. Kuster	X			Mr. Curtis	X		
Ms. Kelly	X			Ms. Lesko	X		
Ms. Barragán	X			Mr. Pence	X		
Mr. McEachin	X			Mr. Crenshaw	X		
Ms. Blunt Rochester	X			Mr. Joyce	X		
Mr. Soto	X			Mr. Armstrong	X		
Mr. O'Halleran	X						
Ms. Rice	X						
Ms. Craig	X						
Ms. Schrier	X						
Ms. Trahan	X						
Ms. Fletcher	X						

07/20/22

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to require manufacturers of certain internet-connected devices that are equipped with a camera or microphone to disclose to consumers that a camera or microphone is part of the device and to require the FTC to issue guidance and enforce compliance, including through seeking civil penalties for violations.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 4081 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 4081 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Informing Consumers about Smart Devices Act.”

Sec. 2. Required disclosure of a camera or recording capability in certain internet-connected devices

Section 2 requires that each manufacturer of a covered device shall disclose whether a covered device they manufacture contains a camera or microphone as a component of the device.

Sec. 3. Enforcement by the Federal Trade Commission

Subsection (a) establishes that violations of section 2 of the legislation shall be treated as a violation of a rule defining an unfair or deceptive act or practice under 15 U.S.C. 57a(a)(1)(B).

Subsection (b) establishes that the FTC shall have the same means to enforce the legislation and violators of the legislation will be subject to the same penalties and privileges as provided in the Federal Trade Commission Act.

Subsection (c) requires the FTC to issue guidance within 180 days of enactment to assist manufacturers with compliance and providing best practices for making the disclosures required by section 2 of the legislation.

Subsection (d) allows manufacturers of covered devices to petition the FTC for tailored guidance on how to meet the requirements of section 2.

Subsection (e) states that FTC guidance under this section does not confer any rights on nor bind any person or the FTC in any way. The FTC may only base enforcement actions and execute consent orders under the legislation on practices alleged to specifically violate section 2.

Sec. 4. Definition of covered device

Section 4 defines a covered device to mean any consumer product defined by 15 U.S.C. 2052(a) that is capable of connecting to the internet, a component of which is a camera or microphone, and is not (i) a telephone (including mobile phone), laptop, tablet, or other device a consumer would reasonably expect to have a microphone or camera; (ii) any device specifically marketed as a camera, telecommunications device, or microphone; or (iii) any device or apparatus described in 47 U.S.C. 255, 617, 619, 303(aa), 303(bb) or regulations promulgated thereunder.

Sec. 5. Effective date

Section 5 states the legislation applies to all devices manufactured 180 days after the FTC issues guidance under section 3(c) and shall not apply to devices manufactured or sold before that date.

XVI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

There are no changes to existing law made by the bill H.R. 4081.

