

6748

I N S E N A T E

March 5, 2014

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the smartphone and tablet security act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known as and may be cited as the "smartphone and tablet security act".

S 2. The general business law is amended by adding a new article 39-H to read as follows:

ARTICLE 39-H

SMARTPHONE AND TABLET SECURITY ACT

SECTION 899-AAAA. DEFINITIONS.

899-BBBB. IN GENERAL.

899-CCCC. ENFORCEMENT.

S 899-AAAA. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "ADVANCED MOBILE COMMUNICATION DEVICE" MEANS ANY HARDWARE TECHNOLOGY INCLUDING, BUT NOT LIMITED TO, A CELLULAR TELEPHONE, HANDHELD COMPUTER, TABLET, OR CALENDARING AND MESSAGING DEVICE WITH TELEPHONY FUNCTIONS, THAT IS CAPABLE OF PROVIDING WIRELESS INTERNET ACCESS, IN ADDITION TO ENABLING VOICE COMMUNICATIONS USING CELLULAR RADIO TELEPHONE SERVICE, AS DEFINED IN SECTION 22.99 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS, OR VOICE OVER INTERNET PROTOCOL SERVICE, AS DEFINED IN SECTION 9.3 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS.

2. "COMMERCIAL MOBILE SERVICE" MEANS ANY MOBILE SERVICE PROVIDED FOR PROFIT AS DEFINED IN SUBSECTION (D) OF SECTION 332 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS.

S 899-BBBB. IN GENERAL. 1. NO INDIVIDUAL, FIRM, CORPORATION, OR OTHER BUSINESS ENTITY SHALL, AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN, SELL AN ADVANCED MOBILE COMMUNICATION DEVICE AT RETAIL THAT DOES NOT INCLUDE AN ENABLED TECHNOLOGICAL SOLUTION THAT CAN RENDER THE ESSENTIAL FEATURES OF THE DEVICE, INCLUDING BUT NOT LIMITED TO, THE ABILITY TO USE THE DEVICE FOR VOICE COMMUNICATIONS, THE ABILITY TO CONNECT TO THE INTERNET, AND THE ABILITY TO ACCESS AND USE MOBILE SOFTWARE APPLICATIONS, PERMA-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 NENTLY INOPERABLE WHEN THE DEVICE IS NOT IN THE POSSESSION OF THE RIGHT-
2 FUL OWNER.

3 2. THE RIGHTFUL OWNER OF AN ADVANCED MOBILE COMMUNICATION DEVICE MAY
4 AFFIRMATIVELY ELECT TO DISABLE THE TECHNOLOGICAL SOLUTION AFTER PURCHAS-
5 ING IT. THE ACTS NECESSARY TO DISABLE THE TECHNOLOGICAL SOLUTION MAY
6 ONLY BE PERFORMED BY THE END-USE CONSUMER OR A PERSON SPECIFICALLY
7 SELECTED BY THE END-USE CONSUMER TO DISABLE THE TECHNOLOGICAL SOLUTION
8 AND SHALL NOT BE PERFORMED BY ANY RETAIL SELLER OF THE ADVANCED MOBILE
9 COMMUNICATIONS DEVICE.

10 3. A PROVIDER OF COMMERCIAL MOBILE SERVICE SHALL NOT INCLUDE A TERM OR
11 CONDITION IN A SERVICE CONTRACT WITH AN END-USE CONSUMER IN THIS STATE
12 THAT REQUIRES OR ENCOURAGES THE CONSUMER OR RIGHTFUL OWNER TO DISABLE
13 THE TECHNOLOGICAL SOLUTION THAT RENDERS THE ADVANCED MOBILE COMMUNI-
14 CATIONS DEVICE INOPERABLE.

15 S 899-CCCC. ENFORCEMENT. 1. THE ATTORNEY GENERAL MAY BRING A CIVIL
16 ACTION AGAINST ANY INDIVIDUAL, FIRM, CORPORATION, OR OTHER BUSINESS
17 ENTITY THAT VIOLATES THIS ARTICLE TO ENJOIN THE VIOLATION AND MAY
18 RECOVER THE FOLLOWING:

19 (A) A CIVIL PENALTY OF ONE THOUSAND DOLLARS PER VIOLATION OF THIS
20 ARTICLE, OR FOR A PATTERN OR PRACTICE OF SUCH VIOLATIONS, UP TO THREE
21 THOUSAND DOLLARS PER VIOLATION; AND/OR

22 (B) COSTS AND REASONABLE ATTORNEYS' FEES.

23 2. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES
24 WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL OR ANY
25 OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER THIS SECTION.

26 S 3. This act shall take effect on the one hundred eightieth day after
27 it shall have become a law.