

6850

I N S E N A T E

March 19, 2014

Introduced by Sen. AVELLA -- 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 the installation of a technological solution on an advanced mobile communication device

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

1 Section 1. Legislative intent. The legislature finds that:

2 (a) According to the federal communications commission (FCC), one in
3 three robberies in the United States involves the theft of a mobile
4 communications device, making it the number one property crime in the
5 country. Many of these robberies often turn violent with some resulting
6 in the loss of life.

7 (b) The FCC estimates that between thirty to forty percent of United
8 States street theft involves a mobile device. In fact, more than forty
9 percent of all robberies in New York city involve smartphones and other
10 cell phones.

11 (c) Consumer reports projects that one point six million Americans had
12 their smartphones stolen in 2012.

13 (d) According to the New York Times, one hundred thirteen smartphones
14 are lost or stolen every minute in the United States.

15 (e) Major cities are home to the highest concentrations of cell phone
16 theft, and officials in New York and California have been pushing for a
17 cellphone kill switch in those states since April 2012. According to New
18 York state attorney general Eric Schneiderman, the United States senate
19 proposal would force the mobile industry to "stop dragging its feet and
20 join us in protecting consumers."

21 (f) In April of 2012, U.S. senator Charles Schumer, D-New York, and
22 New York city police commissioner Ray Kelly announced that the major
23 U.S. cell phone carriers and the federal communications commission have
24 agreed to set up a national database to track reported stolen phones.
25 Senator Schumer also introduced a bill called the mobile device theft
26 deterrence act, which proposes a five-year prison sentence for tampering
27 with the ID numbers of a stolen cell phone.

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

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(g) According to press reports, the international trafficking of stolen smartphones by organized criminal organizations has grown exponentially in recent years because of how profitable the trade has become.

(h) Replacement of lost and stolen mobile communications devices was an estimated thirty-billion-dollar business in 2012 according to studies conducted by mobile communications security experts. Additionally, industry publications indicate that the four largest providers of commercial mobile radio services made an estimated seven billion eight hundred million dollars from theft and loss insurance products in 2013.

(i) Technological solutions that render stolen mobile communications devices useless already exist, but the industry has been slow to adopt them.

(j) In order to be effective, these technological solutions need to be ubiquitous, as thieves cannot distinguish between those mobile communications devices that have the solutions enabled and those that do not. As a result, the technological solution should be able to withstand a hard reset or operating system downgrade, and be enabled by default, with consumers being given the option to affirmatively elect to disable this protection.

(k) Manufacturers of advanced mobile communications devices and commercial mobile radio service providers have a responsibility to ensure their customers are not targeted as a result of purchasing their products and services.

(l) It is the intent of the legislature to require all smartphones and other advanced mobile communications devices offered for sale in New York to come with a technological solution enabled, in order to deter theft and protect consumers.

(m) It is the further intent of the legislature to prohibit any term or condition in a service contract between a customer and a commercial mobile radio service provider that requires or encourages the customer to disable the technological solution that renders the customer's smartphone or other advanced communications device useless if stolen.

S 2. The general business law is amended by adding a new section 399-zzzz to read as follows:

S 399-ZZZZ. ADVANCED MOBILE COMMUNICATIONS DEVICES. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS:

(A) "ADVANCED MOBILE COMMUNICATIONS DEVICE" MEANS AN ELECTRONIC DEVICE THAT IS REGULARLY HAND HELD WHEN OPERATED THAT ENABLES THE USER TO ENGAGE IN VOICE COMMUNICATIONS USING MOBILE TELEPHONY SERVICE, VOICE OVER INTERNET PROTOCOL, OR INTERNET PROTOCOL ENABLED SERVICE, AND TO CONNECT TO THE INTERNET, AND INCLUDES WHAT ARE COMMONLY KNOWN AS SMARTPHONES AND TABLETS.

(B) "COMMERCIAL MOBILE RADIO SERVICE" MEANS "COMMERCIAL MOBILE SERVICE," AS DEFINED IN SUBSECTION (D) OF SECTION 332 OF TITLE 47 OF THE UNITED STATES CODE AND AS FURTHER SPECIFIED BY THE FEDERAL COMMUNICATIONS COMMISSION IN PARTS 20, 22, 24, AND 25 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS, AND INCLUDES "MOBILE TELEPHONY SERVICE."

(C) "ESSENTIAL FEATURES" OF AN ADVANCED MOBILE COMMUNICATIONS DEVICE INCLUDE THE ABILITY TO USE THE DEVICE FOR VOICE COMMUNICATIONS AND THE ABILITY TO CONNECT TO THE INTERNET, INCLUDING THE ABILITY TO ACCESS AND USE MOBILE SOFTWARE APPLICATIONS COMMONLY KNOWN AS "APPS."

(D) "HARD RESET" MEANS THE RESTORATION OF AN ADVANCED MOBILE COMMUNICATIONS DEVICE TO THE STATE IT WAS IN WHEN IT LEFT THE FACTORY, AND

1 REFERS TO ANY ACT OF RETURNING A DEVICE TO THAT STATE, INCLUDING PROC-
2 ESSES COMMONLY TERMED A FACTORY RESET OR MASTER RESET.

3 (E) "INTERNET PROTOCOL ENABLED SERVICE" OR "IP ENABLED SERVICE" MEANS
4 ANY SERVICE, CAPABILITY, FUNCTIONALITY, OR APPLICATION USING EXISTING
5 INTERNET PROTOCOL, OR ANY SUCCESSOR INTERNET PROTOCOL, THAT ENABLES AN
6 END USER TO SEND OR RECEIVE A COMMUNICATION IN EXISTING INTERNET PROTO-
7 COL FORMAT, OR ANY SUCCESSOR INTERNET PROTOCOL FORMAT THROUGH A BROAD-
8 BAND CONNECTION, REGARDLESS OF WHETHER THE COMMUNICATION IS VOICE, DATA,
9 OR VIDEO.

10 (F) "MOBILE TELEPHONY SERVICE" MEANS COMMERCIALY AVAILABLE INTERCON-
11 NECTED MOBILE PHONE SERVICES THAT PROVIDE ACCESS TO THE PUBLIC SWITCHED
12 TELEPHONE NETWORK (PSTN) VIA MOBILE COMMUNICATION DEVICES EMPLOYING
13 RADIO WAVE TECHNOLOGY TO TRANSMIT CALLS, INCLUDING CELLULAR RADIOTELE-
14 PHONE, BROADBAND PERSONAL COMMUNICATIONS SERVICES (PCS), AND DIGITAL
15 SPECIALIZED MOBILE RADIO (SMR). "MOBILE TELEPHONY SERVICES" DOES NOT
16 INCLUDE MOBILE SATELLITE TELEPHONE SERVICES OR MOBILE DATA SERVICES USED
17 EXCLUSIVELY FOR THE DELIVERY OF NON-VOICE INFORMATION TO A MOBILE
18 DEVICE.

19 (G) "SOLD IN NEW YORK" MEANS THAT THE ADVANCED MOBILE COMMUNICATIONS
20 DEVICE IS SOLD AT RETAIL, AND NOT FOR RESALE, FROM A LOCATION WITHIN THE
21 STATE, OR THE ADVANCED MOBILE COMMUNICATIONS DEVICE IS SOLD AND SHIPPED
22 TO AN END-USE CONSUMER AT AN ADDRESS WITHIN THE STATE.

23 (H) "VOICE OVER INTERNET PROTOCOL" OR "VOIP" MEANS VOICE COMMUNI-
24 CATIONS SERVICE THAT DOES ALL OF THE FOLLOWING:

25 (I) USES INTERNET PROTOCOL OR A SUCCESSOR PROTOCOL TO ENABLE
26 REAL-TIME, TWO-WAY VOICE COMMUNICATION THAT ORIGINATES FROM, OR TERMI-
27 NATES AT, THE USER'S LOCATION IN INTERNET PROTOCOL OR A SUCCESSOR PROTO-
28 COL.

29 (II) REQUIRES A BROADBAND CONNECTION FROM THE USER'S LOCATION.

30 (III) PERMITS A USER GENERALLY TO RECEIVE A CALL THAT ORIGINATES ON
31 THE PUBLIC SWITCHED TELEPHONE NETWORK AND TO TERMINATE A CALL TO THE
32 PUBLIC SWITCHED TELEPHONE NETWORK.

33 (IV) A SERVICE THAT USES ORDINARY CUSTOMER PREMISES EQUIPMENT WITH NO
34 ENHANCED FUNCTIONALLY THAT ORIGINATES AND TERMINATES ON THE PUBLIC
35 SWITCHED TELEPHONE NETWORK, UNDERGOES NO NET PROTOCOL CONVERSION, AND
36 PROVIDES NO ENHANCED FUNCTIONALITY TO END USERS DUE TO THE PROVIDER'S
37 USE OF INTERNET PROTOCOL TECHNOLOGY IS NOT A VOIP SERVICE.

38 2. TECHNOLOGICAL SOLUTION. (A) ANY ADVANCED MOBILE COMMUNICATIONS
39 DEVICE THAT IS SOLD IN NEW YORK ON OR AFTER JANUARY FIRST, TWO THOUSAND
40 FIFTEEN, SHALL INCLUDE A TECHNOLOGICAL SOLUTION THAT CAN RENDER THE
41 ESSENTIAL FEATURES OF THE DEVICE INOPERABLE WHEN THE DEVICE IS NOT IN
42 THE POSSESSION OF THE RIGHTFUL OWNER. A TECHNOLOGICAL SOLUTION MAY
43 CONSIST OF SOFTWARE, HARDWARE, OR A COMBINATION OF BOTH SOFTWARE AND
44 HARDWARE, BUT SHALL BE ABLE TO WITHSTAND A HARD RESET. NO ADVANCED
45 MOBILE COMMUNICATIONS DEVICE MAY BE SOLD IN NEW YORK WITHOUT THE TECHNO-
46 LOGICAL SOLUTION ENABLED.

47 (B) THE RIGHTFUL OWNER OF AN ADVANCED MOBILE COMMUNICATIONS DEVICE MAY
48 AFFIRMATIVELY ELECT TO DISABLE THE TECHNOLOGICAL SOLUTION AFTER SALE.
49 HOWEVER, THE PHYSICAL ACTS NECESSARY TO DISABLE THE TECHNOLOGICAL
50 SOLUTION MAY ONLY BE PERFORMED BY THE END-USE CONSUMER OR A PERSON
51 SPECIFICALLY SELECTED BY THE END-USE CONSUMER TO DISABLE THE TECHNOLOG-
52 ICAL SOLUTION AND SHALL NOT BE PHYSICALLY PERFORMED BY ANY RETAIL SELLER
53 OF THE ADVANCED MOBILE COMMUNICATIONS DEVICE.

54 (C) A PROVIDER OF COMMERCIAL MOBILE RADIO SERVICE SHALL NOT INCLUDE A
55 TERM OR CONDITION IN A SERVICE CONTRACT WITH AN END-USE CONSUMER WITH AN
56 ADDRESS WITHIN THE STATE THAT REQUIRES OR ENCOURAGES THE CONSUMER OR

1 RIGHTFUL OWNER TO DISABLE THE TECHNOLOGICAL SOLUTION THAT RENDERS THE
2 CONSUMER'S SMARTPHONE OR OTHER ADVANCED COMMUNICATIONS DEVICE USELESS IF
3 STOLEN.

4 3. PENALTIES. (A) A PERSON OR RETAIL ENTITY SELLING AN ADVANCED COMMU-
5 NICATIONS DEVICE IN NEW YORK IN VIOLATION OF SUBDIVISION TWO SHALL BE
6 SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN FIVE HUNDRED DOLLARS, NOR
7 MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS, PER DEVICE SOLD IN NEW
8 YORK.

9 (B) A PROVIDER OF COMMERCIAL MOBILE RADIO SERVICE THAT INCLUDES A TERM
10 OR CONDITION IN A SERVICE CONTRACT WITH AN END-USE CONSUMER WITH AN
11 ADDRESS WITHIN THE STATE IN VIOLATION OF PARAGRAPH (C) OF SUBDIVISION
12 TWO OF THIS SECTION, SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS
13 THAN FIVE HUNDRED DOLLARS, NOR MORE THAN TWO THOUSAND FIVE HUNDRED
14 DOLLARS, PER SERVICE CONTRACT WITH AN END-USE CONSUMER WITH AN ADDRESS
15 WITHIN NEW YORK.

16 S 3. This act shall take effect immediately.