S T A T E O F N E W Y O R K

9479

I N A S S E M B L Y

May 1, 2014

Introduced by M. of A. DINOWITZ, KELLNER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting hidden mobile device spying and stalking

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

Section 1. The general business law is amended by adding a new article 29-CCC to read as follows:

ARTICLE 29-CCC
BAN ON HIDDEN MOBILE DEVICE
SPYING AND STALKING PROGRAMS

SECTION 540. DEFINITIONS.
541. PROHIBITIONS.
542. ENFORCEMENT.

S 540. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "PORTABLE ELECTRONIC DEVICE" SHALL MEAN ANY HAND-HELD MOBILE TELEPHONE, AS DEFINED BY SUBDIVISION ONE OF SECTION TWELVE HUNDRED TWENTY-FIVE-C OF THE VEHICLE AND TRAFFIC LAW, PERSONAL DIGITAL ASSISTANT (PDA), HANDHELD DEVICE WITH MOBILE DATA ACCESS, LAPTOP COMPUTER, PAGER, BROADBAND PERSONAL COMMUNICATION DEVICE, TWO-WAY MESSAGING DEVICE, ELECTRONIC GAME, OR PORTABLE COMPUTING DEVICE OR ANY OTHER ELECTRONIC DEVICE WHEN USED TO INPUT, WRITE, SEND, RECEIVE, OR READ TEXT FOR PRESENT OR FUTURE COMMUNICATION.

2. "INTERNET CAPABLE" SHALL MEAN ANY PORTABLE ELECTRONIC DEVICE THAT IS INDIVIDUALLY OR COLLECTIVELY CAPABLE OF PROVIDING WIRELESS OR WIRELINE INTERNET ACCESS, IN ADDITION TO ORIGINATION AND COMPLETION OF TELEPHONE CALLS.

3. "ELECTRONIC MESSAGE" SHALL MEAN A MESSAGE SENT OR POSTED TO A UNIQUE DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS, CONSISTING OF A UNIQUE USER NAME OR MAILBOX (COMMONLY REFERRED TO AS THE "LOCAL PART") AND A REFERENCE TO AN INTERNET DOMAIN (COMMONLY REFERRED

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

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TO AS THE "DOMAIN PART"), WHETHER OR NOT DISPLAYED, TO WHICH AN ELECTRONIC MESSAGE CAN BE SENT, DELIVERED OR POSTED.

S 541. PROHIBITIONS. 1. BAN ON SECRET MOBILE SPYING PROGRAMS. IT SHALL BE UNLAWFUL TO SELL, PROVIDE, OR KNOWINGLY FACILITATE THE SALE OR PROVISION OF ANY COMPUTER PROGRAM THAT CAN BE INSTALLED ONTO AN INTERNET CAPABLE PORTABLE ELECTRONIC DEVICE THAT AUTOMATICALLY COPIES AND FORWARDS THE CONTENT OF AN ELECTRONIC MESSAGE SENT BY OR RECEIVED ON SUCH DEVICE TO AN ELECTRONIC ADDRESS OR PORTABLE ELECTRONIC DEVICE THAT IS NOT THE ELECTRONIC ADDRESS OR PORTABLE ELECTRONIC DEVICE ORIGINALLY USED IN THE TRANSMISSION OF THE ELECTRONIC MESSAGE UNLESS SUCH PROGRAM (A) OBTAINS THE EXPRESS CONSENT OF THE INDIVIDUAL WHO IS USING THE PORTABLE ELECTRONIC DEVICE; (B) DISPLAYS AN INDICATOR ON THE DEVICE THAT IS REASONABLY LIKELY TO BE DISCOVERED BY THE USER THAT SUCH PROGRAM HAS BEEN INSTALLED; AND (C) AFTER BEING INITIALLY INSTALLED, SUCH PROGRAM PROMINENTLY DISPLAYS, NOT EARLIER THAN TWENTY-FOUR HOURS AND NOT LATER THAN SEVEN DAYS AFTER THE TIME AN INDIVIDUAL PROVIDES EXPRESS CONSENT, A NOTIFICATION ON THE HOME OR TURN-ON SCREEN OF THE DEVICE ALERTING THE USER THAT ELECTRONIC MESSAGES BEING SENT OR RECEIVED ARE SUBSEQUENTLY COPIED AND TRANSMITTED TO AN ELECTRONIC ADDRESS OR PORTABLE ELECTRONIC DEVICE THAT IS NOT THE ELECTRONIC ADDRESS OR PORTABLE ELECTRONIC DEVICE ORIGINALLY USED IN THE TRANSMISSION OF THE ELECTRONIC MESSAGE.

2. BAN ON SECRET MOBILE STALKING PROGRAMS. IT SHALL BE UNLAWFUL TO SELL, PROVIDE, OR KNOWINGLY FACILITATE THE SALE OR PROVISION OF ANY COMPUTER PROGRAM THAT CAN BE INSTALLED ONTO AN INTERNET CAPABLE PORTABLE ELECTRONIC DEVICE THAT AUTOMATICALLY TRANSMITS THE LOCATION OF SUCH DEVICE SO THAT IT MAY BE ACCESSED FROM A DIFFERENT PORTABLE ELECTRONIC DEVICE IF SUCH PROGRAM: (A) FAILS TO OBTAIN THE EXPRESS CONSENT OF THE INDIVIDUAL WHO IS USING THE PORTABLE ELECTRONIC DEVICE; (B) FAILS TO DISPLAY AN INDICATOR ON THE PORTABLE ELECTRONIC DEVICE THAT IS REASONABLY LIKELY TO BE DISCOVERED BY THE USER THAT SUCH PROGRAM HAS BEEN INSTALLED; OR (C) DISABLES OR HIDES NOTIFICATIONS ON THE DEVICE THAT SUCH DEVICE IS ACCESSING THE GLOBAL POSITIONING SYSTEM OR OTHER LOCATION ENABLING SYSTEM.

3. FOR PURPOSES OF SUBDIVISION ONE OR TWO OF THIS SECTION, A PROGRAM SHALL BE DEEMED REASONABLY LIKELY TO BE DISCOVERED BY THE USER IF AFTER INSTALLATION IT DISPLAYS AN ICON OR INDICATOR OF ITS PRESENCE ON THE DEVICE IN THE SAME FORM AND MANNER AS A PROGRAM, OTHER THAN THE OPERATING SYSTEM OF THE DEVICE OR A PART THEREOF, THAT IS SEPARATELY SOLD OR OFFERED FOR USE ON THE PORTABLE ELECTRONIC DEVICE, AND SUCH DISPLAY CANNOT BE MATERIALLY ALTERED OR DELETED BY THE USER FOR AT LEAST SEVEN DAYS AFTER BEING INSTALLED.

4. EXCEPTIONS. THIS SECTION SHALL NOT APPLY TO: (A) ANY PROGRAM PROVIDED OR SOLD SOLELY TO LAW ENFORCEMENT AGENCIES OR TO BUSINESSES FOR THE PURPOSE OF CONDUCTING LAWFUL BUSINESS ACTIVITIES RELATED TO PROVIDING SECURITY SERVICES OR FOR USE IN PRIVATE INVESTIGATIONS, OR (B) PROVIDED OR SOLD SOLELY TO GOVERNMENT AGENCIES.

S 542. ENFORCEMENT. THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST ANY PERSON THAT VIOLATES THIS ARTICLE TO ENJOIN THE VIOLATION, AND MAY RECOVER A CIVIL PENALTY UP TO ONE THOUSAND DOLLARS PER VIOLATION OF THIS ARTICLE OR, FOR A PATTERN OR PRACTICE OF SUCH VIOLATIONS, UP TO FIVE THOUSAND DOLLARS PER VIOLATION.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.