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

6379--A

2013-2014 Regular Sessions

I N A S S E M B L Y

March 26, 2013

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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."

2. "INTERNET CAPABLE" SHALL MEAN BEING CAPABLE OF ACCESSING THE INTERNATIONAL COMPUTER NETWORK OF BOTH FEDERAL AND NON-FEDERAL INTEROPERABLE PACKET SWITCHED DATA NETWORKS.

3. "ELECTRONIC MESSAGE" SHALL MEAN A MESSAGE SENT OR POSTED TO A UNIQUE DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS,

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

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CONSISTING OF A UNIQUE USER NAME OR MAILBOX (COMMONLY REFERRED TO AS THE "LOCAL PART") AND A REFERENCE TO AN INTERNET DOMAIN (COMMONLY REFERRED 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 OR RECEIVED BY SUCH DEVICE TO AN ELECTRONIC ADDRESS OR PHONE NUMBER THAT IS NOT THE ELECTRONIC ADDRESS OR PHONE NUMBER 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 PHONE NUMBER THAT IS NOT THE ELECTRONIC ADDRESS OR PHONE NUMBER 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 THE DEVICE SO THAT IT MAY BE ACCESSED FROM A DIFFERENT 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 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 BY THE COMPANY THAT DESIGNED SUCH OPERATING SYSTEM, AND SUCH DISPLAY CANNOT BE MATERIALLY ALTERED OR DELETED BY THE USER FOR SEVEN DAYS AFTER BEING INSTALLED.

4. EXCEPTIONS. THIS SECTION SHALL NOT APPLY TO: (A) ANY PROGRAM PROVIDED OR SOLD SOLELY TO BUSINESSES FOR THE PURPOSE OF CONDUCTING LAWFUL BUSINESS ACTIVITIES, 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 ninetieth day after it shall have become a law.