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

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I N A S S E M B L Y

March 6, 2014

Introduced by M. of A. TITONE, MOSLEY, OTIS, DINOWITZ, MAGNARELLI, McDONOUGH, DiPIETRO, SCARBOROUGH, GALEF, SEPULVEDA, SIMOTAS -- Multi-Sponsored by -- M. of A. BUCHWALD, COOK, CROUCH, GIGLIO, GLICK, GOTTFRIED, HIKIND, MARKEY, SCHIMEL, STECK, WEISENBERG -- 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 smart phone device "kill switch"

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

Section 1. Legislative intent. The legislature finds that:

(a) According to the Federal Communications Commission (FCC), one in three robberies in the United States involves the theft of a mobile device, making it the number one property crime in the country. Many of these robberies often turn violent with some resulting in the loss of life.

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

(c) Consumer reports projects that 1.6 million Americans had their smartphones stolen in 2012.

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

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

(f) In April of 2012, U.S. senator Charles Schumer, D-New York, and New York city police commissioner Ray Kelly announced that the major U.S. cell phone carriers and the Federal Communications Commission have

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

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agreed to set up a national database to track reported stolen phones. Senator Schumer also introduced a bill called the mobile device theft deterrence act, which proposes a five-year prison sentence for tampering with the ID numbers of a stolen cell phone.

(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 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 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 mobile devices and commercial mobile radio service providers should make efforts to protect their customers from being targeted as a result of purchasing their products and services.

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

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

S 399-ZZZZ. SMART PHONE DEVICE "KILL SWITCH". 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ACCOUNT HOLDER" WITH RESPECT TO A MOBILE DEVICE OR DEVICES, MEANS THE PERSON WHO HOLDS THE ACCOUNT THROUGH WHICH COMMERCIAL MOBILE DATA SERVICE IS PROVIDED ON THE DEVICE OR DEVICES AND INCLUDES ANYONE ELSE AUTHORIZED BY SUCH PERSON TO TAKE ACTIONS WITH RESPECT TO SUCH DEVICE OR DEVICES.

(B) "COMMERCIAL MOBILE DATA SERVICE" HAS THE SAME MEANING AS FOUND IN SECTION 6001 OF 47 U.S.C. 1401, AS AMENDED FROM TIME TO TIME.

(C) "COMMERCIAL MOBILE SERVICE" HAS THE SAME MEANING AS GIVEN IN SECTION 332 OF 47 U.S.C. 301 ET SEQ., AS AMENDED FROM TIME TO TIME.

(D) "MOBILE DEVICE" MEANS A PERSONAL ELECTRONIC DEVICE ON WHICH COMMERCIAL MOBILE SERVICE OR COMMERCIAL MOBILE DATA SERVICE IS PROVIDED.

2. ANY PROVIDER OF COMMERCIAL MOBILE DATA SERVICE OR COMMERCIAL MOBILE SERVICE SHALL, BY ITSELF OR IN CONJUNCTION WITH THE MANUFACTURER OF A MOBILE DEVICE, ENSURE THAT ANY MOBILE DEVICE UTILIZING ITS SERVICE IS EQUIPPED WITH TECHNOLOGY DESIGNED TO:

(A) REMOTELY DELETE THE ACCOUNT HOLDER'S DATA THAT IS ON THE MOBILE DEVICE IN THE EVENT THE MOBILE DEVICE IS LOST OR STOLEN;

(B) RENDER THE MOBILE DEVICE INOPERABLE TO AN UNAUTHORIZED, NON-ACCOUNT HOLDER BY MEANS OF LOCKING THE MOBILE DEVICE SUCH THAT IT CANNOT BE USED WITHOUT A PASSWORD OR PERSONAL IDENTIFICATION NUMBER, EXCEPT IN ACCORDANCE WITH ANY APPLICABLE FEDERAL COMMUNICATIONS COMMISSION RULES

FOR 911 EMERGENCY COMMUNICATIONS AND, IF AVAILABLE, EMERGENCY NUMBERS PROGRAMMED BY THE AUTHORIZED USER;

(C) PREVENT REACTIVATION WITHOUT THE ACCOUNT HOLDER'S PERMISSION, INCLUDING UNAUTHORIZED FACTORY RESET ATTEMPTS, TO THE EXTENT TECHNOLOGICALLY FEASIBLE; AND

(D) REVERSE THE INOPERABILITY IF THE MOBILE DEVICE IS RECOVERED BY THE ACCOUNT HOLDER AND RESTORE USER DATA ON THE MOBILE DEVICE TO THE EXTENT FEASIBLE.

3. THE TECHNOLOGY REQUIRED UNDER SUBDIVISION TWO OF THIS SECTION SHALL BE OFFERED IN MOBILE DEVICES SOLD IN NEW YORK STATE BEGINNING JULY FIRST, TWO THOUSAND FIFTEEN, AND SHALL BE MADE AVAILABLE ON MOBILE DEVICES AT NO COST TO CONSUMERS, PROVIDED, HOWEVER, THAT MOBILE DEVICES MAY BE MADE AVAILABLE WITHOUT SUCH TECHNOLOGY IF SUCH DEVICES ARE AUTHORIZED PURSUANT TO FEDERAL LAW OR REGULATION.

S 3. This act shall take effect immediately.