

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:

1 Section 1. The general business law is amended by adding a new article
2 29-CCC to read as follows:

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

6 SECTION 540. DEFINITIONS.
7 541. PROHIBITIONS.
8 542. ENFORCEMENT.

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

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

19 2. "INTERNET CAPABLE" SHALL MEAN ANY PORTABLE ELECTRONIC DEVICE THAT
20 IS INDIVIDUALLY OR COLLECTIVELY CAPABLE OF PROVIDING WIRELESS OR WIRE-
21 LINE INTERNET ACCESS, IN ADDITION TO ORIGINATION AND COMPLETION OF TELE-
22 PHONE CALLS.

23 3. "ELECTRONIC MESSAGE" SHALL MEAN A MESSAGE SENT OR POSTED TO A
24 UNIQUE DESTINATION, COMMONLY EXPRESSED AS A STRING OF CHARACTERS,
25 CONSISTING OF A UNIQUE USER NAME OR MAILBOX (COMMONLY REFERRED TO AS THE
26 "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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1 TO AS THE "DOMAIN PART"), WHETHER OR NOT DISPLAYED, TO WHICH AN ELEC-
2 TRONIC MESSAGE CAN BE SENT, DELIVERED OR POSTED.

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

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

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

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

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

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