

5576

2013-2014 Regular Sessions

I N S E N A T E

May 22, 2013

Introduced by Sen. O'BRIEN -- 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 providing that no cell phone retailer shall sell or lease a cell phone in New York state which does not contain geofencing technology

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 39-H to read as follows:

3 ARTICLE 39-H

4 GEOFENCING TECHNOLOGY REQUIRED

5 SECTION 899-AAAA. GEOFENCING TECHNOLOGY REQUIRED.

6 S 899-AAAA. GEOFENCING TECHNOLOGY REQUIRED. 1. DEFINITIONS. AS USED IN
7 THIS ARTICLE, UNLESS THE CONTEXT REQUIRES OTHERWISE:

8 A. "PERSON" MEANS AN INDIVIDUAL, FIRM, COMPANY, ASSOCIATION, PARTNER-
9 SHIP, LIMITED LIABILITY COMPANY OR CORPORATION.

10 B. "TO ENGAGE IN THE BUSINESS OF SELLING, OR LEASING CELL PHONES"
11 MEANS AND REFERS TO A PERSON WHO HOLDS HIMSELF OUT DIRECTLY OR INDIRECT-
12 LY, AS BEING ABLE, OR WHO OFFERS OR UNDERTAKES, BY ANY MEANS OR METHOD,
13 TO SELL, OR LEASE A MOBILE PHONE.

14 C. "CELL PHONE" MEANS A PORTABLE WIRELESS TELEPHONE DEVICE THAT IS
15 DESIGNED TO SEND OR RECEIVE TRANSMISSIONS THROUGH A CELLULAR RADIO TELE-
16 PHONE SERVICE, AS DEFINED IN SECTION 22.99 OF TITLE 47 OF THE CODE OF
17 FEDERAL REGULATIONS. A CELL PHONE DOES NOT INCLUDE A WIRELESS TELEPHONE
18 DEVICE THAT IS INTEGRATED INTO THE ELECTRICAL ARCHITECTURE OF A MOTOR
19 VEHICLE.

20 D. "CELL PHONE RETAILER" MEANS A PERSON AS HEREIN DEFINED THAT ENGAGES
21 IN THE BUSINESS OF SELLING OR LEASING CELL PHONES UNDER THIS ARTICLE.

22 E. "GEOFENCING TECHNOLOGY" MEANS SOFTWARE, APPLICATION, OR DEVICE
23 WHICH TOGETHER WITH DATA FROM A CELL PHONE INDICATES THAT THE USER OF
24 THE PHONE IS DRIVING, AND DISABLES USE OF THE CELL PHONE UNDER THESE

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

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1 CONDITIONS AND WHICH WOULD NOT REQUIRE A PERSON TO VIOLATE SECTIONS
2 TWELVE HUNDRED TWENTY-FIVE-C OR TWELVE HUNDRED TWENTY-FIVE-D OF THE
3 VEHICLE AND TRAFFIC LAW TO ENABLE OR ACTIVATE SUCH SOFTWARE, APPLICATION
4 OR DEVICE.

5 F. "DISABLE" SHALL MEAN, PREVENTING THE USING OF A CELL PHONE IN A
6 MOTOR VEHICLE MOVING AT SPEEDS GREATER THAN OR EQUAL TO TEN MILES PER
7 HOUR.

8 G. "USING" SHALL MEAN HOLDING A CELL PHONE WHILE VIEWING, TAKING OR
9 TRANSMITTING IMAGES, PLAYING GAMES, OR COMPOSING, SENDING, READING,
10 VIEWING, ACCESSING, BROWSING, TRANSMITTING, SAVING OR RETRIEVING E-MAIL,
11 TEXT MESSAGES, OR OTHER ELECTRONIC DATA.

12 2. ON OR AFTER JANUARY TWENTY-NINTH, TWO THOUSAND FOURTEEN NO CELL
13 PHONE RETAILER SHALL SELL OR LEASE ANY CELL PHONE IN THE STATE OF NEW
14 YORK WHICH DOES NOT CONTAIN GEOFENCING TECHNOLOGY WHICH IS ACTIVATED AND
15 OPERATIONAL ON SUCH CELL PHONE.

16 3. ANY CELL PHONE RETAILER THAT DIRECTLY OR INDIRECTLY ENGAGES IN THE
17 BUSINESS OF SELLING OR LEASING CELL PHONES, THAT VIOLATES ANY OF THE
18 PROVISIONS OF THIS ARTICLE, OR DIRECTLY OR INDIRECTLY EMPLOYS, PERMITS
19 OR AUTHORIZES THE SALE OR LEASE OF CELL PHONES, IN VIOLATION OF ANY
20 PROVISIONS OF THIS ARTICLE SHALL BE GUILTY OF A MISDEMEANOR AND, UPON
21 CONVICTION, SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE THOUSAND
22 DOLLARS OR BY IMPRISONMENT OF NOT MORE THAN ONE YEAR OR BY A FINE OF NOT
23 LESS THAN ONE THOUSAND DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS UPON
24 A SUBSEQUENT CONVICTION. EACH VIOLATION OF THIS ARTICLE SHALL BE DEEMED
25 A SEPARATE OFFENSE.

26 S 2. This act shall take effect January 29, 2014.