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

5576--A

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 -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The general business law is amended by adding a new article 39-H to read as follows:

ARTICLE 39-H

GEOFENCING TECHNOLOGY REQUIRED

SECTION 899-AAAA. GEOFENCING TECHNOLOGY REQUIRED.

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

A. "PERSON" MEANS AN INDIVIDUAL, FIRM, COMPANY, ASSOCIATION, PARTNERSHIP, LIMITED LIABILITY COMPANY OR CORPORATION.

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

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

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

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

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E. "GEOFENCING TECHNOLOGY" MEANS SOFTWARE, APPLICATION, OR DEVICE WHICH TOGETHER WITH DATA FROM A CELL PHONE INDICATES THAT THE USER OF THE PHONE IS DRIVING, AND DISABLES USE OF THE CELL PHONE UNDER THESE CONDITIONS AND WHICH WOULD NOT REQUIRE A PERSON TO VIOLATE SECTIONS TWELVE HUNDRED TWENTY-FIVE-C OR TWELVE HUNDRED TWENTY-FIVE-D OF THE VEHICLE AND TRAFFIC LAW TO ENABLE OR ACTIVATE SUCH SOFTWARE, APPLICATION OR DEVICE.

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

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

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

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

S 2. This act shall take effect January 29, 2015.