

6850--B

I N S E N A T E

March 19, 2014

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 agreed to set up a national database to track reported stolen phones. Senator Schumer also introduced a bill called the mobile device theft

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

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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 THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS GIVEN THEM:

(A) "COMMISSIONER" MEANS THE COMMISSIONER OF COMMERCE.

(B) "SMART PHONE" MEANS A CELLULAR PHONE OR OTHER MOBILE DEVICE BUILT ON A MOBILE OPERATING SYSTEM AND POSSESSING ADVANCED COMPUTING CAPABILITY. FEATURES A SMART PHONE MAY POSSESS INCLUDE, BUT ARE NOT LIMITED TO, BUILT-IN APPLICATIONS, INTERNET ACCESS, DIGITAL VOICE SERVICE, TEXT MESSAGING, E-MAIL, AND WEB BROWSING.

(C) "SUBSCRIBER IDENTIFICATION MODULE" OR "SIM CARD" MEANS A CARD OR OTHER SIMILAR MEDIA THAT IS INSERTED INTO A SMART PHONE AND USED TO STORE DATA TO AUTHENTICATE AND IDENTIFY SUBSCRIBERS ON THE NETWORK.

(D) "WIRELESS TELECOMMUNICATIONS EQUIPMENT MANUFACTURER" MEANS ANY ENTITY THAT MANUFACTURES WIRELESS TELECOMMUNICATIONS DEVICES, INCLUDING SMART PHONES.

(E) "WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER" IS DEFINED AS A PROVIDER OF MOBILE WIRELESS TELECOMMUNICATIONS SERVICE.

2. "KILL SWITCH" REQUIRED. (A) ANY SMART PHONE SOLD OR PURCHASED MUST BE EQUIPPED WITH TECHNOLOGY DESIGNED TO RENDER THE DEVICE'S CORE FUNCTIONALITY INOPERABLE IN THE EVENT OF THEFT OR LOSS.

(B) IN ORDER TO COMPLY WITH PARAGRAPH (A) OF THIS SUBDIVISION, ANY "KILL SWITCH" FUNCTIONALITY MUST BE DESIGNED TO:

(1) WIPE THE DEVICE OF ALL USER DATA;

(2) RENDER THE DEVICE'S CORE FUNCTIONALITY INOPERABLE ON ANY WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER'S NETWORK GLOBALLY;

(3) PREVENT THE DEVICE FROM BEING REACTIVATED WITHOUT A PASSCODE OR OTHER SIMILAR AUTHORIZATION, EVEN IF THE DEVICE IS REPROGRAMMED, TURNED

1 OFF AND SUBSEQUENTLY TURNED BACK ON, HAS ITS NETWORK CONNECTIVITY DISA-
2 BLED AND SUBSEQUENTLY REENABLED, OR HAS ITS SIM CARD REMOVED; AND

3 (4) BE REVERSIBLE IN THE EVENT OF THE DEVICE'S RECOVERY BY ITS OWNER.

4 (C) WIRELESS TELECOMMUNICATIONS SERVICE PROVIDERS AND WIRELESS TELE-
5 COMMUNICATIONS EQUIPMENT MANUFACTURERS ARE JOINTLY LIABLE FOR ENSURING
6 SMART PHONES SOLD MEET THE REQUIREMENTS OF THIS SUBDIVISION.

7 3. ADDITIONAL FEES PROHIBITED. WIRELESS TELECOMMUNICATIONS SERVICE
8 PROVIDERS AND WIRELESS TELECOMMUNICATIONS EQUIPMENT MANUFACTURERS ARE
9 PROHIBITED FROM ASSESSING AN ADDITIONAL FEE, SURCHARGE, TARIFF, OR OTHER
10 CHARGE TO CONSUMERS FOR "KILL SWITCH" FUNCTIONALITY IN SMART PHONES.

11 4. NONCOMPLIANCE; INSURANCE. (A) A WIRELESS TELECOMMUNICATIONS SERVICE
12 PROVIDER PROVIDING SERVICE TO A SMART PHONE SOLD OR PROVIDED TO A
13 CONSUMER IN VIOLATION OF THIS SECTION MUST INSURE THE DEVICE AGAINST
14 THEFT AT NO COST TO THE CONSUMER.

15 (B) THEFT INSURANCE UNDER PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE
16 IN THE FORM, AMOUNT, AND DURATION AS DETERMINED BY THE COMMISSIONER.

17 (C) A WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER MUST ANNUALLY
18 SUBMIT ITS THEFT INSURANCE PLAN FOR APPROVAL BY THE COMMISSIONER.

19 S 3. This act shall take effect January 1, 2015 and shall apply to
20 smart phone sales made on or after that date.