

51--A

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

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Introduced by Sen. HOYLMAN -- 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 enacting the smartphone and tablet security act

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

1     Section 1. This act shall be known as and may be cited as the "smart-  
2     phone and tablet security act".

3     S 2. The general business law is amended by adding a new article 39-H  
4     to read as follows:

5                                     ARTICLE 39-H

6                     SMARTPHONE AND TABLET SECURITY ACT

7     SECTION 899-AAAA. DEFINITIONS.

8             899-BBBB. IN GENERAL.

9             899-CCCC. ENFORCEMENT.

10     S 899-AAAA. DEFINITIONS. AS USED IN THIS ARTICLE:

11     1. "ADVANCED MOBILE COMMUNICATION DEVICE" MEANS ANY HARDWARE TECHNOLO-  
12     GY INCLUDING, BUT NOT LIMITED TO, A CELLULAR TELEPHONE, HANDHELD COMPUT-  
13     ER, TABLET, OR CALENDARING AND MESSAGING DEVICE WITH TELEPHONY FUNC-  
14     TIONS, THAT IS CAPABLE OF PROVIDING WIRELESS INTERNET ACCESS, IN  
15     ADDITION TO ENABLING VOICE COMMUNICATIONS USING CELLULAR RADIO TELEPHONE  
16     SERVICE, AS DEFINED IN SECTION 22.99 OF TITLE 47 OF THE CODE OF FEDERAL  
17     REGULATIONS, OR VOICE OVER INTERNET PROTOCOL SERVICE, AS DEFINED IN  
18     SECTION 9.3 OF TITLE 47 OF THE CODE OF FEDERAL REGULATIONS.

19     2. "COMMERCIAL MOBILE SERVICE" MEANS ANY MOBILE SERVICE PROVIDED FOR  
20     PROFIT AS DEFINED IN SUBSECTION (D) OF SECTION 332 OF TITLE 47 OF THE  
21     CODE OF FEDERAL REGULATIONS.

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

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1 S 899-BBBB. IN GENERAL. 1. NO INDIVIDUAL, FIRM, CORPORATION, OR OTHER  
2 BUSINESS ENTITY SHALL, AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN, SELL  
3 AN ADVANCED MOBILE COMMUNICATION DEVICE AT RETAIL THAT DOES NOT INCLUDE  
4 AN ENABLED TECHNOLOGICAL SOLUTION THAT CAN RENDER THE ESSENTIAL FEATURES  
5 OF THE DEVICE, INCLUDING BUT NOT LIMITED TO, THE ABILITY TO USE THE  
6 DEVICE FOR VOICE COMMUNICATIONS, THE ABILITY TO CONNECT TO THE INTERNET,  
7 AND THE ABILITY TO ACCESS AND USE MOBILE SOFTWARE APPLICATIONS, PERMA-  
8 NENTLY INOPERABLE WHEN THE DEVICE IS NOT IN THE POSSESSION OF THE RIGHT-  
9 FUL OWNER.

10 2. THE RIGHTFUL OWNER OF AN ADVANCED MOBILE COMMUNICATION DEVICE MAY  
11 AFFIRMATIVELY ELECT TO DISABLE THE TECHNOLOGICAL SOLUTION AFTER PURCHAS-  
12 ING IT. THE ACTS NECESSARY TO DISABLE THE TECHNOLOGICAL SOLUTION MAY  
13 ONLY BE PERFORMED BY THE END-USE CONSUMER OR A PERSON SPECIFICALLY  
14 SELECTED BY THE END-USE CONSUMER TO DISABLE THE TECHNOLOGICAL SOLUTION  
15 AND SHALL NOT BE PERFORMED BY ANY RETAIL SELLER OF THE ADVANCED MOBILE  
16 COMMUNICATIONS DEVICE.

17 3. A PROVIDER OF COMMERCIAL MOBILE SERVICE SHALL NOT INCLUDE A TERM OR  
18 CONDITION IN A SERVICE CONTRACT WITH AN END-USE CONSUMER IN THIS STATE  
19 THAT REQUIRES OR ENCOURAGES THE CONSUMER OR RIGHTFUL OWNER TO DISABLE  
20 THE TECHNOLOGICAL SOLUTION THAT RENDERS THE ADVANCED MOBILE COMMUNI-  
21 CATIONS DEVICE INOPERABLE.

22 S 899-CCCC. ENFORCEMENT. 1. THE ATTORNEY GENERAL MAY BRING A CIVIL  
23 ACTION AGAINST ANY INDIVIDUAL, FIRM, CORPORATION, OR OTHER BUSINESS  
24 ENTITY THAT VIOLATES THIS ARTICLE TO ENJOIN THE VIOLATION AND MAY  
25 RECOVER THE FOLLOWING:

26 (A) A CIVIL PENALTY OF ONE THOUSAND DOLLARS PER VIOLATION OF THIS  
27 ARTICLE, OR FOR A PATTERN OR PRACTICE OF SUCH VIOLATIONS, UP TO THREE  
28 THOUSAND DOLLARS PER VIOLATION; AND/OR

29 (B) COSTS AND REASONABLE ATTORNEYS' FEES.

30 2. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES  
31 WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL OR ANY  
32 OTHER PERSON AUTHORIZED TO BRING AN ACTION UNDER THIS SECTION.

33 S 3. This act shall take effect on the one hundred eightieth day after  
34 it shall have become a law.