

8093--A

2015-2016 Regular Sessions

I N A S S E M B L Y

June 8, 2015

Introduced by M. of A. TITONE, MOSLEY -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to the manufacture and sale of smartphones that are capable of being decrypted and unlocked by the manufacturer

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 section  
2 399-k to read as follows:  
3 S 399-K. SMARTPHONES. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOW-  
4 ING TERMS SHALL HAVE THE FOLLOWING MEANINGS:  
5 (A) "SMARTPHONE" MEANS A CELLULAR RADIO TELEPHONE OR OTHER MOBILE  
6 VOICE COMMUNICATIONS HANDSET DEVICE THAT INCLUDES THE FOLLOWING  
7 FEATURES:  
8 I. UTILIZES A MOBILE OPERATING SYSTEM.  
9 II. POSSESSES THE CAPABILITY TO UTILIZE MOBILE SOFTWARE APPLICATIONS,  
10 ACCESS AND BROWSE THE INTERNET, UTILIZE TEXT MESSAGING, UTILIZE DIGITAL  
11 VOICE SERVICE, AND SEND AND RECEIVE EMAIL.  
12 III. HAS WIRELESS NETWORK CONNECTIVITY.  
13 IV. IS CAPABLE OF OPERATING ON A LONG-TERM EVOLUTION NETWORK OR  
14 SUCCESSOR WIRELESS DATA NETWORK COMMUNICATION STANDARDS.  
15 (B) "SOLD IN NEW YORK," OR ANY VARIATION THEREOF, MEANS THAT THE  
16 SMARTPHONE IS SOLD AT RETAIL FROM A LOCATION WITHIN THE STATE, OR THE  
17 SMARTPHONE IS SOLD AND SHIPPED TO AN END-USE CONSUMER AT AN ADDRESS  
18 WITHIN THE STATE. "SOLD IN NEW YORK" DOES NOT INCLUDE A SMARTPHONE THAT  
19 IS RESOLD IN THE STATE ON THE SECONDHAND MARKET OR THAT IS CONSIGNED AND  
20 HELD AS COLLATERAL ON A LOAN.

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

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1 (C) "LEASED IN NEW YORK," OR ANY VARIATION THEREOF, MEANS THAT THE  
2 SMARTPHONE IS CONTRACTED FOR A SPECIFIED PERIOD OF TIME TO AN END-USE  
3 CONSUMER AT AN ADDRESS WITHIN THE STATE.

4 2. ANY SMARTPHONE THAT IS MANUFACTURED ON OR AFTER JANUARY FIRST, TWO  
5 THOUSAND SEVENTEEN, AND SOLD OR LEASED IN NEW YORK, SHALL BE CAPABLE OF  
6 BEING DECRYPTED AND UNLOCKED BY ITS MANUFACTURER OR ITS OPERATING SYSTEM  
7 PROVIDER.

8 3. THE SALE OR LEASE IN NEW YORK OF A SMARTPHONE MANUFACTURED ON OR  
9 AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN THAT IS NOT CAPABLE OF BEING  
10 DECRYPTED AND UNLOCKED BY ITS MANUFACTURER OR ITS OPERATING SYSTEM  
11 PROVIDER SHALL SUBJECT THE SELLER OR LESSOR TO A CIVIL PENALTY OF TWO  
12 THOUSAND FIVE HUNDRED DOLLARS FOR EACH SMARTPHONE SOLD OR LEASED IF IT  
13 IS DEMONSTRATED THAT THE SELLER OR LESSOR OF THE SMARTPHONE KNEW AT THE  
14 TIME OF THE SALE OR LEASE THAT THE SMARTPHONE WAS NOT CAPABLE OF BEING  
15 DECRYPTED AND UNLOCKED BY ITS MANUFACTURER OR ITS OPERATING SYSTEM  
16 PROVIDER. NO SELLER OR LESSOR WHO PAYS THE CIVIL PENALTY MAY PASS ANY  
17 PORTION OF THAT PENALTY ON TO ANY PURCHASER OF SMARTPHONES BY RAISING  
18 THE SALES OR LEASE PRICE OF SMARTPHONES.

19 4. THE RETAIL SALE OR LEASE OF A SMARTPHONE MANUFACTURED ON OR AFTER  
20 JANUARY FIRST, TWO THOUSAND SEVENTEEN THAT IS NOT CAPABLE OF BEING  
21 DECRYPTED AND UNLOCKED BY ITS MANUFACTURER OR ITS OPERATING SYSTEM  
22 PROVIDER SHALL NOT RESULT IN LIABILITY TO THE SELLER OR LESSOR IF THE  
23 INABILITY OF THE MANUFACTURER AND OPERATING SYSTEM PROVIDER TO DECRYPT  
24 AND UNLOCK THE SMARTPHONE IS THE RESULT OF ACTIONS TAKEN BY ANY PERSON  
25 OR ENTITY OTHER THAN THE MANUFACTURER, THE OPERATING SYSTEM PROVIDER,  
26 THE SELLER, OR THE LESSOR SO LONG AS SUCH ACTIONS WERE UNAUTHORIZED BY  
27 THE MANUFACTURER, THE OPERATING SYSTEM PROVIDER, THE SELLER, OR THE  
28 LESSOR UNLESS AT THE TIME OF SALE OR LEASE THE SELLER OR LESSOR HAD  
29 RECEIVED NOTIFICATION THAT THE MANUFACTURER AND OPERATING SYSTEM PROVID-  
30 ER WERE UNABLE TO DECRYPT AND UNLOCK SMARTPHONES THAT HAD BEEN ACTED  
31 UPON IN THE MANNER DESCRIBED ABOVE.

32 5. A CIVIL SUIT TO ENFORCE THIS SECTION MAY BE BROUGHT BY THE FOLLOW-  
33 ING PARTIES AND NONE OTHERS: (A) THE ATTORNEY GENERAL, FOR ANY SALE OR  
34 LEASE OF A SMARTPHONE IN NEW YORK, AND (B) THE DISTRICT ATTORNEY FOR ANY  
35 SALE OR LEASE OF A SMARTPHONE IN THE COUNTY REPRESENTED BY THE DISTRICT  
36 ATTORNEY, PROVIDED, HOWEVER THAT THE SELLER OR LESSOR MAY BE SUBJECT TO  
37 NOT MORE THAN A SINGLE PENALTY FOR EACH SALE OR LEASE OF A SMARTPHONE.

38 S 2. This act shall take effect immediately.