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

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:

Section 1. The general business law is amended by adding a new section 399-k to read as follows:

S 399-K. SMARTPHONES. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "SMARTPHONE" MEANS A CELLULAR RADIO TELEPHONE OR OTHER MOBILE VOICE COMMUNICATIONS HANDSET DEVICE THAT INCLUDES THE FOLLOWING FEATURES:

I. UTILIZES A MOBILE OPERATING SYSTEM.

II. POSSESSES THE CAPABILITY TO UTILIZE MOBILE SOFTWARE APPLICATIONS, ACCESS AND BROWSE THE INTERNET, UTILIZE TEXT MESSAGING, UTILIZE DIGITAL VOICE SERVICE, AND SEND AND RECEIVE EMAIL.

III. HAS WIRELESS NETWORK CONNECTIVITY.

IV. IS CAPABLE OF OPERATING ON A LONG-TERM EVOLUTION NETWORK OR SUCCESSOR WIRELESS DATA NETWORK COMMUNICATION STANDARDS.

(B) "SOLD IN NEW YORK," OR ANY VARIATION THEREOF, MEANS THAT THE SMARTPHONE IS SOLD AT RETAIL FROM A LOCATION WITHIN THE STATE, OR THE SMARTPHONE IS SOLD AND SHIPPED TO AN END-USE CONSUMER AT AN ADDRESS WITHIN THE STATE. "SOLD IN NEW YORK" DOES NOT INCLUDE A SMARTPHONE THAT IS RESOLD IN THE STATE ON THE SECONDHAND MARKET OR THAT IS CONSIGNED AND 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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(C) "LEASED IN NEW YORK," OR ANY VARIATION THEREOF, MEANS THAT THE SMARTPHONE IS CONTRACTED FOR A SPECIFIED PERIOD OF TIME TO AN END-USE CONSUMER AT AN ADDRESS WITHIN THE STATE.

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

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

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

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

S 2. This act shall take effect immediately.