

# STATE OF NEW YORK

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6953

2017-2018 Regular Sessions

## IN ASSEMBLY

March 27, 2017

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Introduced by M. of A. TITONE, MOSLEY, OTIS, DINOWITZ, MAGNARELLI, McDO-  
NOUGH, DiPIETRO, GALEF, SEPULVEDA, SIMOTAS, HOOPER, ABINANTI --  
Multi-Sponsored by -- M. of A. BUCHWALD, COOK, CROUCH, GIGLIO, GLICK,  
GOTTFRIED, HIKIND, STECK -- read once and referred to the Committee on  
Consumer Affairs and Protection

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 Assem-  
bly, do enact as follows:

1 Section 1. Legislative intent. The legislature finds that:

2 (a) According to the Federal Communications Commission (FCC), one in  
3 three robberies in the United States involves the theft of a mobile  
4 device, making it the number one property crime in the country. Many of  
5 these robberies often turn violent with some resulting in the loss of  
6 life.

7 (b) The FCC estimates that between thirty to forty percent of United  
8 States street theft involves a mobile device. In fact, more than forty  
9 percent of all robberies in New York city involve smartphones and other  
10 cell phones.

11 (c) Consumer reports projects that 1.6 million Americans had their  
12 smartphones stolen in 2012.

13 (d) According to the New York Times, one hundred thirteen smartphones  
14 are lost or stolen every minute in the United States.

15 (e) Major cities are home to the highest concentrations of cell phone  
16 theft, and officials in New York and California have been pushing for a  
17 cellphone kill switch in those states since April 2012. According to New  
18 York state attorney general, Eric Schneiderman, the United States Senate  
19 proposal would force the mobile industry to "stop dragging its feet and  
20 join us in protecting consumers."

21 (f) In April of 2012, U.S. senator Charles Schumer, D-New York, and  
22 New York city police commissioner Ray Kelly announced that the major

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

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1 U.S. cell phone carriers and the Federal Communications Commission have  
2 agreed to set up a national database to track reported stolen phones.  
3 Senator Schumer also introduced a bill called the mobile device theft  
4 deterrence act, which proposes a five-year prison sentence for tampering  
5 with the ID numbers of a stolen cell phone.

6 (g) According to press reports, the international trafficking of  
7 stolen smartphones by organized criminal organizations has grown expo-  
8 nentially in recent years because of how profitable the trade has  
9 become.

10 (h) Replacement of lost and stolen mobile devices was an estimated  
11 thirty-billion-dollar business in 2012 according to studies conducted by  
12 mobile communications security experts. Additionally, industry publica-  
13 tions indicate that the four largest providers of commercial mobile  
14 radio services made an estimated seven billion eight hundred million  
15 dollars from theft and loss insurance products in 2013.

16 (i) Technological solutions that render stolen mobile communications  
17 devices useless already exist, but the industry has been slow to adopt  
18 them.

19 (j) In order to be effective, these technological solutions need to be  
20 ubiquitous, as thieves cannot distinguish between those mobile devices  
21 that have the solutions enabled and those that do not. As a result, the  
22 technological solution should be able to withstand a hard reset or oper-  
23 ating system downgrade, and be enabled by default, with consumers being  
24 given the option to affirmatively elect to disable this protection.

25 (k) Manufacturers of mobile devices and commercial mobile radio  
26 service providers should make efforts to protect their customers from  
27 being targeted as a result of purchasing their products and services.

28 (l) It is the intent of the legislature to require all smartphones and  
29 other mobile devices offered for sale in New York to come with a techno-  
30 logical solution enabled in order to deter theft and protect consumers.

31 § 2. The general business law is amended by adding a new section 399-  
32 zzzzzz to read as follows:

33 § 399-zzzzzz. Smart phone device "kill switch". 1. Definitions. For  
34 purposes of this section, the following terms shall have the following  
35 meanings:

36 (a) "Account holder" with respect to a mobile device or devices, means  
37 the person who holds the account through which commercial mobile data  
38 service is provided on the device or devices and includes anyone else  
39 authorized by such person to take actions with respect to such device or  
40 devices.

41 (b) "Commercial mobile data service" has the same meaning as found in  
42 section 6001 of 47 U.S.C. 1401, as amended from time to time.

43 (c) "Commercial mobile service" has the same meaning as given in  
44 section 332 of 47 U.S.C. 301 et seq., as amended from time to time.

45 (d) "Mobile device" means a personal electronic device on which  
46 commercial mobile service or commercial mobile data service is provided.

47 2. Any provider of commercial mobile data service or commercial mobile  
48 service shall, by itself or in conjunction with the manufacturer of a  
49 mobile device, ensure that any mobile device utilizing its service is  
50 equipped with technology designed to:

51 (a) remotely delete the account holder's data that is on the mobile  
52 device in the event the mobile device is lost or stolen;

53 (b) render the mobile device inoperable to an unauthorized, non-ac-  
54 count holder by means of locking the mobile device such that it cannot  
55 be used without a password or personal identification number, except in  
56 accordance with any applicable Federal Communications Commission rules

1 for 911 emergency communications and, if available, emergency numbers  
2 programmed by the authorized user;

3 (c) prevent reactivation without the account holder's permission,  
4 including unauthorized factory reset attempts, to the extent technolog-  
5 ically feasible; and

6 (d) reverse the inoperability if the mobile device is recovered by the  
7 account holder and restore user data on the mobile device to the extent  
8 feasible.

9 3. The technology required under subdivision two of this section shall  
10 be offered in mobile devices sold in New York state beginning July  
11 first, two thousand eighteen, and shall be made available on mobile  
12 devices at no cost to consumers, provided, however, that mobile devices  
13 may be made available without such technology if such devices are  
14 authorized pursuant to federal law or regulation.

15 § 3. This act shall take effect immediately.