



Sen. Ira I. Silverstein

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1 AMENDMENT TO SENATE BILL 66

2 AMENDMENT NO. _____. Amend Senate Bill 66 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Smart
5 Phone Theft Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Appropriate law enforcement official" means the sheriff
8 of the county where a dealer is located or, if the dealer is
9 located within a municipality, the police chief of the
10 municipality, provided, however, that the sheriff or police
11 chief may designate an appropriate official of the county or
12 municipality as applicable.

13 "Internet marketplace" or "online platform" means a
14 digitally accessible platform that facilitates commercial
15 transactions between buyers and community-rated sellers where
16 the operator or the platform does not take possession of, or

1 title to, the goods bought or sold.

2 "Law enforcement agency" means a duly authorized local,
3 county, State, or federal law enforcement agency.

4 "Repair and refurbishment program" means a program,
5 offered by a wireless telephone service provider,
6 manufacturer, or retailer who is not primarily engaged in
7 purchasing personal property of any type from a person who is
8 not a wholesaler, through which used or previously owned
9 wireless communications devices are restored to good working
10 order.

11 "Trade-in program" means a program offered by a wireless
12 telephone service provider, manufacturer, or retailer who is
13 not primarily engaged in purchasing personal property of any
14 type from a person who is not a wholesaler, pursuant to which
15 used wireless communications devices are accepted from
16 customers for trade-in when purchasing a new device or in
17 exchange for a noncash credit usable only for the purchase of
18 goods or services from the wireless telephone service provider,
19 manufacturer, or retailer or a rebate from a manufacturer on
20 the purchase of one of the manufacturer's wireless
21 communications devices.

22 "Wireless communications device" means a hand-held
23 cellular phone or other hand-held mobile device that (1) is
24 built on a smart phone mobile operating system; (2) possesses
25 advanced computing capability; (3) enables network
26 connectivity; (4) enables the user to engage in voice

1 communications via commercial mobile radio service, as defined
2 in 47 CFR 20.3; and (5) is capable of operating on a long-term
3 evolution network and successor wireless data network
4 communication standards. Capabilities a wireless communication
5 device may possess include, but are not limited to, built-in
6 applications, Internet access, digital voice service, text
7 messaging, email, and web browsing. "Wireless communications
8 device" does not include a phone commonly referred to as a
9 feature or messaging phone, a laptop computer, a tablet device,
10 or a device that has only electronic reading capability.

11 "Wireless communications device dealer" or "dealer" means
12 an individual, partnership, limited partnership, limited
13 liability company, corporation, or other entity engaged in the
14 business of buying or selling used wireless communications
15 devices.

16 "Wireless communications device manufacturer" or
17 "manufacturer" means an individual, partnership, limited
18 partnership, limited liability company, corporation, or other
19 entity engaged in the business of manufacturing wireless
20 communications devices.

21 "Wireless telephone service provider" means a provider of
22 wireless telephone services and its authorized dealers,
23 distributors, and agents.

24 Section 10. Wireless communications devices; acquisition
25 for resale; purchase or acquisition record required.

1 (a) Every wireless communications device dealer, including
2 an agent, employee, or representative of the dealer, but not an
3 internet marketplace, shall keep a written record at the time
4 of each purchase or acquisition of a used wireless
5 communications device for resale. The record must include the
6 following:

7 (1) an accurate account or description of the wireless
8 communications device purchased or acquired;

9 (2) the date, time, and place or the online platform
10 the wireless communications device was purchased or
11 acquired;

12 (3) the name and address of the person selling or
13 delivering the wireless communications device;

14 (4) the number of the check or electronic transfer used
15 to purchase the wireless communications device;

16 (5) the number from an identification document issued
17 by any state, federal, or foreign government if the
18 document includes the person's photograph, full name,
19 birth date, and signature; and

20 (6) a statement signed by the seller, under penalty of
21 perjury, attesting that the wireless communications device
22 is not stolen and is free of any liens or encumbrances and
23 the seller has the right to sell it.

24 (a-5) A wireless communications device dealer covered by
25 this Section may maintain the records required by subsection
26 (a) of this Section in an electronic form approved by the

1 appropriate law enforcement official.

2 (b) Records required to be maintained under this Section
3 shall be retained by the wireless communications device dealer
4 for a period of 3 years.

5 (c) The record, as well as the wireless communications
6 device purchased or received, shall at all reasonable times be
7 available for inspection by any law enforcement agency.

8 (d) No record is required for wireless communications
9 devices purchased from merchants, manufacturers, or wholesale
10 dealers having an established place of business, but a bill of
11 sale or other evidence of open or legitimate purchase of the
12 wireless communications device shall be obtained and kept by
13 the wireless communications device dealer, which must be shown
14 upon demand to any law enforcement agency.

15 (e) Except as otherwise provided in this Section, a
16 wireless communications device dealer or the dealer's agent,
17 employee, or representative may not disclose personal
18 information received pursuant to subsection (a) concerning a
19 customer without the customer's consent unless the disclosure
20 is made in response to a request from a law enforcement agency.
21 A wireless communications device dealer must implement
22 reasonable safeguards to protect the security of the personal
23 information and prevent unauthorized access to or disclosure of
24 the information. For purposes of this Section, "personal
25 information" is any individually identifiable information
26 gathered in connection with a record under subsection (a).

1 Section 15. Records; prohibitions. A wireless
2 communications device dealer, including an agent, employee, or
3 representative of the dealer, shall not:

4 (1) make any false entry in the records of transactions
5 involving a used wireless communications device;

6 (2) falsify, obliterate, destroy, or remove from the
7 place of business the records, books, or accounts relating
8 to used wireless communications device transactions;

9 (3) refuse to allow the appropriate law enforcement
10 agency to inspect records or any used wireless
11 communications device in the dealer's possession during
12 the ordinary hours of business or other times acceptable to
13 both parties;

14 (4) fail to maintain a record of each used wireless
15 communications device transaction for 3 years; or

16 (5) purchase a used wireless communications device
17 from a person under the age of 18 years.

18 Section 20. Payment for used wireless communications
19 devices. A wireless communications device dealer shall pay for
20 purchases of all used wireless communications devices by check
21 mailed to a specific address or by electronic transfer.

22 Section 25. Investigative holds; confiscation of property.

23 (a) Whenever a law enforcement official from any agency has

1 probable cause to believe that a wireless communications device
2 in the possession of a wireless communications device dealer is
3 stolen or is evidence of a crime and notifies the dealer not to
4 sell the item, the dealer shall not process or sell the item or
5 remove or allow its removal from the premises. This
6 investigative hold must be confirmed in writing by the
7 originating agency within 72 hours and remain in effect for 120
8 days from the date of initial notification, until the
9 investigative hold is canceled or renewed, or until a law
10 enforcement notification to confiscate or directive to release
11 is issued, whichever comes first.

12 (b) If a wireless communications device is identified as
13 stolen or as evidence in a criminal case, a law enforcement
14 official may:

15 (1) physically confiscate and remove the wireless
16 communications device from the wireless communications
17 device dealer pursuant to a written notification;

18 (2) place the wireless communications device on hold or
19 extend the hold under subsection (a) and leave the device
20 at the premises; or

21 (3) direct its release to a registered owner or owner's
22 agent.

23 (c) When an item is confiscated, the law enforcement agency
24 doing so shall provide identification upon request of the
25 wireless communications device dealer, and shall provide the
26 name and telephone number of the confiscating agency and

1 investigator and the case number related to the confiscation.

2 (d) When an investigative hold or notification to
3 confiscate is no longer necessary, the law enforcement official
4 or designee shall notify the wireless communications device
5 dealer.

6 (e) A wireless communications device dealer may sell or
7 otherwise dispose of the wireless communications device if: (1)
8 a notification to confiscate is not issued during the
9 investigative hold; or (2) a law enforcement official does not
10 physically remove the wireless communications device from the
11 premises within 15 calendar days from issuance of a
12 notification to confiscate.

13 (f) If a wireless communications device dealer is required
14 to hold the wireless communications device at the direction of
15 law enforcement for purposes of investigation or prosecution,
16 or if the device is seized by law enforcement, the wireless
17 communications device dealer and any other victim is entitled
18 to seek restitution, including any out-of-pocket expenses for
19 storage and lost profit, in any criminal case that may arise
20 from the investigation against the individual who sold the
21 wireless communications device to the wireless communications
22 device dealer.

23 Section 30. Video security cameras required.

24 (a) Each wireless communications device dealer shall
25 install and maintain at each physical location video

1 surveillance cameras, still digital cameras, or similar
2 devices positioned to record or photograph a frontal view
3 showing a readily identifiable image of the face of each seller
4 of a wireless communications device who enters the physical
5 location.

6 (b) The video camera or still digital camera must be kept
7 in operating condition and must be shown upon request to a
8 properly identified law enforcement officer for inspection.
9 The camera must record and display the accurate date and time.
10 The video camera or still digital camera must be turned on at
11 all times when the physical location is open for business and
12 at any other time when wireless communications devices are
13 purchased or sold.

14 (c) Recordings and images required by subsection (a) shall
15 be retained by the wireless communications device dealer for a
16 minimum period of 120 days and shall at all reasonable times be
17 open to the inspection of any properly identified law
18 enforcement officer.

19 Section 35. Penalty. A wireless communications device
20 dealer, or the agent, employee, or representative of the
21 wireless communications device dealer, who intentionally
22 violates a provision of this Act is guilty of a business
23 offense and shall be fined more than \$500 but not more than
24 \$1,000.

1 Section 40. Application of Act.

2 (a) This Act does not apply with respect to a wireless
3 communications device returned pursuant to the return policies
4 of the wireless communications device dealer, wireless
5 telephone service provider, manufacturer, or retailer from
6 whom it was originally purchased.

7 (b) This Act does not apply to:

8 (1) a wireless telephone service provider who acquires
9 wireless communications devices as part of a trade-in or a
10 repair and refurbishment program; or

11 (2) a manufacturer who acquires wireless
12 communications devices as part of a trade-in program.

13 (c) This Act does not apply to wireless communications
14 device dealers regulated under the Pawnbroker Regulation Act.

15 (d) This Act does not alter or affect a dealer's separate
16 obligations under the Resale Dealers Act, if applicable, except
17 that any violation under this Act, by a person covered by the
18 Resale Dealers Act, which has the same or similar elements as a
19 violation under the Resale Dealers Act shall be punished as
20 provided under the Resale Dealers Act."