



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1300

Introduced 2/18/2015, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

New Act

Creates the Smart Phone Kill Switch Act. Requires that any smart phone manufactured on or after July 1, 2016 that is sold or purchased in Illinois must be equipped with preloaded anti-theft functionality or be capable of downloading that functionality. Requires the functionality to be available to purchasers at no cost. Provides that the Illinois Commerce Commission shall adopt rules regarding smart phone anti-theft functionality. Requires wireless communications device dealers to maintain a written record of every purchase or acquisition of a used wireless communications device for resale. Sets forth information that must be included in the written record. Provides that a law enforcement agency that has probable cause to believe a device has been stolen or is evidence of a crime may place an investigative hold on or confiscate the device. Requires the installation of video security cameras at a dealer's physical location. Provides that a violation of the Act is a Class B misdemeanor. Provides exemptions from the application of the Act, including wireless telephone providers who acquire devices for trade-in or for repair and refurbishment programs.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Smart
5 Phone Kill Switch Act.

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

7 "Internet marketplace" or "online platform" means a
8 digitally accessible platform that facilitates commercial
9 transactions between buyers and community-rated sellers where
10 the operator or the platform does not take possession of, or
11 title to, the goods bought or sold.

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

14 "Repair and refurbishment program" means a program,
15 offered by a wireless telephone service provider,
16 manufacturer, or retailer who is not primarily engaged in
17 purchasing personal property of any type from a person who is
18 not a wholesaler, through which used or previously owned
19 wireless communications devices are restored to good working
20 order.

21 "Smart phone" means a cellular phone or other mobile device
22 that: (1) is built on a smart phone mobile operating system;
23 (2) possesses advanced computing capability; (3) enables

1 network connectivity; and (4) is capable of operating on a
2 long-term evolution network and successor wireless data
3 network communication standards. Capabilities a smart phone
4 may possess include, but are not limited to, built-in
5 applications, Internet access, digital voice service, text
6 messaging, e-mail, and Web browsing. "Smart phone" does not
7 include a phone commonly referred to as a feature or messaging
8 phone, a laptop computer, a tablet device, or a device that has
9 only electronic reading capability.

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

20 "Wireless communications device" means a cellular phone or
21 a portable electronic device that is capable of receiving and
22 transmitting data, including, but not limited to, text messages
23 and e-mail, without an access line for service.

24 "Wireless communications device dealer" or "dealer" means
25 an individual, partnership, limited partnership, limited
26 liability company, corporation, or other entity engaged in the

1 business of buying or selling used wireless communications
2 devices.

3 "Wireless communications device manufacturer" or
4 "manufacturer" means an individual, partnership, limited
5 partnership, limited liability company, corporation, or other
6 entity engaged in the business of manufacturing wireless
7 communications devices.

8 "Wireless telephone service provider" means a provider of
9 wireless telephone services and its authorized dealers,
10 distributors, and agents.

11 Section 10. Anti-theft functionality required. Any smart
12 phone manufactured on or after July 1, 2016 that is sold or
13 purchased in Illinois must be equipped with preloaded
14 anti-theft functionality or be capable of downloading that
15 functionality. The functionality must be available to
16 purchasers at no cost. The Illinois Commerce Commission shall
17 adopt rules regarding smart phone anti-theft functionality.

18 Section 15. Wireless communications devices; acquisition
19 for resale; purchase or acquisition record required.

20 (a) Every wireless communications device dealer, including
21 an agent, employee, or representative of the dealer, but not an
22 internet marketplace, shall keep a written record at the time
23 of each purchase or acquisition of a used wireless
24 communications device for resale. The record must include the

1 following and may be kept in electronic form:

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

4 (2) the date, time, and place or the online platform on
5 which the wireless communications device was purchased or
6 acquired;

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

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

11 (5) the number from an identification document issued
12 by any state, federal, or foreign government if the
13 document includes the person's photograph, full name,
14 birth date, and signature; and

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

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

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

25 (d) No record is required for wireless communications
26 devices purchased from merchants, manufacturers, or wholesale

1 dealers having an established place of business, but a bill of
2 sale or other evidence of open or legitimate purchase of the
3 wireless communications device shall be obtained and kept by
4 the wireless communications device dealer, which must be shown
5 upon demand to any law enforcement agency.

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

18 Section 20. Records; prohibitions. A wireless
19 communications device dealer, including an agent, employee, or
20 representative of the dealer, shall not:

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

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

1 (3) refuse to allow the appropriate law enforcement
2 agency to inspect records or any used wireless
3 communications device in the dealer's possession during
4 the ordinary hours of business or other times acceptable to
5 both parties;

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

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

10 Section 25. Payment for used wireless communications
11 devices. A wireless communications device dealer shall pay for
12 purchases of all used wireless communications devices by check
13 mailed to a specific address or by electronic transfer.

14 Section 30. Investigative holds; confiscation of property.

15 (a) Whenever a law enforcement official from any agency has
16 probable cause to believe that a wireless communications device
17 in the possession of a wireless communications device dealer is
18 stolen or is evidence of a crime and notifies the dealer not to
19 sell the item, the dealer shall not process or sell the item or
20 remove or allow its removal from the premises. This
21 investigative hold must be confirmed in writing by the
22 originating agency within 72 hours and remain in effect for 30
23 days from the date of initial notification until the
24 investigative hold is canceled or renewed or until a law

1 enforcement notification to confiscate or directive to release
2 is issued, whichever comes first.

3 (b) If a wireless communications device is identified as
4 stolen or as evidence in a criminal case, a law enforcement
5 official may:

6 (1) physically confiscate and remove the wireless
7 communications device from the wireless communications
8 device dealer pursuant to a written notification;

9 (2) place the wireless communications device on hold or
10 extend the hold under subsection (a) and leave the device
11 at the premises; or

12 (3) direct its release to a registered owner or owner's
13 agent.

14 (c) When an item is confiscated, the law enforcement agency
15 doing so shall provide identification upon request of the
16 wireless communications device dealer, and shall provide the
17 name and telephone number of the confiscating agency and
18 investigator and the case number related to the confiscation.

19 (d) When an investigative hold or notification to
20 confiscate is no longer necessary, the law enforcement official
21 or designee shall notify the wireless communications device
22 dealer.

23 (e) A wireless communications device dealer may sell or
24 otherwise dispose of the wireless communications device if: (1)
25 a notification to confiscate is not issued during the
26 investigative hold; or (2) a law enforcement official does not

1 physically remove the wireless communications device from the
2 premises within 15 calendar days from issuance of a
3 notification to confiscate.

4 (f) If a wireless communications device dealer is required
5 to hold the wireless communications device at the direction of
6 law enforcement for purposes of investigation or prosecution,
7 or if the device is seized by law enforcement, the wireless
8 communications device dealer and any other victim is entitled
9 to seek restitution, including any out-of-pocket expenses for
10 storage and lost profit, in any criminal case that may arise
11 from the investigation against the individual who sold the
12 wireless communications device to the wireless communications
13 device dealer.

14 Section 35. Video security cameras required.

15 (a) Each wireless communications device dealer shall
16 install and maintain at each physical location video
17 surveillance cameras, still digital cameras, or similar
18 devices positioned to record or photograph a frontal view
19 showing a readily identifiable image of the face of each seller
20 of a wireless communications device who enters the physical
21 location.

22 (b) The video camera or still digital camera must be kept
23 in operating condition and must be shown upon request to a
24 properly identified law enforcement officer for inspection.
25 The camera must record and display the accurate date and time.

1 The video camera or still digital camera must be turned on at
2 all times when the physical location is open for business and
3 at any other time when wireless communications devices are
4 purchased or sold.

5 (c) Recordings and images required by subsection (a) shall
6 be retained by the wireless communications device dealer for a
7 minimum period of 30 days and shall at all reasonable times be
8 open to the inspection of any properly identified law
9 enforcement officer.

10 Section 40. Criminal penalty. A wireless communications
11 device dealer, or the agent, employee, or representative of the
12 wireless communications device dealer, who intentionally
13 violates a provision of this Act is guilty of a Class B
14 misdemeanor.

15 Section 45. Application of Act.

16 (a) This Act does not apply with respect to a wireless
17 communications device returned to the store where it was
18 originally purchased pursuant to the return policies of the
19 wireless communications device dealer, wireless telephone
20 service provider, manufacturer, or retailer.

21 (b) This Act does not apply with respect to wireless
22 communications devices acquired by a:

23 (1) wireless telephone provider as part of a trade-in
24 or a repair and refurbishment program; or

1 (2) manufacturer as part of a trade-in program.

2 (c) This Act does not apply to wireless communications

3 device dealers regulated under the Pawnbroker Regulation Act.