

ASSEMBLY BILL

No. 1681

Introduced by Assembly Member Cooper

January 20, 2016

An act to add Section 22762 to the Business and Profession Code, relating to smartphones.

LEGISLATIVE COUNSEL'S DIGEST

AB 1681, as introduced, Cooper. Smartphones.

Existing law requires that a smartphone that is manufactured on or after July 1, 2015, and sold in California after that date, include a technological solution at the time of sale, which may consist of software, hardware, or both software and hardware, that, once initiated and successfully communicated to the smartphone, can render inoperable the essential features, as defined, of the smartphone to an unauthorized user when the smartphone is not in the possession of an authorized user.

This bill would require a smartphone that is manufactured on or after January 1, 2017, and sold in California, to be capable of being decrypted and unlocked by its manufacturer or its operating system provider. The bill would, except as provided, subject a seller or lessor that knowingly failed to comply with that requirement to a civil penalty of \$2,500 for each smartphone sold or leased. The bill would prohibit a seller or lessor who has paid this civil penalty from passing any portion of the penalty on to purchasers of smartphones. The bill would authorize only the Attorney General or a district attorney to bring a civil suit to enforce these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22762 is added to the Business and
2 Professions Code, immediately following Section 22761, to read:

3 22762. (a) For the purposes of this section, the following terms
4 have the following meanings:

5 (1) “Smartphone” has the same meaning as in Section 22761.

6 (2) “Sold in California” has the same meaning as in Section
7 22761.

8 (3) “Leased in California,” or any variation thereof, means that
9 the smartphone is contracted for a specified period of time to an
10 end-use consumer at an address within the state.

11 (b) A smartphone that is manufactured on or after January 1,
12 2017, and sold or leased in California, shall be capable of being
13 decrypted and unlocked by its manufacturer or its operating system
14 provider.

15 (c) Except as provided in subdivision (d), a seller or lessor that
16 sells or leases in California a smartphone manufactured on or after
17 January 1, 2017, that is not capable of being decrypted and
18 unlocked by its manufacturer or its operating system provider shall
19 be subject to a civil penalty of two thousand five hundred dollars
20 (\$2,500) for each smartphone sold or leased if the seller or lessor
21 of the smartphone knew at the time of the sale or lease that the
22 smartphone was not capable of being decrypted and unlocked by
23 its manufacturer or its operating system provider. A seller or lessor
24 who pays a civil penalty imposed pursuant to this subdivision shall
25 not pass on any portion of that penalty to purchasers of
26 smartphones by raising the sales or lease price of smartphones.

27 (d) (1) The sale or lease of a smartphone manufactured on or
28 after January 1, 2017, that is not capable of being decrypted and
29 unlocked by its manufacturer or its operating system provider shall
30 not result in liability to the seller or lessor if the inability of the
31 manufacturer and operating system provider to decrypt and unlock
32 the smartphone is the result of actions taken by a person or entity
33 other than the manufacturer, the operating system provider, the
34 seller, or the lessor and those actions were unauthorized by the
35 manufacturer, the operating system provider, the seller, or the
36 lessor.

37 (2) Paragraph (1) does not apply if at the time of sale or lease,
38 the seller or lessor had been notified that the manufacturer and

1 operating system provider were unable to decrypt and unlock the
2 smartphone due to those unauthorized actions.

3 (e) A civil suit to enforce this section may only be brought by
4 the Attorney General, for the sale or lease of a smartphone in
5 California, or a district attorney for the sale or lease of a
6 smartphone in the county represented by the district attorney. A
7 seller or lessor shall not be subject to more than a single penalty
8 for each sale or lease of a smartphone.

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