

AMENDED IN SENATE MAY 5, 2014
AMENDED IN SENATE APRIL 9, 2014
AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 962

Introduced by Senator Leno
(Coauthors: Senators Hancock, Pavley, and Wolk)
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as amended, Leno. Advanced mobile communications devices.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any advanced mobile communications device, ~~as defined~~ *commonly known as a smartphone*, that is *manufactured and sold* in California on or after ~~January~~ *July 1, 2015*, include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, as defined, *to an unauthorized user* when the device is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined, and when enabled, prevent reactivation of the device on a wireless network except by the rightful owner or his or her authorized designee. The bill would make these requirements inapplicable when the device is resold in California on the secondhand

market or is consigned and held as collateral on a loan. The bill would prohibit the sale of an advanced mobile communications device in California ~~without the technological solution being enabled, but unless, during the activation and registration process, the device's default setting prompts the user to enable the technological solution. The bill~~ would authorize the rightful owner to affirmatively elect to disable the technological solution ~~after sale. at the point of sale, during the activation and registration process, or anytime thereafter.~~ The bill would make a violation of the bill's requirements subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) According to the Federal Communications Commission,
4 smartphone thefts now account for 30 to 40 percent of robberies
5 in many major cities across the country. Many of these robberies
6 often turn violent with some resulting in the loss of life.
7 (b) Consumer Reports projects that 1.6 million Americans were
8 victimized for their smartphones in 2012.
9 (c) According to the New York Times, 113 smartphones are
10 lost or stolen every minute in the United States.
11 (d) According to the Office of the District Attorney for the City
12 and County of San Francisco, in 2012, more than 50 percent of all
13 robberies in San Francisco involved the theft of a mobile
14 communications device.
15 (e) Thefts of smartphones in Los Angeles increased 12 percent
16 in 2012, according to the Los Angeles Police Department.
17 (f) According to press reports, the international trafficking of
18 stolen smartphones by organized criminal organizations has grown
19 exponentially in recent years because of how profitable the trade
20 has become.
21 (g) Replacement of lost and stolen mobile communications
22 devices was an estimated thirty-billion-dollar (\$30,000,000,000)
23 business in 2012 according to studies conducted by mobile
24 communications security experts. Additionally, industry
25 publications indicate that the four largest providers of commercial

1 mobile radio services made an estimated seven billion eight
2 hundred million dollars (\$7,800,000,000) from theft and loss
3 insurance products in 2013.

4 (h) Technological solutions that render stolen mobile
5 communications devices useless already exist, but the industry has
6 been slow to adopt them.

7 (i) In order to be effective, these technological solutions need
8 to be ubiquitous, as thieves cannot distinguish between those
9 mobile communications devices that have the solutions enabled
10 and those that do not. As a result, the technological solution should
11 be able to withstand a hard reset or operating system downgrade,
12 and be enabled by default, with consumers being given the option
13 to affirmatively elect to disable this protection.

14 (j) Manufactures of advanced mobile communications devices
15 and commercial mobile radio service providers have a
16 responsibility to ensure their customers are not targeted as a result
17 of purchasing their products and services.

18 (k) It is the intent of the Legislature to require all smartphones
19 ~~and other advanced mobile communications devices~~ offered for
20 sale in California to come with a technological solution enabled,
21 in order to deter theft and protect consumers.

22 SEC. 2. Section 22761 is added to the Business and Professions
23 Code, to read:

24 22761. (a) For purposes of this section, the following terms
25 have the following meanings:

26 (1) “Advanced mobile communications device” means an
27 electronic device that is regularly hand held when operated that
28 enables the user to engage in voice communications using mobile
29 telephony service, Voice over Internet Protocol, or Internet Protocol
30 enabled service, as those terms are defined in Sections 224.4 and
31 239 of the Public Utilities Code, and to connect to the Internet,
32 ~~and includes what~~ *and is limited to what* are commonly known as
33 ~~smartphones and tablets.~~ *smartphones.*

34 (2) “Commercial mobile radio service” means “commercial
35 mobile service,” as defined in subsection (d) of Section 332 of
36 Title 47 of the United States Code and as further specified by the
37 Federal Communications Commission in Parts 20, 22, 24, and 25
38 of Title 47 of the Code of Federal Regulations, and includes
39 “mobile satellite telephone service” and “mobile telephony

1 service,” as those terms are defined in Section 224.4 of the Public
2 Utilities Code.

3 (3) “Essential features” of an advanced mobile communications
4 device include the ability to use the device for voice
5 communications and the ability to ~~connect to~~ *browse* the Internet,
6 including the ability to access and use mobile software applications
7 commonly known as “apps.” *“Essential features” does not include*
8 *any functionality needed for the operation of the technological*
9 *solution.*

10 (4) “Hard reset” means the restoration of an advanced mobile
11 communications device to the state it was in when it left the
12 factory, and refers to any act of returning a device to that state,
13 including processes commonly termed a factory reset or master
14 reset.

15 (5) “Sold in California” means that the advanced mobile
16 communications device is sold at retail from a location within the
17 state, or the advanced mobile communications device is sold and
18 shipped to an end-use consumer at an address within the state.
19 “Sold in California” does not include a device that is resold in the
20 state on the secondhand market or that is consigned and held as
21 collateral on a loan.

22 (b) (1) Any advanced mobile communications device that is
23 ~~manufactured and~~ sold in California on or after ~~January~~ *July* 1,
24 2015, shall include a technological solution that can render the
25 essential features of the device inoperable ~~to an unauthorized user~~
26 when the device is not in the possession of the rightful owner. The
27 technological solution shall be reversible, so that if the rightful
28 owner obtains possession of the device after the essential features
29 of the device have been rendered inoperable, the operation of those
30 essential features can be restored by the rightful owner or his or
31 her authorized designee. A technological solution may consist of
32 software, hardware, or a combination of both software and
33 hardware, but shall be able to withstand a hard reset, and when
34 enabled, shall prevent reactivation of the device on a wireless
35 network except by the rightful owner or his or her authorized
36 designee. No advanced mobile communications device may be
37 sold in California ~~without the technological solution enabled.~~
38 *unless, during the activation and registration process, the device’s*
39 *default setting prompts the user to enable the technological*
40 *solution.*

1 (2) The “essential features” that are required to be rendered
2 inoperable pursuant to this subdivision do not include the ability
3 of a device to access emergency services by a voice call or text to
4 the numerals “911” and the ability of a device to receive wireless
5 emergency alerts and warnings.

6 (3) The rightful owner of an advanced mobile communications
7 device may affirmatively elect to disable the technological solution
8 ~~after sale.~~ *at the point of sale, during the activation and registration*
9 *process, or anytime thereafter.* However, the physical acts
10 necessary to disable the technological solution may only be
11 performed by the end-use consumer or a person specifically
12 selected by the end-use consumer to disable the technological
13 ~~solution and shall not be physically performed by any retail seller~~
14 ~~of the advanced mobile communications device.~~ *solution.*

15 (c) A person or retail entity selling an advanced communications
16 device in California in violation of subdivision (b) shall be subject
17 to a civil penalty of not less than five hundred dollars (\$500), nor
18 more than two thousand five hundred dollars (\$2,500), per device
19 sold in California.

20 (d) Any request by a government agency to interrupt
21 communications service utilizing a technological solution required
22 by this section is subject to Section 7908 of the Public Utilities
23 Code.

24 (e) Nothing in this section requires a technological solution that
25 is incompatible with, or renders it impossible to comply with,
26 obligations under state and federal law and regulation related to
27 any of the following:

28 (1) The provision of emergency services through the 911 system,
29 including text to 911, bounce-back messages, and location accuracy
30 requirements.

31 (2) Participation in the wireless emergency alert system.

32 (3) Participation in state and local emergency alert and public
33 safety warning systems.