

114TH CONGRESS
1ST SESSION

S. 1076

To require mobile service providers and smartphone manufacturers to give consumers the ability to remotely delete data from smartphones and render smartphones inoperable.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2015

Ms. KLOBUCHAR (for herself, Ms. MIKULSKI, Ms. HIRONO, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require mobile service providers and smartphone manufacturers to give consumers the ability to remotely delete data from smartphones and render smartphones inoperable.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Smartphone Theft Pre-
5 vention Act of 2015”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) mobile device theft costs consumers billions
2 of dollars each year, according to the Federal Com-
3 munications Commission;

4 (2) 1 in 3 robberies include the theft of a mo-
5 bile device;

6 (3) carriers, manufacturers, law enforcement,
7 the Federal Communications Commission, and State
8 governments have worked to address the growing
9 trend of mobile device theft, but more remains to be
10 done;

11 (4) consumers deserve to have the most secure
12 technology available to protect them and their infor-
13 mation;

14 (5) technological protections continue to de-
15 velop, evolve, and improve in ways that are good for
16 the economy and the consumers of the United
17 States, and for public safety in the United States;

18 (6) the wireless industry should work with law
19 enforcement to educate consumers about the security
20 tools that are available to them and how to keep
21 their data, their devices, and themselves safe;

22 (7) because engineering and security needs
23 change rapidly, the mobile device industry, law en-
24 forcement, and consumer advocates are best suited

1 to proactively develop solutions to protect con-
 2 sumers, drive innovation, and deter theft; and

3 (8) major cities such as San Francisco, New
 4 York, and London have seen recent decreases in
 5 smartphone theft since carriers and manufacturers
 6 began rolling out sophisticated new technological
 7 functions to protect consumers from theft.

8 **SEC. 3. FUNCTION FOR STOLEN SMARTPHONES.**

9 (a) IN GENERAL.—Part I of title III of the Commu-
 10 nications Act of 1934 (47 U.S.C. 301 et seq.) is amended
 11 by adding at the end the following:

12 **“SEC. 343. FUNCTION FOR STOLEN SMARTPHONES.**

13 “(a) DEFINITIONS.—

14 “(1) IN GENERAL.—In this section—

15 “(A) the term ‘account holder’, with re-
 16 spect to a smartphone—

17 “(i) means the person who holds the
 18 account through which commercial mobile
 19 service or commercial mobile data service
 20 is provided on the smartphone; and

21 “(ii) includes a person authorized by
 22 the person described in clause (i) to take
 23 actions with respect to the smartphone;

24 “(B) the term ‘commercial mobile data
 25 service’ has the meaning given the term in sec-

1 tion 6001 of the Middle Class Tax Relief and
2 Job Creation Act of 2012 (47 U.S.C. 1401);

3 “(C) the term ‘commercial mobile service’
4 has the meaning given the term in section 332;
5 and

6 “(D) the term ‘smartphone’ means a cel-
7 lular radio telephone or other mobile voice com-
8 munications handset device—

9 “(i) on which commercial mobile serv-
10 ice or commercial mobile data service is
11 provided; and

12 “(ii) that—

13 “(I) utilizes a mobile operating
14 system;

15 “(II) possesses advanced data ca-
16 pabilities, including software applica-
17 tions, Internet access, digital voice
18 services, email, and text messaging;

19 “(III) has wireless network
20 connectivity; and

21 “(IV) is capable of operating on
22 a long-term evolution network.

23 “(2) FCC AUTHORITY TO MODIFY DEFINITION
24 OF ‘SMARTPHONE’.—The Commission may modify
25 the definition of the term ‘smartphone’ under para-

1 graph (1) if the Commission determines that cir-
2 cumstances require such a modification.

3 “(b) REQUIREMENTS.—

4 “(1) FUNCTION.—

5 “(A) IN GENERAL.—A provider of commer-
6 cial mobile service or commercial mobile data
7 service on a smartphone, in coordination with
8 the manufacturer of, and the provider of the
9 operating system for, the smartphone, shall—

10 “(i) make available on the smartphone
11 a function described in subparagraph (B);
12 and

13 “(ii) ensure that—

14 “(I) during the initial device
15 setup process, the smartphone
16 prompts the account holder to enable
17 the function described in subpara-
18 graph (B); and

19 “(II) only the account holder is
20 able to opt out of enabling the func-
21 tion described in subparagraph (B).

22 “(B) FUNCTION DETAILS.—A function de-
23 scribed in this subparagraph, with respect to a
24 smartphone, is a function that—

1 “(i) may only be used by the account
2 holder; and

3 “(ii) includes the capability to re-
4 motely—

5 “(I) delete or render inaccessible
6 from the smartphone all information
7 relating to the account holder that has
8 been placed on the smartphone;

9 “(II) render the smartphone in-
10 operable on the network of any pro-
11 vider of commercial mobile service or
12 commercial mobile data service glob-
13 ally;

14 “(III) prevent the smartphone
15 from being reactivated or repro-
16 grammed without a passcode or simi-
17 lar authorization after the smartphone
18 has been—

19 “(aa) rendered inoperable as
20 described in subclause (II); or

21 “(bb) subject to an unau-
22 thorized factory reset; and

23 “(IV) restore personal informa-
24 tion from the smartphone onto a com-
25 patible or interoperable device.

1 “(2) DEVICE STANDARDS.—A person may not
2 manufacture in the United States, or import into the
3 United States for sale or resale to the public, a
4 smartphone unless the smartphone is configured in
5 such a manner that the provider of commercial mo-
6 bile service or commercial mobile data service on the
7 smartphone is able to comply with the requirements
8 under paragraph (1).

9 “(3) EXEMPTIONS FOR FUNCTIONALLY EQUIVA-
10 LENT TECHNOLOGY.—

11 “(A) MOBILE SERVICE PROVIDERS.—The
12 Commission may exempt a provider of commer-
13 cial mobile service or commercial mobile data
14 service on a smartphone, and the manufacturer
15 of, and provider of the operating system for, the
16 smartphone, from the requirement under para-
17 graph (1) with respect to that smartphone if
18 the service provider, in coordination with the
19 manufacturer and operating system provider,
20 makes available on the smartphone technology
21 that accomplishes the functional equivalent of
22 the function, initial prompt, and ability to opt
23 out required under paragraph (1)(A).

24 “(B) MANUFACTURERS AND IMPORTERS.—
25 The Commission may exempt a person from the

1 requirement under paragraph (2)(A), with re-
2 spect to a smartphone that the person manufac-
3 tures in the United States or imports into the
4 United States for sale or resale to the public,
5 if the smartphone is configured in such a man-
6 ner that the provider of commercial mobile serv-
7 ice or commercial mobile data service on the
8 smartphone may make available on the
9 smartphone technology that accomplishes the
10 functional equivalent of the function, initial
11 prompt, and ability to opt out required under
12 paragraph (1)(A).

13 “(c) NO FEE.—A provider of commercial mobile serv-
14 ice or commercial mobile data service on a smartphone
15 may not charge the account holder any fee for making the
16 function, initial prompt, and ability to opt out required
17 under subsection (b)(1)(A), or any equivalent technology
18 described in subsection (b)(3)(A), available to the account
19 holder.

20 “(d) FORFEITURE PENALTY.—

21 “(1) IN GENERAL.—Any person that is deter-
22 mined by the Commission, in accordance with para-
23 graphs (3) and (4) of section 503(b), to have vio-
24 lated subsection (b) or (c) of this section, including
25 a manufacturer or operating system provider that

1 violates the requirement to coordinate with a service
2 provider under subsection (b)(1)(A), shall be liable
3 to the United States for a forfeiture penalty, in an
4 amount to be determined by the Commission.

5 “(2) OTHER PENALTIES.—A forfeiture penalty
6 under this subsection shall be in addition to any
7 other penalty provided for in this Act.

8 “(e) COMMON NATIONAL FRAMEWORK.—The Com-
9 mission shall establish a common national framework for
10 smartphone anti-theft measures that takes into consider-
11 ation the interest of all stakeholders for the purpose of
12 promoting national uniformity of the function, initial
13 prompt, and ability to opt out required under subsection
14 (b)(1)(A), or functionally equivalent technology described
15 in subsection (b)(3)(A), to protect consumers from the
16 theft of smartphones.

17 “(f) TABLETS.—

18 “(1) COMMISSION DETERMINATION.—Not later
19 than 180 days after the date of enactment of the
20 Smartphone Theft Prevention Act of 2015, the Com-
21 mission shall determine whether this section should
22 apply with respect to tablets on which commercial
23 mobile service or commercial mobile data service is
24 provided.

1 “(2) REGULATIONS.—If the Commission deter-
2 mines that this section should apply with respect to
3 tablets described in paragraph (1), the Commission
4 shall promulgate regulations to implement that de-
5 termination.

6 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion shall be construed to prohibit a manufacturer of
8 smartphones, or a provider of commercial mobile service
9 or commercial mobile data service, from taking actions not
10 described in this section to protect consumers from the
11 theft of smartphones.

12 “(h) RELATIONSHIP TO STATE LAW.—Nothing in
13 this section shall be construed to preempt any provision
14 of State law that provides protections to users of
15 smartphones (or tablets, if applicable) that are at least
16 as strong as the protections provided under this section.”.

17 (b) APPLICABILITY OF FUNCTION REQUIREMENT.—

18 (1) DEFINITION.—In this subsection, the term
19 “smartphone” has the meaning given the term in
20 section 343 of the Communications Act of 1934, as
21 added by subsection (a).

22 (2) APPLICABILITY.—Except as provided in
23 paragraph (3), section 343 of the Communications
24 Act of 1934, as added by subsection (a), shall apply

1 with respect to any smartphone that, on or after
2 January 1, 2016, is—

3 (A) manufactured in the United States; or

4 (B) imported into the United States for
5 sale to the public.

6 (3) COMPLIANCE EXTENSIONS.—The Federal
7 Communications Commission may exempt a person
8 that is subject to any requirement under section
9 343(b) of the Communications Act of 1934, as
10 added by subsection (a), from that requirement for
11 a temporary period after the date described in para-
12 graph (2) of this subsection, upon a showing by the
13 person that the person requires more time to be able
14 to comply with the requirement.

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