

2016 Regular Session

HOUSE BILL NO. 1040

BY REPRESENTATIVE JAMES

TELECOMMUNICATIONS: Regulates the manufacture, sale, and lease of telephones with respect to smartphone encryption technology

1 AN ACT

2 To enact Chapter 8-L of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:844.61 through 844.64, relative to smartphone encryption technology; to
4 provide for a short title; to provide for definitions; to regulate the manufacture, sale,
5 and lease of smartphones; to provide for penalties relative to violations; to provide
6 for enforcement; to provide for limited liability; to provide for effectiveness; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 8-L of Title 45 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 45:844.61 through 844.64, is hereby enacted to read as follows:

11 CHAPTER 8-L. LOUISIANA BRITTNEY MILLS ACT

12 §844.61. Short title

13 This Chapter shall be known and may be cited as "The Louisiana Brittney
14 Mills Act".

15 §844.62. Smartphone encryption technology; restrictions

16 A. For the purposes of this Chapter, "smartphone" means any cellular
17 telephone or other mobile voice communications device that utilizes certain
18 capabilities or technologies including but not limited to the following:

19 (1) A mobile operating system.

20 (2) Wireless network connectivity.

1 (3) Mobile software applications.

2 (4) Text messaging.

3 (5) Internet access and browsing.

4 (6) Digital voice service.

5 (7) Sending and receiving mail.

6 (8) Operation of a long-term evolution network or of any other successor
7 wireless data network communication standards.

8 B. Any smartphone manufactured, sold, or leased in this state shall be
9 capable of being decrypted and unlocked by either its manufacturer or its operating
10 system provider without the necessity of obtaining the user passcode.

11 C. Any smartphone that is sold or leased at a retail location within this state
12 or that is sold or leased and delivered to a consumer at an address within this state
13 shall be subject to the provisions of this Chapter.

14 §844.63. Violations; penalties; enforcement

15 A.(1) Each sale or lease of any smartphone shall be considered a violation
16 of the provisions of this Chapter in the event that the seller or lessor of the
17 smartphone knew or reasonably should have known at the time of the sale or lease
18 that the smartphone was not capable of being decrypted and unlocked by either its
19 manufacturer or its operating system provider.

20 (2) The seller or lessor shall be subject to a civil penalty of two thousand five
21 hundred dollars for each violation.

22 (3) No seller or lessor, who is subject to and pays the civil penalty for a
23 violation of the provisions of this Chapter, shall raise the sales or lease price of
24 smartphones for the purpose of passing to the consumer all or part of the penalty.

25 B.(1) Except as provided for in Paragraph (2) of this Section, the attorney
26 general may enforce the provisions of this Chapter.

27 (2) The attorney general shall enforce the provisions of this Chapter when
28 the user of the smartphone, which is incapable of being decrypted and unlocked by

1 either its manufacturer or its operating system provider, is the victim of a homicide
2 as defined in R.S. 14:29.

3 §844.64. Limited liability

4 No manufacturer, operating system provider, seller, or lessor shall be held
5 liable for its inability to decrypt and unlock a smartphone if its inability is the result
6 of actions taken by any other person or entity except when the manufacturer,
7 operating system provider, seller, or lessor:

8 (1) Authorizes the actions that result in the inability to decrypt and unlock
9 the smartphone.

10 (2) Received notice prior to the manufacture, sale, or lease of the smartphone
11 that such actions would reasonably result in the inability to decrypt and unlock the
12 smartphone.

13 Section 2. This Act shall become effective on January 1, 2017.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1040 Original

2016 Regular Session

James

Abstract: Regulates the implementation of smartphone encryption technology by smartphone manufacturers, operating system providers, sellers, and lessors.

Proposed law enacts the Louisiana Brittney Mills Act.

Proposed law defines the term "smartphone" for the purposes of proposed law in order to provide for clarification.

Proposed law requires that any smartphone manufactured, sold, or leased in this state shall be capable of being decrypted and unlocked by either its manufacturer or its operating system provider without the necessity of obtaining the user passcode.

Proposed law clarifies that proposed law is applicable not only to retail locations within the state where smartphones are sold or leased but also to transactions whereby smartphones are sold or leased to consumers and subsequently delivered to an address within the state.

Proposed law states that each sale or lease of a smartphone shall be a violation of proposed law when the seller or lessor of the smartphone knew or reasonably should have known at the time of the sale or lease that the smartphone was not capable of being decrypted and unlocked by either its manufacturer or its operating system provider.

Proposed law declares that the seller or lessor shall be subject to a civil penalty of \$2,500 for each violation of proposed law.

Proposed law prohibits any seller or lessor, who is subject to and has paid the civil penalty for a violation of proposed law, from raising the sales or lease price of smartphones for the purpose of passing to the consumer all or part of the penalty imposed by proposed law.

Proposed law authorizes the attorney general to enforce the provisions of proposed law. Proposed law requires the attorney general to enforce the provisions of proposed law when the user of the smartphone, which is incapable of being decrypted and unlocked by either its manufacturer or its operating system provider, is the victim of a homicide as defined in present law (R.S. 14:29).

Proposed law limits the liability of manufacturers, operating system providers, sellers, or lessors of smartphones when its inability to decrypt and unlock a smartphone is the result of actions taken by any other person or entity. Proposed law enumerates exceptions and clarifies that the liability of those manufacturers, operating system providers, sellers, or lessors will not be limited when they have authorized the action that caused the inability or when they have received notice prior to the manufacture, sale, or lease of the smartphone that such actions would reasonably result in the inability to decrypt and unlock the smartphone.

Effective January 1, 2017.

(Adds R.S. 45:844.61-844.64)