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HOUSE BILL NO. 1281

Offered January 14, 2015

Prefiled August 27, 2014

A BILL to amend the Code of Virginia by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-553, relating to kill switches for digital devices; civil penalties.

Patrons—Spruill, BaCote, Hester and Ward; Senators: Alexander, Dance and Locke

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 59.1 a chapter numbered 50, consisting of sections numbered 59.1-550 through 59.1-553, as follows:

CHAPTER 50.

KILL SWITCHES FOR DIGITAL DEVICES.

§ 59.1-550. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authorized user" means the purchaser of a digital device or individual authorized by the purchaser of the digital device to operate the digital device.

"Digital device" means a cellular phone, tablet device, or other mobile communications device that (i) utilizes a mobile operating system; (ii) possesses advanced computing capability, including the capability to utilize mobile software applications, access and browse the Internet, utilize text messaging, utilize digital voice service, and send and receive email and text messages through a mobile service network; (iii) enables wireless network connectivity; and (iv) is capable of operating on a long-term evolution network and successor wireless data network communication standards. "Digital device" does not include a radio cellular telephone commonly referred to as a feature or messaging phone, a laptop computer, or a device that has only electronic reading capability.

"Hard reset" means the restoration of a digital device to its functional capabilities as when it left its place of manufacture through processes commonly termed a factory reset or master reset.

"Kill switch" means a technological functionality, provided by the manufacturer or operating system provider, that once initiated and successfully communicated to the digital device renders the essential features of the digital device inoperable to an unauthorized user when the digital device is not in the possession of an authorized user. A kill switch (i) may consist of software, hardware, or a combination of software and hardware; (ii) when enabled is able to withstand a hard reset or operating system downgrade and prevents reactivation of the digital device on a wireless network except by an authorized user; (iii) is reversible, so that if an authorized user obtains possession of the digital device after the essential features of the digital device have been rendered inoperable, the operation of those essential features can be restored by an authorized user; and (iv) may provide the authorized user of a digital device the ability to disable or opt out of enabling the kill switch at any time, provided that the physical acts necessary to disable or opt out of enabling the kill switch can be performed only by the authorized user to disable or opt out of enabling the kill switch.

"Sold in the Commonwealth," or any variation thereof, means that the digital device sold at retail is from a location within Virginia or the digital device is sold and shipped to an end-use consumer at an address within Virginia. "Sold in the Commonwealth" does not include a digital device that is resold in Virginia on the secondhand market or that is consigned and held as collateral on a loan.

§ 59.1-551. Kill switch required.

No person shall sell in the Commonwealth any new digital device manufactured on or after July 1, 2015, unless:

1. The digital device is equipped at the time of sale with a preloaded kill switch that, during the digital device's initial device setup process, prompts an authorized user to enable the kill switch; or

2. A kill switch may be downloaded to the digital device by an authorized user at any time following its sale in the Commonwealth at no cost to the authorized user.

§ 59.1-552. Injunctive relief.

The Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin any violation of this chapter. The proceeding shall be brought in the district or circuit court of any county or city where the digital device was sold at retail or to which the digital device was shipped to an end-use consumer.

§ 59.1-553. Civil penalty.

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59 *A court may assess upon the person selling a digital device in the Commonwealth in violation of any*
60 *provision of this chapter a civil penalty of not less than \$250 nor more than \$1,000 per such sale. Civil*
61 *penalties assessed under this section shall be collected by the Office of the Attorney General and*
62 *deposited into the Literary Fund.*