

FIRST REGULAR SESSION

# HOUSE BILL NO. 144

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE NICHOLS.

0482L.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 407, RSMo, by adding thereto two new sections relating to antitheft protection for smartphones or wireless communications devices, with a penalty provision.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 407, RSMo, is amended by adding thereto two new sections, to be known as sections 407.312 and 407.313, to read as follows:

**407.312. 1. (1) For purposes of this section, "smartphone" means a cellular phone or other mobile device that:**

**(a) Is built on a smartphone mobile operating system;**

**(b) Possesses advanced computing capability;**

**(c) Enables network connectivity; and**

**(d) Is capable of operating on a long-term evolution network and successor wireless data network communication standards.**

**(2) Capabilities a smartphone may possess include, but are not limited to, built-in applications, internet access, digital voice service, text messaging, email, and web browsing.**

**(3) A smartphone does not include a phone commonly referred to as a feature or messaging phone, a laptop computer, a tablet device, or a device that has only electronic reading capability.**

**2. Any new smartphone manufactured on or after January 1, 2016, sold or purchased in Missouri shall be equipped with preloaded antitheft functionality or be capable of downloading that functionality. The functionality shall be available to purchasers at no cost.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

**407.313. 1. (1) Every wireless communications device dealer, including an agent, employee, or representative of the dealer, shall keep a written record at the time of each purchase or acquisition of a used wireless communication device for resale. The record shall include the following and may be kept in electronic form:**

**(a) An accurate account or description of the wireless communications device purchased or acquired;**

**(b) The date, time, and place or the online platform the wireless communications device was purchased or acquired;**

**(c) The name and address of the person selling or delivering the wireless communications device;**

**(d) The number of the seller's driver's license, Missouri identification card number, or other identification number from an identification document issued by any state, federal, or foreign government if the document includes the person's photograph, full name, birth date, and signature; and**

**(e) A statement signed by the seller, under penalty of perjury, attesting that the wireless communications device is not stolen and is free of any liens or encumbrances and the seller has the right to sell it.**

**(2) Records required to be maintained under subdivision (1) of this subsection shall be retained by the wireless communications device dealer for a period of three years.**

**(3) The record, as well as the wireless communications device purchased or received, shall at all reasonable times be available for inspection by any law enforcement agency.**

**(4) No record is required for wireless communications devices purchased from merchants, manufacturers, or wholesale dealers having an established place of business, but a bill of sale or other evidence of open or legitimate purchase of the wireless communications device shall be obtained and kept by the wireless communications device dealer, which shall be shown upon demand to any law enforcement agency.**

**(5) Except as otherwise provided in this section, a wireless communications device dealer or the dealer's agent, employee, or representative shall not disclose personal information received under subdivision (1) of this subsection concerning a customer without the customer's consent unless the disclosure is made in response to a request from a law enforcement agency. A wireless communications device dealer shall implement reasonable safeguards to protect the security of the personal information and prevent unauthorized access to or disclosure of the information. For purposes of this subsection, "personal information" is any individually identifiable information gathered in connection with a record under subdivision (1) of this subsection.**

37           **2. A wireless communications device dealer, including an agent, employee, or**  
38 **representative of the dealer, shall not:**

39           **(1) Make any false entry in the records of transactions involving a used wireless**  
40 **communications device;**

41           **(2) Falsify, obliterate, destroy, or remove from the place of business the records,**  
42 **books, or accounts relating to used wireless communications device transactions;**

43           **(3) Refuse to allow the appropriate law enforcement agency to inspect records or**  
44 **any used wireless communications device in the dealer's possession during the ordinary**  
45 **hours of business or other times acceptable to both parties;**

46           **(4) Fail to maintain a record of each used wireless communications device**  
47 **transaction for three years; or**

48           **(5) Purchase a used wireless communications device from a person under the age**  
49 **of eighteen years.**

50           **3. A wireless communications device dealer shall pay for purchases of all used**  
51 **wireless communications devices by check mailed to a specific address or by electronic**  
52 **transfer.**

53           **4. (1) Whenever a law enforcement official from any agency has probable cause**  
54 **to believe that a wireless communications device in the possession of a wireless**  
55 **communications device dealer is stolen or is evidence of a crime and notifies the dealer not**  
56 **to sell the item, the dealer shall not:**

57           **(a) Process or sell the item; or**

58           **(b) Remove or allow its removal from the premises.**

59

60 **This investigative hold shall be confirmed in writing by the originating agency within**  
61 **seventy-two hours and will remain in effect for thirty days from the date of the initial**  
62 **notification, until the investigative hold is cancelled or renewed, or until a law enforcement**  
63 **notification to confiscate or directive to release is issued, whichever comes first.**

64           **(2) If a wireless communications device is identified as stolen or as evidence in a**  
65 **criminal case, a law enforcement official may:**

66           **(a) Physically confiscate and remove the wireless communications device from the**  
67 **wireless communications device dealer, under a written notification;**

68           **(b) Place the wireless communications device on hold and extend the hold under**  
69 **subdivision (1) of this subsection, and leave the device at the premises; or**

70           **(c) Direct its release to a registered owner or owner's agent.**

71           **(3) When an item is confiscated, the law enforcement agency doing so shall provide**  
72 **identification upon request of the wireless communications device dealer, and shall provide**

73 the name and telephone number of the confiscating agency and investigator, and the case  
74 number related to the confiscation.

75 (4) When an investigative hold or notification to confiscate is no longer necessary,  
76 the law enforcement official or designee shall notify the wireless communications device  
77 dealer.

78 (5) A wireless communications device dealer may sell or otherwise dispose of the  
79 wireless communications device if:

80 (a) A notification to confiscate is not issued during the investigative hold; or

81 (b) A law enforcement official does not physically remove the wireless  
82 communications device from the premises within fifteen calendar days from issuance of a  
83 notification to confiscate.

84 (6) If a wireless communications device dealer is required to hold the wireless  
85 communications device at the direction of law enforcement for purposes of investigation  
86 or prosecution, or if the device is seized by law enforcement, the wireless communications  
87 device dealer and any other victim is entitled to seek restitution, including any out-of-  
88 pocket expenses for storage and lost profit, in any criminal case that may arise from the  
89 investigation against the individual who sold the wireless communications device to the  
90 wireless communications device dealer.

91 5. A wireless communications device dealer, or the agent, employee, or  
92 representative of the wireless communications device dealer, who intentionally violates a  
93 provision of this section is guilty of a class B misdemeanor.

94 6. (1) This section shall not apply with respect to a wireless communications device  
95 returned to the store where it was originally purchased under the return policies of the  
96 wireless communications device dealer, commercial mobile radio service (CMRS) provider,  
97 manufacturer, or retailer.

98 (2) This section shall not apply with respect to wireless communications devices  
99 acquired by a:

100 (a) CMRS provider as part of a trade-in or a repair and refurbishment program;

101 or

102 (b) Manufacturer as part of a trade-in program.

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