

**SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION**

S.F. No. 1740

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DATE	D-PG	OFFICIAL STATUS
02/25/2014	5819	Introduction and first reading Referred to Jobs, Agriculture and Rural Development
03/27/2014	6950a	Comm report: To pass as amended
	6950	Second reading
03/28/2014	7158	Author added Dziedzic
05/02/2014	8636a	Special Order: Amended
	8637	Laid on table
	8639a	Taken from table
	8639	Third reading Passed as amended
05/09/2014		Returned from House with amendment Laid on table Taken from table Senate concurred Third reading Passed

A bill for an act

relating to telecommunications; consumer protection; requiring antitheft functionality for smart phones to deter theft; establishing requirements for acquisition and resale of wireless communications devices; proposing coding for new law in Minnesota Statutes, chapters 325E; 325F.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE 1

SMART PHONE ANTITHEFT PROTECTION

Section 1. **[325F.698] SMART PHONE ANTITHEFT PROTECTION.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Smart phone" means a cellular phone or other mobile device built on a mobile operating system and possessing advanced computing capability. Features a smart phone may possess include, but are not limited to, built-in applications, Internet access, digital voice service, text messaging, e-mail, and Web browsing. "Smart phone" does not include a device that has only electronic reading capability.

Subd. 2. **Antitheft functionality required.** Any new smart phone manufactured on or after July 1, 2015, sold or purchased in Minnesota must be equipped with preloaded antitheft functionality or be capable of downloading that functionality. The functionality must be available to purchasers at no cost and easily operable by people with disabilities. The antitheft functionality may be used by a third party only with the consent of the account holder of the smart phone.

EFFECTIVE DATE. This section is effective July 1, 2015.

3.1 Subd. 2. **Purchase or acquisition record required.** (a) Every wireless
3.2 communications device dealer, including an agent, employee, or representative of the
3.3 dealer, but not an internet marketplace, shall keep a written record at the time of each
3.4 purchase or acquisition of a used wireless communications device for resale. The record
3.5 must include the following and may be kept in electronic form:

3.6 (1) an accurate account or description of the wireless communications device
3.7 purchased or acquired;

3.8 (2) the date, time, and place or the online platform the wireless communications
3.9 device was purchased or acquired;

3.10 (3) the name and address of the person selling or delivering the wireless
3.11 communications device;

3.12 (4) the number of the check or electronic transfer used to purchase the wireless
3.13 communications device;

3.14 (5) the number of the seller's driver's license, Minnesota identification card number,
3.15 or other identification number from an identification document issued by any state,
3.16 federal, or foreign government if the document includes the person's photograph, full
3.17 name, birth date, and signature; and

3.18 (6) a statement signed by the seller, under penalty of perjury as provided in section
3.19 609.48, attesting that the wireless communications device is not stolen and is free of any
3.20 liens or encumbrances and the seller has the right to sell it.

3.21 (b) Records required to be maintained under this subdivision shall be retained by the
3.22 wireless communications device dealer for a period of three years.

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

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

3.30 (e) Except as otherwise provided in this section, a wireless communications device
3.31 dealer or the dealer's agent, employee, or representative may not disclose personal
3.32 information received pursuant to paragraph (a) concerning a customer without the
3.33 customer's consent unless the disclosure is made in response to a request from a law
3.34 enforcement agency. A wireless communications device dealer must implement
3.35 reasonable safeguards to protect the security of the personal information and prevent
3.36 unauthorized access to or disclosure of the information. For purposes of this paragraph,

4.1 "personal information" is any individually identifiable information gathered in connection
4.2 with a record under paragraph (a).

4.3 Subd. 3. **Records; prohibitions.** A wireless communications device dealer,
4.4 including an agent, employee, or representative of the dealer, shall not:

4.5 (1) make any false entry in the records of transactions involving a used wireless
4.6 communications device;

4.7 (2) falsify, obliterate, destroy, or remove from the place of business the records,
4.8 books, or accounts relating to used wireless communications device transactions;

4.9 (3) refuse to allow the appropriate law enforcement agency to inspect records or
4.10 any used wireless communications device in the dealer's possession during the ordinary
4.11 hours of business or other times acceptable to both parties;

4.12 (4) fail to maintain a record of each used wireless communications device transaction
4.13 for three years; or

4.14 (5) purchase a used wireless communications device from a person under the age of
4.15 18 years.

4.16 Subd. 4. **Payment for used wireless communications devices.** A wireless
4.17 communications device dealer shall pay for purchases of all used wireless communications
4.18 devices by check mailed to a specific address or by electronic transfer.

4.19 Subd. 5. **Investigative holds; confiscation of property.** (a) Whenever a law
4.20 enforcement official from any agency has probable cause to believe that a wireless
4.21 communications device in the possession of a wireless communications device dealer is
4.22 stolen or is evidence of a crime and notifies the dealer not to sell the item, the dealer shall
4.23 not (1) process or sell the item, or (2) remove or allow its removal from the premises.
4.24 This investigative hold must be confirmed in writing by the originating agency within 72
4.25 hours and will remain in effect for 30 days from the date of initial notification, until
4.26 the investigative hold is canceled or renewed, or until a law enforcement notification to
4.27 confiscate or directive to release is issued, whichever comes first.

4.28 (b) If a wireless communications device is identified as stolen or as evidence in a
4.29 criminal case, a law enforcement official may:

4.30 (1) physically confiscate and remove the wireless communications device from the
4.31 wireless communications device dealer, pursuant to a written notification;

4.32 (2) place the wireless communications device on hold or extend the hold under
4.33 paragraph (a), and leave the device at the premises; or

4.34 (3) direct its release to a registered owner or owner's agent.

4.35 (c) When an item is confiscated, the law enforcement agency doing so shall provide
4.36 identification upon request of the wireless communications device dealer, and shall

5.1 provide the name and telephone number of the confiscating agency and investigator, and
5.2 the case number related to the confiscation.

5.3 (d) A wireless communications device dealer may request seized property be
5.4 returned in accordance with section 626.04.

5.5 (e) When an investigative hold or notification to confiscate is no longer necessary,
5.6 the law enforcement official or designee shall notify the wireless communications device
5.7 dealer.

5.8 (f) A wireless communications device dealer may sell or otherwise dispose of the
5.9 wireless communications device if:

5.10 (1) a notification to confiscate is not issued during the investigative hold; or

5.11 (2) a law enforcement official does not physically remove the wireless
5.12 communications device from the premises within 15 calendar days from issuance of a
5.13 notification to confiscate.

5.14 (g) If a wireless communications device dealer is required to hold the wireless
5.15 communications device at the direction of law enforcement for purposes of investigation
5.16 or prosecution, or if the device is seized by law enforcement, the wireless communications
5.17 device dealer and any other victim is entitled to seek restitution, including any
5.18 out-of-pocket expenses for storage and lost profit, in any criminal case that may arise from
5.19 the investigation against the individual who sold the wireless communications device to
5.20 the wireless communications device dealer.

5.21 Subd. 6. **Video security cameras required.** (a) Each wireless communications
5.22 device dealer shall install and maintain at each physical location video surveillance
5.23 cameras, still digital cameras, or similar devices positioned to record or photograph a
5.24 frontal view showing a readily identifiable image of the face of each seller of a wireless
5.25 communications device who enters the physical location.

5.26 (b) The video camera or still digital camera must be kept in operating condition and
5.27 must be shown upon request to a properly identified law enforcement officer for inspection.
5.28 The camera must record and display the accurate date and time. The video camera or still
5.29 digital camera must be turned on at all times when the physical location is open for business
5.30 and at any other time when wireless communications devices are purchased or sold.

5.31 (c) Recordings and images required by paragraph (a) shall be retained by the wireless
5.32 communications device dealer for a minimum period of 30 days and shall at all reasonable
5.33 times be open to the inspection of any properly identified law enforcement officer.

5.34 Subd. 7. **Criminal penalty.** A wireless communications device dealer, or the
5.35 agent, employee, or representative of the wireless communications device dealer, who
5.36 intentionally violates a provision of this section is guilty of a misdemeanor.

6.1 Subd. 8. **Application.** (a) This section does not apply with respect to a wireless
6.2 communications device returned to the store where it was originally purchased pursuant
6.3 to the return policies of the wireless communications device dealer, CMRS provider,
6.4 manufacturer, or retailer.

6.5 (b) This section does not apply with respect to wireless communications devices
6.6 acquired by a: (1) CMRS provider as part of a trade-in program; (2) manufacturer as
6.7 part of a trade-in program; or (3) retailer whose trade-in program: (i) reports records to
6.8 the Minnesota Automated Property System in an interchange file specification format
6.9 maintained by the system; (ii) reports to other national or regional transaction reporting
6.10 database available to law enforcement; or (iii) reports as required by local ordinance.

6.11 (c) This section does not apply to wireless communications device dealers regulated
6.12 under chapter 325J.

6.13 **EFFECTIVE DATE.** This section is effective July 1, 2014.

APPENDIX
Article locations in S1740-2

ARTICLE 1 SMART PHONE ANTITHEFT PROTECTION Page.Ln 1.7
ARTICLE 2 RESALE OF CELLPHONES Page.Ln 2.9