



Berkeley City Council

CONSENT CALENDAR

March 25, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kriss Worthington and Jesse Arreguin

Subject: Senate Bill 962, the “Cell Phone Kill Switch” Bill.

RECOMMENDATION:

Adopt a Resolution supporting Senate Bill (SB) 962, authored by State Senator Mark Leno, which would require that any new mobile communications device sold in California to be enabled with a remote solution to render the device inoperable when not in the possession of the rightful owner. Copies of the Resolution are to be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senators Mark Leno and Loni Hancock, Assembly Speaker John A. Perez, and Assemblymember Nancy Skinner.

BACKGROUND:

As reported by the *San Francisco Chronicle*, as many as 40% of all robberies nationwide are smartphone thefts. Smartphone theft constitutes about 75% of all thefts in some cities, and nationally there are about 113 smartphones being stolen every minute. A recent study figures that smartphone losses and thefts cost consumers about \$30 billion yearly.

Smartphones are an appealing target for thieves and would-be criminals, because they can easily be resold, mainly due to many device manufacturers that do not have preinstalled programs or solutions for device owners to remotely disable their phones.

Senator Mark Leno and Assemblymember Nancy Skinner have recently co-written a bill, SB 962 that would require all smartphone and tablet manufacturers to equip their devices with a digital ‘kill switch’ that would render the devices useless if stolen or lost. Eliminating the device’s ability to be reactivated would discourage thieves from stealing smartphones, as the devices would be virtually useless and, to a degree, worthless.

SB 962 calls for pre-equipped theft-deterrence technology on mobile devices. Programs or technology similar to this kind of ‘kill switch’ already exist rather widely around the world; Australia has a national anti-theft program that utilizes electronic serial numbers (that program has been shown to reduce smartphone theft figures by over 25%). Apple, the manufacturer of the ubiquitous iPhone, already includes a digital ‘kill switch’ option on mobile devices. Following the lead of such a leading manufacturer is a

commonsense solution for consumers and could save many millions of dollars, as well as time and worry.

The City of Berkeley was the first city to officially call on wireless manufacturers and service providers to create such solutions to deter theft and support for SB 962 would be consistent with previous positions taken by Council on the subject.

FINANCIAL IMPLICATIONS:

None.

CONTACT PERSON:

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Attachments:

1. Resolution
2. Senate Bill 962
3. Article from SFGate.com, "[Kill switch' bill for mobile devices takes aim at theft](http://www.sfgate.com/news/article/Kill-switch-bill-for-mobile-devices-takes-aim-5215038.php)". (<http://www.sfgate.com/news/article/Kill-switch-bill-for-mobile-devices-takes-aim-5215038.php>)

RESOLUTION NO. XXXX

IN SUPPORT OF SENATE BILL 962 ('THE KILL SWITCH BILL') AND
PREINSTALLATION OF REMOTE MOBILE DEVICE DEACTIVATION TECHNOLOGY

WHEREAS, many residents of the City of Berkeley own smartphones, whose usage is publicly ubiquitous; and

WHEREAS, the City of Berkeley recognizes that, given the high monetary value of smartphones, smartphone users are often targeted for theft; and

WHEREAS, the ability to digitally and remotely 'deactivate' one's own mobile device when lost could save smartphone owners a great deal of trouble, and help protect their safety; and

WHEREAS, this same ability to digitally 'kill' one's mobile device would also serve to discourage would-be thieves from taking smartphones, because they might often be rendered useless by the true property owner once stolen; and

WHEREAS, smartphone and mobile device theft can be violent and traumatizing, and the problem has grown increasingly rampant, not only in the City of Berkeley, but throughout the State; and

WHEREAS, mobile device theft costs consumers more than \$30 billion a year while the wireless industry makes an estimated \$7.8 billion selling theft and loss insurance on mobile devices -on top of selling replacement devices; and

WHEREAS, Senator Mark Leno and Assemblymember Nancy Skinner have introduced Senate Bill 962, the 'Kill Switch Bill', which would require mobile device manufacturers to preinstall these digital protections on mobile devices for consumers.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports Senate Bill 962, the 'Kill Switch Bill', which will help protect consumers from costly and sometimes traumatizing thefts.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senators Mark Leno and Loni Hancock, Assembly Speaker John A. Perez, and Assemblymember Nancy Skinner.

SENATE BILL**No. 962**

Introduced by Senator Leno
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as introduced, Leno. Advanced mobile communications devices.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any advanced mobile communications device, as defined, that is sold in California on or after January 1, 2015, include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, as defined, when the device is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined. The bill would prohibit the sale of an advanced mobile communications device in California without the technological solution being enabled, but would authorize the rightful owner to affirmatively elect to disable the technological solution after sale. The bill would prohibit a provider of commercial mobile radio service, as defined, from including any term or condition in a service contract with an end-use consumer with an address within the state that requires or encourages the consumer or rightful owner to disable the technological solution that renders the consumer's smartphone or other advanced communications device useless if stolen. The bill would make a violation of the bill's requirements subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- P2 1 SECTION 1.
 The Legislature finds and declares all of the
 2 following:
 3 (a) According to the Federal Communications Commission,
 4 one in three robberies in the United States involve the theft of a
 5 mobile communications device, making it the number one property
 6 crime in the country. Many of these robberies often turn violent
 7 with some resulting in the loss of life.
 8 (b) Consumer Reports projects that 1.6 million Americans were
 9 victimized for their smartphones in 2012.
 10 (c) According to the New York Times, 113 smartphones are
 11 lost or stolen every minute in the United States.
 12 (d) According to the Office of the District Attorney for the City
 13 and County of San Francisco, in 2012, more than 50 percent of all
 14 robberies in San Francisco involved the theft of a mobile
 15 communications device.
 16 (e) Thefts of smartphones in Los Angeles increased 12 percent

17 in 2012, according to the Los Angeles Police Department.

18 (f) According to press reports, the international trafficking of
19 stolen smartphones by organized criminal organizations has grown
20 exponentially in recent years because of how profitable the trade
21 has become.

22 (g) Replacement of lost and stolen mobile communications
23 devices was an estimated thirty-billion-dollar (\$30,000,000,000)
24 business in 2012 according to studies conducted by mobile
25 communications security experts. Additionally, industry
26 publications indicate that the four largest providers of commercial
27 mobile radio services made an estimated seven billion eight
28 hundred million dollars (\$7,800,000,000) from theft and loss
29 insurance products in 2013.

30 (h) Technological solutions that render stolen mobile
31 communications devices useless already exist, but the industry has
32 been slow to adopt them.

P3 1 (i) In order to be effective, these technological solutions need
2 to be ubiquitous, as thieves cannot distinguish between those
3 mobile communications devices that have the solutions enabled
4 and those that do not. As a result, the technological solution should
5 be able to withstand a hard reset or operating system downgrade,
6 and be enabled by default, with consumers being given the option
7 to affirmatively elect to disable this protection.

8 (j) Manufactures of advanced mobile communications devices
9 and commercial mobile radio service providers have a
10 responsibility to ensure their customers are not targeted as a result
11 of purchasing their products and services.

12 (k) It is the intent of the Legislature to require all smartphones
13 and other advanced mobile communications devices offered for
14 sale in California to come with a technological solution enabled,
15 in order to deter theft and protect consumers.

16 (l) It is the further intent of the Legislature to prohibit any term
17 or condition in a service contract between a customer and a
18 commercial mobile radio service provider that requires or
19 encourages the customer to disable the technological solution that
20 renders the customer's smartphone or other advanced
21 communications device useless if stolen.

22 SEC. 2.

Section 22761 is added to the Business and Professions
23 Code, to read:

24 22761.

(a) For purposes of this section, the following terms
25 have the following meanings:

26 (1) "Advanced mobile communications device" means an
27 electronic device that is regularly hand held when operated that
28 enables the user to engage in voice communications using mobile
29 telephony service, Voice over Internet Protocol, or Internet Protocol
30 enabled service, as those terms are defined in Sections 224.4 and
31 239 of the Public Utilities Code, and to connect to the Internet,
32 and includes what are commonly known as smartphones and
33 tablets.

34 (2) "Commercial mobile radio service" means "commercial
35 mobile service," as defined in subsection (d) of Section 332 of
36 Title 47 of the United States Code and as further specified by the
37 Federal Communications Commission in Parts 20, 22, 24, and 25
38 of Title 47 of the Code of Federal Regulations, and includes

P4 39 "mobile satellite telephone service" and "mobile telephony
1 service," as those terms are defined in Section 224.4 of the Public
2 Utilities Code.

3 (3) "Essential features" of an advanced mobile communications
4 device include the ability to use the device for voice
5 communications and the ability to connect to the Internet, including
6 the ability to access and use mobile software applications
7 commonly known as "apps."

8 (4) "Hard reset" means the restoration of an advanced mobile
9 communications device to the state it was in when it left the
10 factory, and refers to any act of returning a device to that state,
11 including processes commonly termed a factory reset or master
12 reset.

13 (5) "Sold in California" means that the advanced mobile
14 communications device is sold at retail, and not for resale, from a
15 location within the state, or the advanced mobile communications
16 device is sold and shipped to an end-use consumer at an address
17 within the state.

18 (b) (1) Any advanced mobile communications device that is
19 sold in California on or after January 1, 2015, shall include a
20 technological solution that can render the essential features of the
21 device inoperable when the device is not in the possession of the
22 rightful owner. A technological solution may consist of software,
23 hardware, or a combination of both software and hardware, but
24 shall be able to withstand a hard reset. No advanced mobile
25 communications device may be sold in California without the
26 technological solution enabled.

27 (2) The rightful owner of an advanced mobile communications
28 device may affirmatively elect to disable the technological solution
29 after sale. However, the physical acts necessary to disable the
30 technological solution may only be performed by the end-use
31 consumer or a person specifically selected by the end-use consumer
32 to disable the technological solution and shall not be physically
33 performed by any retail seller of the advanced mobile
34 communications device.

35 (c) A provider of commercial mobile radio service shall not
36 include a term or condition in a service contract with an end-use
37 consumer with an address within the state that requires or
38 encourages the consumer or rightful owner to disable the
39 technological solution that renders the consumer's smartphone or
40 other advanced communications device useless if stolen.

P5 1 (d) (1) A person or retail entity selling an advanced
2 communications device in California in violation of subdivision
3 (b) shall be subject to a civil penalty of not less than five hundred
4 dollars (\$500), nor more than two thousand five hundred dollars
5 (\$2,500), per device sold in California.

6 (2) A provider of commercial mobile radio service that includes
7 a term or condition in a service contract with an end-use consumer

8 with an address within the state in violation of subdivision (c) shall
9 be subject to a civil penalty of not less than five hundred dollars
10 (\$500), nor more than two thousand five hundred dollars (\$2,500),
11 per service contract with an end-use consumer with an address
12 within California.

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'Kill switch' bill for mobile devices takes aim at theft

Kevin Fagan

Updated 4:38 am, Saturday, February 8, 2014

Smartphones and other mobile devices in California would have to have a "kill switch" that would render them inoperable if lost or stolen, under what state Sen. Mark Leno bills as first-of-its-kind legislation in the nation.

Mobile device thefts account for 67 percent of all robberies in San Francisco, and in Oakland the figure is 75 percent. Leno, D-San Francisco, said Friday that the bill he introduced this week would protect users by requiring that companies include technology through which cell phones and tablets can be rendered inoperable by remote control.

"This is a crime of convenience, and if we end the convenience, we end the crime," Leno said at a San Francisco press conference.

State Assemblywoman Nancy Skinner, D-Berkeley, said that if Leno's SB962 clears the Senate, she will carry the legislation in her chamber. The police chiefs of Oakland and San Francisco and elected leaders including Oakland Mayor Jean Quan stood with her during Leno's announcement, and they all said they anticipate stiff pushback from manufacturers because wireless firms indirectly benefit from thefts.

The replacement of lost and stolen mobile devices is a \$30 billion-a-year business in the U.S., they said, and wireless carriers collectively make at least \$7.8 billion on theft and loss insurance.

"A business model based on the victimization of customers is not a business model worth defending," Leno said.

CTIA-The Wireless Association, a trade group for wireless providers, says that kill switches leave devices open to hacking and that it prefers to promote other methods, such as use of national stolen-device databases.

"These 3G and 4G/LTE databases, which blacklist stolen phones and prevent them from being reactivated, are part of the solution," Michael Altschul, the association's senior vice president, wrote in an e-mail Friday. "Yet we need more international carriers and countries to participate to help remove the after-market abroad for these trafficked devices."

Government records show that the theft of about 1.5 million smartphones every year constitutes as much as 40 percent of all robberies in the nation.

Apple offers a kill switch on its iPhones, but it is optional. Leno's bill would require all mobile devices to install kill switches, and although it would give buyers the option to disable the switches, it would outlaw companies from encouraging people to do so.

Violations of the law would bring civil penalties of \$500 to \$2,500. Leno is aiming to have the bill on the governor's desk by September.

Sprint spokeswoman Crystal Davis said in an e-mail that "while open to a kill switch option, Sprint remains concerned that 'permanent' kill switches could lead to unintended consequences for customers, reputable recycling programs, and legitimate used or trade-in devices, given that many devices reported lost or stolen are subsequently found by their owners."

San Francisco District Attorney George Gascón, who has been pursuing kill switch legislation with Leno for more than a year, called the industry's responses "disingenuous."

"I don't see any rational reason for not passing this law," he said.

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