

HB 144 -- ANTI-THEFT PROTECTION FOR WIRELESS COMMUNICATIONS DEVICES

SPONSOR: Nichols

This bill requires any new smartphone manufactured on or after January 1, 2016, sold or purchased in Missouri to be equipped with preloaded anti-theft functionality or be capable of downloading that functionality. The functionality must be available to the purchaser at no cost.

Every wireless communications device dealer, including an agent, employee, or representative of the dealer, must keep a written record at the time of each purchase or acquisition of a used wireless communication device for resale. The record must include specified information, may be kept in electronic form, and must be retained by the dealer for three years. The record, as well as the device purchased or received, must at all reasonable times be available for inspection by any law enforcement agency.

A record is not required for a wireless communications device purchased from a merchant, manufacturer, or wholesale dealer having an established place of business, but a bill of sale or other evidence of open or legitimate purchase of the device must be obtained and kept by the dealer and must be shown upon demand to any law enforcement agency.

A wireless communications device dealer or the dealer's agent, employee, or representative must not disclose personal information received concerning a customer without the customer's consent unless the disclosure is made in response to a request from a law enforcement agency. A dealer must implement reasonable safeguards to protect the security of the personal information and prevent unauthorized access to or disclosure of the information. "Personal information" is any individually identifiable information gathered in connection with a record.

A wireless communications device dealer, including an agent, employee, or representative of the dealer, must not:

- (1) Make any false entry in the records of transactions involving a used wireless communications device;
- (2) Falsify, obliterate, destroy, or remove from the place of business the records, books, or accounts relating to used device transactions;
- (3) Refuse to allow the appropriate law enforcement agency to inspect records or any used device in the dealer's possession during the ordinary hours of business or other times acceptable to

both parties;

(4) Fail to maintain a record of each used device transaction for three years; or

(5) Purchase a used device from a person under the age of 18 years.

A wireless communications device dealer must pay for purchases of all used wireless communications devices by check mailed to a specific address or by electronic transfer. Whenever a law enforcement official from any agency has probable cause to believe that a device in the possession of a dealer is stolen or is evidence of a crime and notifies the dealer not to sell the item, the dealer must not process or sell the item or remove or allow its removal from the premises. This investigative hold must be confirmed in writing by the originating agency within 72 hours and will remain in effect for 30 days from the date of the initial notification until the investigative hold is canceled or renewed or until a law enforcement notification to confiscate or directive to release is issued, whichever comes first.

If a wireless communications device is identified as stolen or as evidence in a criminal case, a law enforcement official may physically confiscate and remove the device from the wireless communications device dealer, under a written notification; place the device on hold and extend the hold and leave the device at the premises; or direct its release to a registered owner or owner's agent. When an investigative hold or notification to confiscate is no longer necessary, the law enforcement official or designee must notify the dealer.

A wireless communications device dealer may sell or otherwise dispose of the wireless communications device if a notification to confiscate is not issued during the investigative hold or a law enforcement official does not physically remove the device from the premises within 15 days from issuance of a notification to confiscate. If a dealer is required to hold the device at the direction of law enforcement for purposes of investigation or prosecution, or if the device is seized by law enforcement, the dealer and any other victim is entitled to seek restitution, including any out-of-pocket expenses for storage and lost profit, in any criminal case that may arise from the investigation against the individual who sold the device to the dealer.

When an item is confiscated, the law enforcement agency doing so must provide identification upon request of the wireless communications device dealer of the name and telephone number of the confiscating agency and investigator and the case number

related to the confiscation.

A wireless communications device dealer, or the agent, employee, or representative of the wireless communications device dealer, who intentionally violates one of these provisions is guilty of a class B misdemeanor.

These provisions do not apply to a wireless communications device returned to the store where it was originally purchased under the return policies of the wireless communications device dealer, commercial mobile radio service (CMRS) provider, manufacturer, or retailer or to a wireless communications device acquired by a CMRS provider as part of a trade-in or a repair and refurbishment program or to a manufacturer as part of a trade-in program.