

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**


**HB 1222**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Peace Garden Room, State Capitol

HB 1222  
1/20/2015  
22235

- Subcommittee  
 Conference Committee



### Explanation or reason for introduction of bill/resolution:

Anti-theft functionality for smartphones and to provide for a report to the legislative management.

### Minutes:

Attachments 1-5

**Chairman Keiser:** Opens the hearing on HB 1222.

**Representative Hanson:** Introduces the bill. (Attachment 1).

4:35

**Representative Laning:** Do you know what the added cost to put that on phones?

**Representative Hanson:** I do not.

**Representative Beadle:** How many states currently have the kill switch legislation and would this possibly that we would no longer have I-Phones in North Dakota. They don't want to sell them here because they don't want to install them automatically?

**Representative Hanson:** Two states have this in place. I can't imagine that the major cell phone carriers wanting to discontinue to have those customers.

**Representative Beadle:** If it must be equipped with and preloaded with anti-theft functionality, what I'm wondering, if Apple decided to include this on their I-Phones, would look at and say, North Dakota is a market that we have to have this on our phones. So, we are not selling the phone in that market because it's a small market.

**Representative Hanson:** My understanding is that a lot of states are moving towards, currently. As far as a major carrier would do, I can't image them cutting out a consumer base of any population size.

**Representative Ruby:** If this must be available to purchasers at no cost, how are you going to enforce that?

**Representative Hanson:** I wanted them to be required in the state of North Dakota. I don't know how to mandate that consumer cost.

**Representative Ruby:** We have laws against theft, why are we mandating a manufacturer of a product to have an anti-theft function. We don't require that on vehicle, toasters, etc., so where would you draw the line on that?

**Representative Hanson:** It's not my intent to punish those who manufacture the device; we want to take as many steps as possible for theft to protect personal information.

**Representative Lefor:** Do you have any idea what this will cost per phone.

**Representative Hanson:** I don't know the cost.

**Representative Becker:** Are there currently smartphone and apps that have the kill switch?

**Representative Hanson:** Yes, there are.

**Representative Becker:** Are there also apps to wipe information when you lose it?

**Representative Hanson:** Yes.

**Chairman Keiser:** Is there anyone else here to testify in support to HB 1222, opposition?

**Jamie Hastings~CTIA-The Wireless Association:** (Attachment 2).

**19:45**

**Representative Louser:** When I type anti-theft on my smart phone, the 1<sup>st</sup> 36 apps are free. When I type kill switch, the first 7 are free. As a consumer is the integrity behind those apps flawed?

**Hastings:** We stopped counting the number of apps and counted the number of companies that were offering these kinds of apps. We've seen over 30. We know for a fact that there are lots of viable alternative for consumers.

**Representative Kasper:** These free apps, are they potentially mining the data? Is there any federal regulation that protects the privacy of the customer?

**Hastings:** I'm no expert in this area; the protection of the privacy of our consumers is utmost. There are federal regulations called CPNI, which our companies adhere to. It's a highly competitive industry and the good companies are going to be the companies that are going to be successful.

**Representative Kasper:** Does your association have a policy that your members adhere to not mining and protecting individual privacies?

**Hastings:** We certainly do.

**Representative Beadle:** I'm curious about the California law that passed the kill switch legislation that starts June 21, 2015. What is the difference between the California law versus what this one is, and how is it going to affect the industry as a whole?

**Hastings:** You're correct, we are concerned about a patchwork quilt of regulations in this regard across the states. With respect to California's CTIA, was opposed, continued to be opposed up until the governor signed that bill. You're correct in that some of our members took a neutral position. I will tell you that CTIA, with the support of our members, were fully engaged and opposed. I'm not sure that we will know for a while, the unintended negative consequences of that bill. There is no regulation that can keep up with the speed of the wireless industry. This is why we asked California not to take that action.

**Representative Lefor:** What is the percentage of wireless carriers in this country that are members of yours?

**Hastings:** With the voluntary commitment, they represent 97% of the subscribers here in the United States.

**Representative Lefor:** This 97%, is this still voluntary. Have all of these members sign on that you're going to do this and your statement manufactured after July 2015 for retail sales, that could take it until 2016 and longer?

**Hastings:** Yes, to the last question. The first question?

**Lefor:** You have 97% of the carriers in the country, what percent of those have agreed to follow this commitment? All the companies?

**Hastings:** Yes. Our companies have the integrity.

**Representative Laning:** Do you have an estimated cost per phone to put this feature on?

**Hastings:** I do not know that.

**Representative Amerman:** How do we know it's of no cost to consumers? How long with this base line anti-theft tool is of no cost before we have to pay?

**Hastings:** There has been a commitment to provide this at no cost. When the consumer walks in, they are not going to be faced with this additional service. With respect to base line, we are going to do amazing things in this industry and it's a competitive industry. If it's something the consumer wants, our companies will provide it.

**33:00**

**Cheryl Riley~AT&T President External Affairs, Northern Plains States:** (Attachment 3).

**Chairman Keiser:** If you are doing it all voluntary, why is it so bad to put it statute?

**Riley:** It's the patchwork of different regulations, with all the states.

**Chairman Keiser:** This could be a market issue, but the concern is the smart phone has a lot of information. Why should we rely solely on a volunteer bases to get a kill switch on them versus let the market take care of it?

**Riley:** Because of the variety of the competition, this will take care of it.

**Representative Laning:** If I bought a smart phone, lose it, had it killed, and then found it, can I get it reactivated again?

**Hastings:** The term kill switch, you can reverse that.

**Jon Godfread~Greater ND Chamber of Commerce:** (Attachment 4).

**Representative Kasper:** In this case, the chamber is against a mandate?

**Godfread:** Correct.

**Steve Lysny~General Manager & CEO of SRT Wireless:** (Attachment 5).

**Representative Beadle:** What other brands of phone makers are out there that rural wireless might be involved in.

**Lysne:** Those are going to be the primary ones, we don't carry as large of a variety of phones because we don't have the market.

**Chairman Keiser:** Is there anyone else here to testify in opposition to HB 1222, neutral? Closes the hearing. What are the wishes of the committee?

**Representative Becker:** Moves for a Do Not Pass on HB 1222.

**Representative Kasper:** Second.

**Representative Becker:** I don't think the consumers need protection because the protection is already available to them. The market gave us the best option available.

**Representative Hanson:** It's confusing, the testimony we've gotten on the bill says that we are not ready for this yet, but the industry is already ahead of it. My intention was to give a bedrock of protection for consumers.

**Representative Ruby:** I think they are ahead of this. When the market dictates, they are going to protect it. I agree with the motion.

**Representative Hanson:** The voluntary commitment made by these companies, I don't know that all consumers are as savvy to know about a kill switch.

**Roll call was taken on HB 1222 for a Do Not Pass with 11 yes, 3 no, 1 absent and Representative Beadle is the carrier.**

Date: Jan 20, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1222

House Industry, Business & Labor Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep Becker Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	\	x
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	Ab		Representative Hanson		x
Representative Kasper	x		Representative M Nelson		x
Representative Laning	x				

Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep Beadle

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1222: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1222 was placed on the Eleventh order on the calendar.



**2015 TESTIMONY**

**HB 1222**

Jan 20, 2015

**HB 1222 Testimony; Rep. Ben Hanson**

**House Committee on Industry, Business and Labor:**

*January 9<sup>th</sup>, 2015 testimony in regards to HB 1222; A BILL for an Act provide for anti-theft functionality for smartphones; and to provide for a report to the legislative management.*

Mr. Chair, fellow committee members, for the record my name is Ben Hanson and I am a representative from District 16 in Fargo and West Fargo. I stand before you today to testify in favor HB 1222.

In 2013 (the last year stats are available) 3.1 million Americans had their smart phones stolen. In addition to the simple monetary loss of the phone, many of their passwords, accounts etc. were abused. That was more than double the previous year's rate\*. Given estimates that 144 million Americans were using smart phones that year\*\*, this means a staggering 2.15% of consumers were subject to theft. The potential for increased rates of theft only rises as smart phone use becomes more prevalent.

Stolen, unlocked smart phones are worth quite a bit in domestic and international the black market. They are often worth quite a bit more in other countries and can even be used as currency in some more improvised. With the sheer amount of apps, email and personal information all available on most smart phones, identity theft becomes a secondary theft to victims of theft.

Unless they are un-usable. Which brings me to the "Kill-Switch" device that can be included in smart phone devices. Kill Switches allow someone who has had their phone stolen (or is simply misplaced) to contact their service provider and render their phone unable to turn on or be used in any way. This serves the dual purpose of protecting the person's information while providing a deterrent for theft from simple elimination in value of re-sale. Personal information such as contact info, phone numbers, etc. could still be saved via Cloud technology.

The threat to consumers and the persistent problem of smart phone theft is fairly universally agreed upon. The solution is not. This bill provides a local solution. In 2014 an attempt at federal legislation to ensure the basic, bedrock consumer protection of kill-switches, or the

ability to render a stolen or lost device unusable, called *The Smartphone Theft Prevention Act* went nowhere. HB 1222 provides a local answer to this problem.

\*"Outsmarting the Outlaws" NCSL. 6/1/2014

\*\*Statista



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### Volunteer Income Tax Assistance

Feb 14 2015 - 8:00am to 6:00pm

Free income tax assistance provided by accounting students



### GMAT Prep Class

Feb 21 2015 - 8:00am to Feb 28 2015 - 8:00am

GMAT Preparation Class reviewing math and grammar

## Creighton Professor Releases Research on Mobile Phone Kill Switch

Mar 30 2014 - 9:00pm

### Creighton Professor, Consumer Advocate, Releases Research Showing Kill Switch in Mobile Phones Could Save Consumers Billions Annually

OMAHA, Neb. – New research released today from Creighton University Heider College of Business professor and consumer advocate William Duckworth, Ph.D., shows consumers overwhelmingly support the Kill Switch in mobile phones and they could save \$2.6 billion annually if it were made mandatory on all phones.

In a survey of 1,200 smartphone owners, Duckworth studied consumer support for the Kill Switch, consumer habits regarding cell phone insurance and the links between the two. His findings indicate that consumers not only support a free Kill Switch on all phones, they expect it.

“My research suggests that at least half of smartphone owners would in fact reduce their insurance coverage if the Kill Switch reduced the prevalence of cell phone theft,” said Duckworth. “Overall, it seems clear that Americans want the Kill Switch and that an industry-wide implementation of the technology could significantly improve public safety and save consumers billions of dollars a year.”

To estimate the financial savings a Kill Switch could deliver, he considered two components: the cost of replacing stolen phones and the cost of paying for premium cell phone insurance covering stolen phones. He found a Kill Switch could save Americans up to \$2.6 billion per year. According to the survey:

- Americans spend about \$580 million per year replacing stolen phones.
- They also spend another \$4.8 billion per year paying for premium cell phone insurance from their wireless carriers.

If the Kill Switch significantly reduced cell phone theft, consumers could save about \$580 million a year by not needing to replace stolen phones and another \$2 billion a year by switching from premium cell phone insurance to more basic coverage offered by third parties such as Apple and SquareTrade for a total of about \$2.6 billion annually.

An Executive Summary of this research is available [here](#).

Duckworth is an associate professor of Business Intelligence and Analytics in the Heider College of Business at Creighton University. His research focuses on consumer behavior, statistics, experiment designs and computational issues in statistics. He received National Science Foundation grants and awards for his efforts to improve teaching and learning in statistics. Duckworth also designed and released the “Warranty Consultant” app for the iPhone.

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## OUTSMARTING THE OUTLAWS

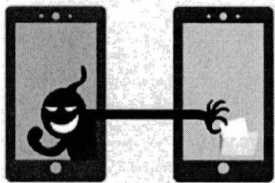
6/1/2014

STATE LEGISLATURES MAGAZINE | JUNE 2014

### As cell phone thefts soar, lawmakers look for ways to protect consumers and thwart the thieves.

By Jo Anne Bourquard

Property crimes may be down, but smartphone thefts are escalating, say law enforcement officials. This is particularly true in large cities, where about 40 percent of robberies involve the theft of a mobile phone, the Federal Communications Commission (FCC) reports. Consumer Reports recently disclosed that cell phone thefts nearly doubled last year, increasing from 1.6 million stolen phones in 2012 to 3.1 million in 2013.



People talking on their phones in public, inattentive to their surroundings, make easy targets for thieves, who are after the wealth of personal financial data contained on the phones and the high resale value phones fetch on the international black market.

A recent study by Creighton University found 145 million Americans currently have smartphones, and they spend about \$4.8 billion a year on cell phone insurance and another \$580 million replacing stolen phones.

The survey of 1,200 smartphone users in February 2014 indicated overwhelming support (99 percent) for giving consumers the option of disabling their lost cell phones. The study estimates consumers could save about \$2.6 billion a year if cell phones came with "kill switches."

#### What's a Kill Switch?

Kill switch software allows the smartphone to be made inoperable after it is reported stolen by wiping out just about everything on the phone—contacts, photos, emails sent and received, and other information—and locking it, preventing the phone from being reactivated without an authorized user's consent and password.

Many believe this technology is the best way to thwart the thieves. Lawmakers in California and Minnesota debated bills this year to require the use of a kill switch or other technology to disable stolen phones.

Kill switch legislation also has been introduced in at least three other states—Illinois, New York and Rhode Island. In addition, pending legislation in New York prohibits wireless phone providers from activating mobile telephones belonging to another owner unless authorized to do so.

"One of the top catalysts for street crime in many California cities is smartphone theft, and these crimes are becoming increasingly violent," says California Senator Mark Leno (D). He believes kill switch technology is capable of stopping "cell phone thieves in their tracks."

The California Senate passed legislation in early May that requires all smartphones sold in the state to come pre-equipped with theft-detering technological solutions to render the device useless if stolen, beginning next year. Senate Bill 962, authored by Senator Leno and sponsored by San Francisco District Attorney George Gascón, is supported by law enforcement groups, and would allow consumers to opt-out of using the technology. Companies that fail to comply would be subject to a penalty.

"We're one step closer to ending the violence and victimization that far too many people have been subjected to. California truly has an opportunity to lead the way and end this public safety crisis," says Leno.

Minnesota enacted a law in May requiring all smartphones sold after July 1, 2015, to have the switch software. The law also requires retailers of used smartphones to keep records of sales and mixes the use of cash for payment. "With this new law, Minnesota is leading the way and acting on this growing threat to public safety," says Representative Joe Atkins (DFL), sponsor of the measure in the House.

At the federal level, several pieces of legislation have been introduced that would: require providers to install kill switches; ban anyone from altering or removing the unique ID numbers on mobile devices; and prohibit cell phone companies from providing service to any mobile device that has been reported stolen.

#### Industry Seeks Solution

In April, Oregon Senator Bruce Starr (R), NCSL president, applauded the wireless industry's "commitment to reduce the number of smartphone thefts" after it announced its support of a voluntary campaign to include the kill-switch anti-

<http://www.ncsl.org/research/telecommunications-and-information-technology/outsmarting-the-outlaws.aspx>

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theft technology in all phones manufactured after July 2015.

CTIA, the wireless industry association trade group, is promoting that the kill switch feature be preloaded or available as a free download and that consumers be given the choice whether to activate it. The group also believes an authorized user should be able to reverse the kill switch feature when the phone is found.

"Wireless companies, manufacturers and operating system companies are taking a step in the right direction," wrote Rhode Island Senator Dominick J. Ruggerio (D) in an opinion piece in the Providence Journal. He's concerned that although technology has "made our world more convenient, it has also put users at greater risk."

The program has commitments from Apple, Google and Samsung as well as AT&T, Sprint, T-Mobile and Verizon Wireless among others. "This flexibility provides consumers with access to the best features and apps that fit their unique needs, while protecting their smartphones and the valuable information they contain," says CTIA's Steve Largent. "It's important that different technologies are available," he says, "so that a 'trap door' isn't created that could be exploited by hackers and criminals."

### Other Efforts

The FCC has teamed up with law enforcement agencies and wireless carriers—including Verizon Wireless, AT&T, Sprint and T-Mobile—to create a national database of the unique identification numbers of cell phones reported stolen, which went live at the end of 2013.

Carriers use these ID numbers (known as IMEI, or International Mobile Equipment Identity) to disable the phone's ability to communicate with its mobile network.

Some law enforcement officials say the database won't solve the problem, however, because phone IDs can be easily modified by thieves, and because many stolen phones end up overseas where they are not covered by the database.

The FCC also has launched a public education campaign, the PROTECT Initiative, to encourage consumers to activate and use the password protection option on their smartphones and tablets.

Attorneys general in at least 29 states, Guam and Puerto Rico have joined prosecutors, police chiefs, state and city comptrollers, and public safety activists to form the Secure Our Smartphones (S.O.S.) initiative to find technical solutions to removing the economic incentives for re-selling stolen smartphones.

The coalition says it's time to halt the increase in crime that has smartphone theft—also known as "Apple picking"—at its core.

## MOBILE PHONES

### By the Numbers

**91%**

Percentage of American adults who own cell phones

**56%**

Percentage of American adults who own smartphones

**113**

iPhones and Android phones stolen or lost every minute in the United States

**3.1 million**

Cell phones stolen in 2013

**175 million**

Mobile phones, primarily smartphones, sold in the United States in 2013

Sources: Pew Research Center Internet and American Life report, 2013; New York Attorney General's Office; International Data Corporation, and Consumer Reports

Jo Anne Bourquard is a senior fellow in NCSL's Member Outreach and Digital Communications Division.

### Additional Resources

#### NCSL Resources

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#### Other Resources

Smart phone thefts rose to 3.1 million last year, Consumer Reports finds | [Consumer Reports](#)



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## Apple's iPhone, the New International Currency

By Vernon Silver February 06, 2014

### iPriciest Countries

tax included

1.	Brazil	\$1,196
2.	Jordan	\$1,090
3.	Turkey	\$1,059
4.	Romania	\$1,026
5.	Greece	\$1,012
6.	Hungary	\$1,005
7.	Malta	\$998
7.	Italy	\$998
9.	Denmark	\$990
10.	France	\$971

DATA COMPILED BY BLOOMBERG  
GRAPHIC BY BLOOMBERG BUSINESSWEEK

I've been paying my bills with iPhones. Not with apps or on bank sites—I've been using the Apple (AAPL) hardware as currency.

It started by accident in December, during a business trip to New York. I live in Rome, where domestic work comes cheap and technology is expensive. An unlocked, gold, 32-gigabyte iPhone 5s that costs about \$815 with tax in the U.S. goes for €839 (about \$1,130) in Italy, roughly a month's wages for workers who do laundry, pick up kids from school, or provide care for the elderly. When one worker heard I was visiting the States, she asked me to pick her up an iPhone in lieu of the equivalent cash for work she'd done. Lining up inside the Apple Store on Fifth Avenue, I was surrounded by shoppers speaking languages from around the world. The salesman looked stunned when I said I wanted an unlocked iPhone. Just one?

A new shipment of unlocked 5s phones had just come in, he said, adding that the gold model I asked for was the most popular in Europe and the easiest to resell. To my right, a man with a credit card from a Saudi bank was trying to buy his third and fourth phones of the day. "Make it two," I said. There was one more step: The salesman grabbed a landline from behind the counter to connect me with my bank's antifraud department. Purchases from this store, he said, are red flags.

Do the math, and that's no surprise. Exiting the store with my plastic Apple shopping bag secured by a rope drawstring, I no longer thought of the phones inside as appliances. They were more like gold bars.

Transnational workers rich and poor have long dealt in an ever-evolving system of arbitrage for luxury goods carrying significant price differences around the world. A few years ago, it was Louis Vuitton (MC:FP) and Gucci (KER:FP) handbags, bought in Paris by Asians who paid for trips home by selling the purses at a markup. In the early 1990s, Levi's jeans served a similar function for Americans in Eastern Europe. Today, it's the iPhone, especially that gold 5s.

Kyle Wiens, chief executive officer of the iPhone spare-parts distributor iFixit, was scuba diving during a break from a November conference in Cabo San Lucas, Mexico, when the dive leader offered free boat trips if Wiens ever returned to Mexico with iPhones to sell at the U.S. price. (The phone costs about 16 percent more in Mexico than in the U.S.) Wiens says he's seeing more and more widespread iPhone arbitrage. When he goes to China to meet suppliers, he brings a couple iPhones and iPads to sell at cost, as a gesture of goodwill.

Alexander Peterc, an analyst with Exane BNP Paribas whose office sits above the Apple Store on London's Regent Street, says that for more than a month after the 5s came out last year, people from countries where it wasn't yet available lined up every day. "They can probably pay their plane ticket by buying two phones and selling them in India," says Peterc.

Apple CEO Tim Cook has hinted that the cross-border movement of iPhones is important to his bottom line. In July, when Apple reported revenue in Greater China had dropped 14 percent in the previous quarter, to \$4.6 billion, he blamed a downturn in purchases in Hong Kong, where tourists and resellers are major customers. Apple spokeswoman Teresa Brewer declined to comment.

According to a list of iPhone prices in 48 countries compiled by Stanmere (U.K.)-based Mobile Unlocked, the cheapest 5s with 16GB of memory can be purchased for about \$700 in the U.S. The most expensive country in which to purchase the same phone is Brazil, at \$1,200. At a little less than \$1,000, Italy ranked seventh-most expensive, tied with Malta.

Within a couple days of my return, I exchanged both phones for domestic work, valuing them at the \$815 I'd paid. The second phone's recipient sold hers for its local value (\$1,130) to an acquaintance, she said, with payments to be made over time. She told me the new owner sold the phone at an additional markup on an installment plan that will cost the final buyer about \$1,350.



On a trip to Los Angeles a few weeks after my Fifth Avenue purchases, I found myself in front of another Apple Store. Walking in felt like a visit to an ATM. I asked the salesperson for an unlocked iPhone 5s. The response: Just one?

I didn't have a buyer lined up, so I did buy only one. Still, when I got back to Italy, I exchanged it within a week, for €600 worth of household work from someone whose phone had been stolen on the subway. She'd bought the stolen one on layaway for €1,000, and is still paying it off.

I was relieved to make the deal: An iPhone's value lasts only until the next product launch. For now, the 5s is holding steady, even against that other new currency—Bitcoin.

The bottom line: U.S. Apple stores mean free money to international travelers, whose neighbors have to pay far more at home.



Silver is a reporter for Bloomberg News in Rome, and author of *The Lost Chalice: The Real-Life Chase for One of the World's Rarest Masterpieces* (HarperCollins). Follow him on Twitter @vtsilver.

**Testimony of  
Jamie Hastings  
CTIA – THE WIRELESS ASSOCIATION®  
In Opposition to House Bill 1222**

**January 20, 2015**

**Before the North Dakota House Industry, Business and Labor Committee**

Mr. Chairman and members of the Committee, I am Jamie Hastings with CTIA-The Wireless Association®, the trade association for the wireless communications industry, in opposition to HB 1222. Although the wireless industry shares the sponsor's goal of reducing smartphone theft, we do not support the approach proposed in this bill as we believe it is unnecessary - given the wireless industry's commitment to provide anti-theft tools to consumers - and unworkable.

In April 2014, CTIA and participating wireless companies announced a smartphone anti-theft commitment, which is one of the most recent efforts by the industry to help aid law enforcement to deter smartphone thefts in the United States. In Part I of the Commitment each device manufacturer and operating system signatory agrees that new models of smartphones first manufactured after July 2015 for retail sale in the United States will offer, at no cost to consumers, a baseline anti-theft tool that is preloaded or downloadable on wireless smartphones. Part II of the Commitment provides that each network operator that is a signatory commits to permit the availability and full usability of a baseline anti-theft tool to be pre-loaded or downloaded.

This announcement by the wireless industry negates any need for passing HB 1222. The industry has already committed to providing this tool to consumers, which will further strengthen the fight against smartphone theft. The most recent announcement is in addition to a number of steps taken by the wireless industry to assist law enforcement in their efforts to address smartphone theft, including the deployment of an integrated stolen phones database, outreach to educate consumers, and

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the development of numerous security solutions. This multi-layered approach, which is necessary to truly combat smartphone theft, is absent in this legislation.

CTIA and its member companies work collaboratively with the Federal Communications Commission (FCC), law enforcement officials, and lawmakers to help prevent smartphone thefts and to dry up the aftermarket for stolen phones. In April 2012, we announced a voluntary commitment by CTIA and participating wireless companies to take certain actions to help law enforcement deter smartphone theft and protect personal data, including the development of a stolen phones database to report and track all stolen 4G/LTE phones in the U.S. All participating wireless carriers completed this database integration in November 2013. Wireless carriers use the database to check whether a smartphone presented to them has been reported lost or stolen. If the smartphone has been reported lost or stolen, it will be denied service on carrier networks.

The database is interconnected across mobile carriers and is a resource for law enforcement to use to deter thefts. To enhance the effectiveness of the database solution, U.S. databases are integrated internationally. Efforts are underway to link more foreign carriers and countries to the database to mitigate the export of stolen phones to markets outside the U.S. In collaboration with carriers, local law enforcement should make extensive use of the industry's stolen phones database and corresponding solutions. I would like to take this opportunity to invite North Dakota's law enforcement agencies to seek access to the database.

In addition to the deployment of the integrated database, the wireless industry has been individually and collectively educating consumers on ways to help reduce smartphone theft. These initiatives include highlighting consumer use of passwords, applications, and other preventative measures so that if a consumer's smartphone is ever lost or stolen, personal information is protected. These education efforts include information at the time of smartphone activation, public service announcements, websites, e-mail, and social media outreach.

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CTIA and its members have also taken steps to aid law enforcement by providing resources to educate consumers about measures they can and should take. CTIA developed a website beforeyouloseit.org for tips and information. We also developed an attention grabbing public service announcement with guidance to consumers to use their smartphones' features and apps to remote lock, track, and wipe their devices if they are lost or stolen. Most recently, CTIA made available business cards in Spanish and English to provide smart tips to consumers to deter smartphone theft.

In addition to being unnecessary in light of these industry commitments, legislation, such as HB 1222 suggests that state by state regulation is workable in this area. State-by-state regulation will never keep pace with innovation in the global wireless ecosystem. What lawmakers mandate as a solution today may not be the solution consumers demand or need tomorrow. Any mandated technology standard will quickly become outdated in the fast-moving world of wireless applications and technology. Moreover, requiring a particular technology mandate is counter to the policies that have made the wireless industry one of the most important and vibrant sectors of our economy.

Wireless service operates without regard to territorial boundaries and state lines and thus is uniquely interstate and national. As the FCC has explained, Congress sought to ensure a "national regulatory policy" for wireless, "not a policy that is balkanized state-by-state." HB 1222 will influence device design, manufacturing, and wireless service far beyond North Dakota's borders. And, if other states, territories, and local governments regulate in this area, the potential for conflicting technical and operational requirements among state, territorial, and commonwealth legislatures, not to mention thousands of local governments, is staggering. The resulting patchwork of state and local laws will negatively impact wireless consumers. Even the most knowledgeable wireless consumers may experience confusion when purchasing and using their devices under those circumstances.

CTIA and wireless companies are committed to continuing to develop solutions to prevent smartphone theft. In June 2014, the Chairman of the FCC convened a workshop on the prevention of

mobile device theft. CTIA participated on a panel with law enforcement representatives regarding the nature of the problem and steps that the industry had taken in support of law enforcement efforts. As a result of the workshop, the FCC Chairman chartered the Technological Advisory Committee (TAC) to address a set of recommendations for preventing the theft of mobile devices by the end of 2014.

To fulfill the Chairman's mandate, the TAC created a new working group - the Mobile Device Theft Prevention (MDTP) Working Group. The first organizational meeting of the MDTP took place on August 1, 2014. The group is organized into five areas: problem definition, existing solutions, gap analysis, cybersecurity and privacy, and consumer outreach. The group made over 30 recommendations to the FCC Chairman on December 4, 2014. That report is now out for public comment with initial comments due by January 30, 2015. North Dakota should allow the wireless industry to meet its previously announced commitment to provide anti-theft solutions to consumers and allow the process at the federal level to work before considering legislation on this issue.

In closing, the wireless industry has been at the forefront of addressing smartphone theft. The industry's ongoing multi-layered efforts eliminate the need for new legislation on this issue. The approach incorporated in HB 1222, although well-intentioned, will lead to unintended negative consequences for North Dakota consumers. For these reasons, we ask that you give HB 1222 a **Do Not Pass** recommendation. Thank you for your time and I would be willing to answer any questions.



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January 20, 2015

RE: House Bill 1222

House Industry, Business and Labor

Cheryl Riley, AT&T President External Affairs, Northern Plains States

Dear Chairman Keiser and Members of the House Industry, Business and Labor Committee:

I am writing to express concerns with HB1222. AT&T believes that the wireless industry has taken actions that make this legislation unnecessary. Additionally, we believe that the bill could also have unintended consequences that could be detrimental to consumers.

First, consumers who want to disable their stolen or lost phones can do that now. Existing operating systems and apps already provide that capability and a variety of companies offer security solutions to accomplish the same end. For example, Apple currently supports this functionality in iOS7 and Google's Android supports similar functionality as well.

Second, a stolen phone database has been developed and is in operation to report and track all stolen 4G/LTE phones in the United States. Through this system, devices can be de-activated and re-activated, as needed. U.S wireless carriers are already integrated into this database and there are efforts underway to link more foreign carriers as well.

Third, AT&T has undertaken a collaborative and comprehensive approach with the rest of the wireless industry, policy makers, the public safety community and law enforcement to protect consumers in the event their device is lost or stolen. It's called the "Smartphone Anti-Theft Voluntary Commitment," which is the most recent effort by CTIA and the wireless industry to deter smartphone thefts in the U.S.

In part, the "Smartphone Anti-Theft Voluntary Commitment" states:

Each device manufacturer and operating system agrees that new models of smartphones first manufactured after July 2015 for retail sale in the United States will offer, at no cost to consumers, a baseline anti-theft tool that is preloaded or downloadable on wireless smartphones that provides the connected capability to:

- Remote wipe the authorized user's data (i.e., erase personal info that is added after purchase such as contacts, photos, emails, etc.) that is on the smartphone in the event it is lost or stolen.
- Render the smartphone inoperable to an unauthorized user (e.g., locking the smartphone so it cannot be used without a password or PIN), except in accordance with FCC rules for 911



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emergency communications, and if available, emergency numbers programmed by the authorized user (e.g., “phone home”).

- Prevent reactivation without authorized user’s permission (including unauthorized factory reset attempts) to the extent technologically feasible (e.g., locking the smartphone) above).
- Reverse the inoperability if the smartphone is recovered by the authorized user and restore user data on the smartphone to the extent feasible (e.g., restored from the cloud).

In short, we believe that state legislation is unnecessary and could have some unforeseen consequences such as:

- Universally mandated technology to render phones inoperable makes those phones susceptible to being compromised and rendered inoperable by hackers and criminals.
- State legislation that mandates a particular technological solution is a snapshot in time and can quickly become obsolete. The wireless industry innovates at warp speed and today’s solutions can quickly be rendered ineffective. The vibrant growth and development of an incredible array of advanced technology in the lightly regulated wireless industry should serve as a reminder of the benefits of letting the market work.

Rather than legislation, AT&T advocates consumer education as the best way to protect customers and their data. AT&T offers complete device tutorials, apps, and more to help our customers safeguard their phones and personal information.

The wireless industry has been at the forefront of addressing wireless device theft. The industry’s efforts have incorporated a multi-layered approach to the issue. The “one size fits all” approach incorporated in HB1222, although well-intentioned, will lead to unintended negative consequences for North Dakota consumers.

I urge you to avoid using legislation to mandate a solution and needlessly thrust government into the wireless industry. Let this market work to provide benefits to North Dakota consumers, businesses, and the economy as a whole.

Sincerely,

Cheryl Riley  
AT&T President External Affairs, Northern Plains States

Testimony of Jon Godfread  
Greater North Dakota Chamber of Commerce  
HB 1222  
January 20, 2015

Mr. Chairman and members of the committee, My name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. Greater North Dakota Chamber is working to build the strongest business environment possible through its more than 1,100 business members as well as partnerships and coalitions with local chambers of commerce from across the state. Greater North Dakota Chamber also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in opposition of HB 1222.

Currently consumers have the ability to disable lost or stolen phones. Some phones already come with this security software preloaded and some require the downloading of an app to gain this ability. This is a consumer choice on how they choose to protect their cell phones. We believe it's appropriate for the consumer to have the choice of security software, each being a little bit different, some are more complex that offer more options, some are simpler and easy to use. This is about consumer choice and not about state regulation

Secondly, this type of legislation could lead to 50 different sets of rules and regulations which would be not only difficult for the industry and the providers but also potentially harmful to the consumer. Businesses are consumers of cell phones and smart phones. To mandate that there be a kill switch or anti-theft policy on every cell phone could open up that cell phone consumer to hacking. If all of a certain carrier's phones have certain anti-theft software, a hacker could potentially hack into that provider and disable many cell phones which could have a detrimental effect on business as whole.

While we appreciate the need to protect our cell phones and the headache that can result from them being either lost or stolen. State regulation is not the solution, the industry has done a good job of providing different options for securing a cell phone, locating it if it's lost, and being able to remotely disable it if needed. We would encourage the industry to continue working on these issues, without the need of a state mandate.

Thank you for the opportunity to appear before you today in opposition to HB 1222. I would be happy to answer any questions.

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## HOUSE BILL 1222

### HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

JANUARY 20, 2015

#### STEVE LYSNE SRT COMMUNICATIONS

Good afternoon, my name is Steve Lysne, I am the General Manager and CEO of SRT Communications, located in Minot. I also appear on behalf of the Rural Wireless Association, a national organization that advocates for small wireless carriers.

SRT Wireless provides service to more than 10,000 customers. With 73 towers spanning from White Earth to Rugby, the Canadian border to Wilton, SRT offers 3G service which allows our customers the benefits of next generation wireless service including voice, data and video, at the speeds customers want and need today. To date, SRT has invested in excess of \$40 million dollars to provide rural North Dakotans with these services.

This is an issue on which SRT largely agrees with CTIA. We've not been outspoken on the issue, but instead let CTIA carry the water. As the CTIA testimony notes, CTIA announced a smartphone anti-theft commitment in April 2014. More information about that commitment is available here for your reference. For the most part we agree with the CTIA testimony.

The top 5 largest carriers have signed the CTIA commitment, but regional and rural carriers have not:

Small and rural (Tier III) carriers share the bill sponsors' goal of reducing smartphone theft.

However, Tier III wireless service providers typically do not have the size or purchasing power necessary to place equipment orders directly with handset manufacturers.

These carriers rely on secondary or tertiary market vendors for their handset supply and, similarly, lack the size and

purchasing power necessary to dictate handset functions/ specifications that are available through these vendors.

Tier III carriers often do not have the same access to the latest wireless phone models manufactured for the United States that the larger carriers enjoy.

Compliance with HB 1222, or even the CTIA commitment, on the same time frame as the large nationwide carriers would be next to impossible.

There is the concern of the compliance costs HB 1222 would impose on small and rural carriers in particular.

We agree that state by state legislation is not a workable solution, this is a national issue.

The argument that state legislation will be unable to keep pace with innovation and that any enacted technology standard will become outdated almost immediately is also compelling, particularly given the fact that the ND legislature meets only once every two years.

SRT Wireless asks that you give a "Do Not Pass" recommendation to House Bill 1222.