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## DIGEST

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HB 1040 Original

2016 Regular Session

James

**Abstract:** Regulates the implementation of smartphone encryption technology by smartphone manufacturers, operating system providers, sellers, and lessors.

Proposed law enacts the Louisiana Brittney Mills Act.

Proposed law defines the term "smartphone" for the purposes of proposed law in order to provide for clarification.

Proposed law requires that any smartphone manufactured, sold, or leased in this state shall be capable of being decrypted and unlocked by either its manufacturer or its operating system provider without the necessity of obtaining the user passcode.

Proposed law clarifies that proposed law is applicable not only to retail locations within the state where smartphones are sold or leased but also to transactions whereby smartphones are sold or leased to consumers and subsequently delivered to an address within the state.

Proposed law states that each sale or lease of a smartphone shall be a violation of proposed law when the seller or lessor of the smartphone knew or reasonably should have known at the time of the sale or lease that the smartphone was not capable of being decrypted and unlocked by either its manufacturer or its operating system provider.

Proposed law declares that the seller or lessor shall be subject to a civil penalty of \$2,500 for each violation of proposed law.

Proposed law prohibits any seller or lessor, who is subject to and has paid the civil penalty for a violation of proposed law, from raising the sales or lease price of smartphones for the purpose of passing to the consumer all or part of the penalty imposed by proposed law.

Proposed law authorizes the attorney general to enforce the provisions of proposed law. Proposed law requires the attorney general to enforce the provisions of proposed law when the user of the smartphone, which is incapable of being decrypted and unlocked by either its manufacturer or its operating system provider, is the victim of a homicide as defined in present law (R.S. 14:29).

Proposed law limits the liability of manufacturers, operating system providers, sellers, or lessors of smartphones when its inability to decrypt and unlock a smartphone is the result of actions taken by any other person or entity. Proposed law enumerates exceptions and clarifies that the liability of

those manufacturers, operating system providers, sellers, or lessors will not be limited when they have authorized the action that caused the inability or when they have received notice prior to the manufacture, sale, or lease of the smartphone that such actions would reasonably result in the inability to decrypt and unlock the smartphone.

Effective January 1, 2017.

(Adds R.S. 45:844.61-844.64)