

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 411**

5 (SENATORS PREZIOSO AND LAIRD, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed March 10, 2012; in effect ninety days from passage.]  
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10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §61-3-22a, relating  
12 to electronic cash register automated sales suppression  
13 devices and phantom-ware; providing definitions; making it  
14 unlawful to willfully and knowingly sell, purchase, install,  
15 transfer or possess in this state any automated sales  
16 suppression device or phantom-ware; providing criminal  
17 penalties and civil liability and civil remedies; establishing  
18 that such devices and software are contraband; and providing  
19 for the seizure and destruction of such devices.

20 *Be it enacted by the Legislature of West Virginia:*

21 That the Code of West Virginia, 1931, as amended, be amended  
22 by adding thereto a new section, designated §61-3-22a, to read as  
23 follows:

24 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

25 **§61-3-22a. Possession or use of automated sales suppression**

1                                   **devices; penalty.**

2           (a) *General.* -- When used in this article, words defined in  
3 subsection (b) of this section shall have the meanings ascribed to  
4 them in this section, except in those instances where a different  
5 meaning is provided in this article or the context in which the  
6 word is used clearly indicates that a different meaning is intended  
7 by the Legislature.

8           (b) *Definitions.* --

9           (1) "Automated sales suppression device" or "zapper" means a  
10 software program, carried on a memory stick or removable compact  
11 disc, accessed through an Internet link, or accessed through any  
12 other means, that falsifies the electronic records of electronic  
13 cash registers and other point-of-sale systems, including, but not  
14 limited to, transaction data and transaction reports.

15           (2) "Electronic cash register" means a device that keeps a  
16 register or supporting documents through the means of an electronic  
17 device or computer system designed to record transaction data for  
18 the purpose of computing, compiling or processing retail sales  
19 transaction data in whatever manner.

20           (3) "Phantom-ware" means a hidden, preinstalled or installed  
21 at a later time programming option embedded in the operating system  
22 of an electronic cash register or hardwired into the electronic  
23 cash register that can be used to create a virtual second till or  
24 may eliminate or manipulate transaction records that may or may not  
25 be preserved in digital formats to represent the true or  
26 manipulated record of transactions in the electronic cash register.

1           (4) "Transaction data" includes items purchased by a customer,  
2 the price for each item, a taxability determination for each item,  
3 a segregated tax amount for each of the taxed items, the amount of  
4 cash or credit tendered, the net amount returned to the customer in  
5 change, the date and time of the purchase, the name, address and  
6 identification number of the vendor and the receipt or invoice  
7 number of the transaction.

8           (5) "Transaction report" means a report documenting, but not  
9 limited to, the sales taxes collected, media totals and discount  
10 voids at an electronic cash register that is printed on cash  
11 register tape at the end of a day or shift, or a report documenting  
12 every action at an electronic cash register that is stored  
13 electronically.

14           (c) It is unlawful to willfully and knowingly sell, purchase,  
15 install, transfer or possess in this state any automated sales  
16 suppression device or zapper or phantom-ware.

17           (d) Any person convicted of a violation of subsection (c) of  
18 this section is guilty of a felony and, upon conviction thereof,  
19 shall be confined in a correctional institution for not less than  
20 one nor more than five years, or fined not less than \$10,000 nor  
21 more than \$100,000, or both confined and fined.

22           (e) Any person violating subsection (c) of this section is  
23 liable for all taxes and penalties due the state as the result of  
24 the fraudulent use of an automated sales suppression device, zapper  
25 or phantom-ware and shall forfeit all profits associated with the  
26 sale or use of an automated sales suppression device or phantom-

1 ware.

2 (f) An automated sales suppression device or phantom-ware and  
3 any cash register or device containing such device or software is  
4 contraband and, as such, subject to seizure and destruction by any  
5 duly authorized law-enforcement agency in the state, including the  
6 Criminal Investigation Division of the State Tax Department.