

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 411

(By Senators Prezioso and Laird)

[Originating in the Committee on the Judiciary;
reported February 9, 2012.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3-22a, relating to electronic cash register automated sales suppression devices; providing definitions; stating it shall be unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device; providing for penalties; establishing that such devices and software are contraband; and providing for the seizure and destruction of such devices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-22a. Possession or use of automated sales suppression devices; penalty.

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

7 (b) *Definitions.* —

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

15 (2) “Electronic cash register” means a device that keeps
16 a register or supporting documents through the means of an

17 electronic device or computer system designed to record
18 transaction data for the purpose of computing, compiling or
19 processing retail sales transaction data in whatever manner.

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

28 (4) “Transaction data” includes items purchased by a
29 customer, the price for each item, a taxability determination
30 for each item, a segregated tax amount for each of the taxed
31 items, the amount of cash or credit tendered, the net amount
32 returned to the customer in change, the date and time of the
33 purchase, the name, address and identification number of the
34 vendor and the receipt or invoice number of the transaction.

35 (5) “Transaction report” means a report documenting,
36 but not limited to, the sales taxes collected, media totals and
37 discount voids at an electronic cash register that is printed
38 on cash register tape at the end of a day or shift, or a report

39 documenting every action at an electronic cash register that
40 is stored electronically.

41 (c) It is unlawful to willfully and knowingly sell, pur-
42 chase, install, transfer or possess in this state any automated
43 sales suppression device or zapper or phantom-ware.

44 (d) Any person convicted of a violation of subsection (c)
45 of this section is guilty of a felony and, upon conviction
46 thereof, shall be confined in a correctional institution for not
47 less than one nor more than five years, or fined not less than
48 \$10,000 nor more than \$100,000, or both confined and fined.

49 (e) Any person violating subsection (c) of this section is
50 liable for all taxes and penalties due the state as the result of
51 the fraudulent use of an automated sales suppression device,
52 zapper or phantom-ware and shall forfeit all profits associ-
53 ated with the sale or use of an automated sales suppression
54 device or phantom-ware.

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