1   **H. B. 4303**

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3   (By Delegate White)

4   [By request of the Tax Division]

5   [Introduced January 26, 2012; referred to the

6   Committee on the Judiciary then Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by

11   adding thereto a new section, designated §61-3-22a, relating

12   to electronic cash register automated sales suppression

13   devices; providing definitions; stating it shall be unlawful

14   to willfully and knowingly sell, purchase, install, transfer,

15   or possess in this state any automated sales suppression

16   device; providing for penalties and civil remedies;

17   establishing that such devices and software are contraband;

18   and providing for the seizure and destruction of such devices.

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

20   That the Code of West Virginia, 1931, as amended, be amended

21 by adding thereto a new section, designated §61-3-22a, to read as

22 follows:

23 **ARTICLE 3. Crimes against property.**

24 <u>§61-3-22a.   **Possession or use of automated sales suppression**</u>

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

1 be preserved in digital formats to represent the true or

2 manipulated record of transactions in the electronic cash register.

3   (4) "Transaction data" includes items purchased by a customer,

4 the price for each item, a taxability determination for each item,

5 a segregated tax amount for each of the taxed items, the amount of

6 cash or credit tendered, the net amount returned to the customer in

7 change, the date and time of the purchase, the name, address, and

8 identification number of the vendor, and the receipt or invoice

9 number of the transaction.

10   (5) "Transaction report" means a report documenting, but not

11 limited to, the sales taxes collected, media totals, and discount

12 voids at an electronic cash register that is printed on cash

13 register tape at the end of a day or shift, or a report documenting

14 every action at an electronic cash register that is stored

15 electronically.

16   © It is unlawful to willfully and knowingly sell, purchase,

17 install, transfer or possess in this state any automated sales

18 suppression device or zapper or phantom-ware.

19   (d) Any person convicted of a violation of subsection © of

20 this section is guilty of a felony and, upon conviction thereof,

21 shall be confined in a correctional institution for not less than

22 one nor more than five years, or fined not less than $10,000 nor

23 more than $100,000, or both confined and fined.

24   (e) Any person violating subsection © of this section is

1 liable for all taxes and penalties due the state as the result of

2 the fraudulent use of an automated sales suppression device, zapper

3 or phantom-ware and shall forfeit all profits associated with the

4 sale or use of an automated sales suppression device or phantom-

5 ware.

6   (f) The possession of any device or software defined under

7 subdivision (b)(1) or (b)(3) of this section is prima facie

8 evidence of an attempt to evade tax, and any person found in

9 possession of such device or software is subject to further

10 penalties as provided by law for an attempt to evade tax.

11   (g) An automated sales suppression device or phantom-ware and

12 any cash register or device containing such device or software is

13 contraband, and as such, subject to seizure and destruction by any

14 duly-authorized law-enforcement agency in the state, including the

15 criminal investigation division of the state Tax Department.

16   (h) Notwithstanding the criminal penalties prescribed by this

17 section, the rights of any victims of financial fraud committed

18 through means of any device defined in subsection (b) of this

19 section to pursue civil remedies through the courts shall not be

20 abridged.

     NOTE: The purpose of this bill is to make the use in West
Virginia of electronic cash register automated sales suppression
devices unlawful.

     §61-3-22a is a new section; therefore, it has been completely

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underscored.