

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 411**

4 (By Senators Prezioso and Laird)

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported February 9, 2012.]
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9
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; establishing that such
17 devices and software are contraband; and providing for the
18 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 **§61-3-22a. Possession or use of automated sales suppression**
25 **devices; penalty.**

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

7 (b) *Definitions.* --

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

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

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

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

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

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

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

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

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

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