

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 411**

(SENATORS PREZIOSO AND LAIRD, *original sponsors*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §61-3-22a, relating to electronic cash register automated sales suppression devices and phantom-ware; providing definitions; making it unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device or phantom-ware; providing criminal penalties and civil liability and civil remedies; 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

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*Governor*