

1 H.511

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Crimes; frauds; automated sales suppression devices

5 Statement of purpose of bill as introduced: This bill proposes to prohibit the  
6 sale, purchase, installation, transfer, or possession of automated sales  
7 suppression devices, which are also known as “zappers.”

8 ~~An act relating to “zappers” and automated sales suppression devices.~~ *An act*  
9 *relating to automated sales suppression devices, also known as “zappers.”*

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 13 V.S.A. § 2032 is added to read:~~

12 ~~§ 2032. SALES SUPPRESSION DEVICES~~

13 ~~(a) As used in this section:~~

14 ~~(1) “Automated sales suppression device” or “zapper” means a software~~  
15 ~~program, carried on a memory stick or removable compact disc, accessed~~  
16 ~~through an Internet link, or accessed through any other means, that falsifies~~  
17 ~~transaction data, transaction reports, or any other electronic records of~~  
18 ~~electronic cash registers and other point-of-sale systems.~~

19 ~~(2) “Electronic cash register” means a device that keeps a register or~~  
20 ~~supporting documents through the means of an electronic device or computer~~

1 ~~system designed to record transaction data for the purpose of computing,~~  
2 ~~compiling, or processing retail sales transaction data in any manner.~~

3 (3) "Phantom-ware" means a hidden programming option, whether  
4 preinstalled or installed at a later time, embedded in the operating system of an  
5 electronic cash register or hardwired into the electronic cash register that:

6 (A) can be used to create a virtual second till; or

7 (B) may eliminate or manipulate transaction records.

8 (4) "Transaction data" includes items purchased by a customer, the price  
9 for each item, a taxability determination for each item, a segregated tax amount  
10 for each of the taxed items, the amount of cash or credit tendered, the net  
11 amount returned to the customer in change, the date and time of the purchase,  
12 the name, address, and identification number of the vendor, and the receipt or  
13 invoice number of the transaction.

14 (5) "Transaction reports" means a report documenting, but not limited  
15 to, the sales, taxes collected, media totals, and discount voids at an electronic  
16 cash register that is printed on cash register tape at the end of a day or shift, or  
17 a report documenting every action at an electronic cash register that is stored  
18 electronically.

19 (b) A person shall not knowingly sell, purchase, install, transfer, or possess  
20 an automated sales suppression device or phantom-ware. A person who

1 ~~violates this subsection shall be imprisoned for not less than one year and not~~  
2 ~~more than five years and fined not more than \$100,000.00, or both.~~

3 (c) A person who violates subsection (b) of this section shall be liable to  
4 the State for:

5 (1) all taxes, interest, and penalties due as the result of the person's use  
6 of an automated sales suppression device or phantom-ware; and

7 (2) all profits associated with the person's sale of an automated sales  
8 suppression device or phantom-ware.

9 (d) An automated sales suppression device or phantom-ware and any  
10 device containing such device or software shall be deemed contraband and  
11 shall be subject to seizure by the Commissioner of Taxes or by a law  
12 enforcement officer when directed to do so by the Commissioner of Taxes.

13 Sec. 2. EFFECTIVE DATE

14 This act shall take effect on passage.

*Sec. 1. 13 V.S.A. § 2032 is added to read:*

*§ 2032. SALES SUPPRESSION DEVICES*

*(a) As used in this section:*

*(1) "Automated sales suppression device," also known as a "zapper,"*  
*means a software program, carried on a memory stick or removable compact*  
*disc, accessed through an Internet link, or accessed through any other means,*

that falsifies transaction data, transaction reports, or any other electronic records of electronic cash registers and other point-of-sale systems.

(2) “Electronic cash register” means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in any manner.

(3) “Phantom-ware” means a hidden programming option, whether preinstalled or installed at a later time, embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that:

(A) can be used to create a virtual second till; or

(B) may eliminate or manipulate transaction records.

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

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

or a report documenting every action at an electronic cash register that is stored electronically.

(b)(1) A person shall not knowingly sell, purchase, install, transfer or possess an automated sales suppression device or phantom-ware.

(2) A person who violates subdivision (1) of this subsection shall be imprisoned for not less than one year and not more than five years and fined not more than \$100,000.00, or both.

(c) A person who violates subdivision (b)(1) of this section shall be liable to the State for:

(1) all taxes, interest, and penalties due as the result of the person's use of an automated sales suppression device or phantom-ware; and

(2) all profits associated with the person's sale of an automated sales suppression device or phantom-ware.

(d) An automated sales suppression device or phantom-ware and any device containing such device or software shall be deemed contraband and shall be subject to seizure by the Commissioner of Taxes or by a law enforcement officer when directed to do so by the Commissioner of Taxes.

**Sec. 2. SAFE HARBOR**

(a) A person shall not be subject to prosecution under 13 V.S.A. 2032 if, by October 1, 2013, the person:

(1) notifies the Department of Taxes of the person's possession of an automated sales suppression device;

(2) provides any information requested by the Department of Taxes, including transaction records, software specifications, encryption keys, passwords, and other data; and

(3) corrects any underreported sales tax records and fully pays the Department any amounts previously owed.

(b) This section shall not be construed to limit the person's civil or criminal liability under 32 V.S.A. § 9814a (submitting fraudulent sales tax return) or any other provision of law.

**Sec. 3. EFFECTIVE DATE**

This act shall take effect on passage.