S T A T E O F N E W Y O R K

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I N S E N A T E

June 15, 2012

Introduced by Sens. MARCELLINO, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the tax law, in relation to prohibiting the use of automated sales suppression devices, zappers or phantom-ware

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 1816 to read as follows:

S 1816. AUTOMATED SALES SUPPRESSION. (A) DEFINITIONS. AS USED IN THIS SECTION:

(1) "AUTOMATED SALES SUPPRESSION DEVICE" OR "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 THE ELECTRONIC RECORDS OF ELECTRONIC CASH REGISTERS AND OTHER POINT-OF-SALE SYSTEMS, INCLUDING, BUT NOT LIMITED TO, TRANSACTION DATA AND TRANSACTION REPORTS.

(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 TRANSACTION DATA.

(3) "PHANTOM-WARE" MEANS A HIDDEN, PREINSTALLED, OR INSTALLED AT A LATER TIME PROGRAMMING OPTION EMBEDDED IN THE OPERATING SYSTEM OF AN ELECTRONIC CASH REGISTER OR HARDWIRED INTO THE ELECTRONIC CASH REGISTER THAT WITH INTENT OR BY SPECIFIC DESIGN IS USED TO CREATE A VIRTUAL SECOND TILL OR MAY ELIMINATE OR MANIPULATE TRANSACTION RECORDS THAT MAY OR MAY NOT BE PRESERVED IN DIGITAL FORMATS TO REPRESENT THE TRUE OR MANIPULATED RECORD OF TRANSACTIONS IN THE ELECTRONIC CASH REGISTER.

(4) "TRANSACTION DATA" MEANS DATA ASSOCIATED WITH 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, SEQUENCE OR INVOICE NUMBER OF THE TRANSACTION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(5) "TRANSACTION REPORT" MEANS A REPORT DOCUMENTING DATA, INCLUDING, BUT NOT LIMITED TO, DATA ASSOCIATED WITH 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.

(6) "PERSON" SHALL HAVE THE SAME DEFINITION AS IN SUBDIVISION (A) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER.

(B) PROHIBITIONS. (1) IT IS AN OFFENSE FOR A PERSON TO KNOWINGLY PURCHASE, POSSESS, INSTALL, UPDATE, MAINTAIN, UPGRADE, TRANSFER OR USE ANY AUTOMATED SALES SUPPRESSION DEVICE, ZAPPER OR PHANTOM-WARE. IT IS ALSO AN OFFENSE TO TRANSMIT DATA WITH THE INTENT OF DATA MANIPULATION.

(2) A VIOLATION OF PARAGRAPH ONE OF THIS SUBDIVISION IS A CLASS E FELONY PUNISHABLE BY A FINE OF NOT LESS THAN FIVE THOUSAND DOLLARS BUT NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS AND, FOR A SECOND OFFENSE WITHIN FIVE YEARS, BY A FINE OF NOT LESS THAN TWENTY-FIVE THOUSAND DOLLARS BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS AND, FOR A THIRD OR SUBSEQUENT OFFENSE WITHIN TEN YEARS, BY A FINE OF NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS BUT NOT MORE THAN FIVE HUNDRED THOUSAND DOLLARS.

(3) IT IS AN OFFENSE FOR A PERSON TO KNOWINGLY SELL ANY AUTOMATED SALES SUPPRESSION DEVICE, ZAPPER OR PHANTOM-WARE.

(4) A VIOLATION OF PARAGRAPH THREE OF THIS SUBDIVISION IS A CLASS E FELONY PUNISHABLE BY A FINE OF TWENTY-FIVE THOUSAND DOLLARS PER INCIDENT.

(5) THE OFFENSES CREATED BY THIS SECTION SHALL BE IN ADDITION TO AND CONSIDERED A SEPARATE OFFENSE FROM ANY OFFENSE OF SECTION EIGHTEEN HUNDRED SEVENTEEN OF THIS PART.

S 2. This act shall take effect January 1, 2013.