

2611

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to enacting the automated sales suppression act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "automated sales suppression act".

3 S 2. The executive law is amended by adding a new section 170-c to
4 read as follows:

5 S 170-C. AUTOMATED SALES SUPPRESSION STUDY AND REPORT. 1. DEFINITIONS.

6 (A) "AUTOMATED SALES SUPPRESSION DEVICE" OR "ZAPPER" SHALL MEAN A SOFT-
7 WARE PROGRAM, CARRIED ON A MEMORY STICK, REMOVABLE COMPACT DISC,
8 ACCESSED THROUGH AN INTERNET LINK OR ACCESSED THROUGH ANY OTHER MEANS,
9 THAT FALSIFIES THE ELECTRONIC RECORDS OF POINT-OF-SALE SYSTEMS FOR THE
10 PURPOSE OF TAX EVASION.

11 (B) "DEPARTMENT" SHALL MEAN THE STATE DEPARTMENT OF TAXATION AND
12 FINANCE.

13 (C) "ELECTRONIC CASH REGISTER" SHALL MEAN A DEVICE THAT KEEPS A REGIS-
14 TER OR SUPPORTING DOCUMENTS THROUGH THE MEANS OF AN ELECTRONIC DEVICE OR
15 COMPUTER SYSTEM DESIGNED TO RECORD TRANSACTION DATA FOR THE PURPOSE OF
16 COMPUTING, COMPILING OR PROCESSING RETAIL SALES TRANSACTION DATA IN
17 WHATEVER MANNER.

18 (D) "PHANTOM-WARE" SHALL MEAN A HIDDEN, PRE-INSTALLED OR INSTALLED AT
19 A LATER TIME PROGRAMMING OPTION EMBEDDED IN THE OPERATING SYSTEM OF AN
20 ELECTRONIC CASH REGISTER OR HARDWIRED INTO THE ELECTRONIC CASH REGISTER
21 THAT CAN BE USED TO CREATE A VIRTUAL SECOND TILL OR MAY ELIMINATE OR
22 MANIPULATE RECORDS THAT MAY OR MAY NOT BE PRESERVED IN DIGITAL FORMATS
23 TO REPRESENT THE TRUE OR MANIPULATED RECORD OF TRANSACTIONS IN THE ELEC-
24 TRONIC CASH REGISTER.

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

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1 (E) "SUPPORTING DOCUMENTS" SHALL MEAN ANY RECEIPT, INVOICE OR REPORT
2 THAT PROVIDES A RECORD OF TRANSACTION DATA OR TRANSACTION REPORTS.

3 (F) "TRANSACTION DATA" SHALL INCLUDE ITEMS PURCHASED BY A CUSTOMER,
4 THE PRICE FOR EACH ITEM, A TAXABILITY DETERMINATION FOR EACH ITEM, A
5 SEGREGATED TAX AMOUNT FOR EACH OF THE TAXED ITEMS, THE AMOUNT OF CASH OR
6 CREDIT TENDERED, THE NET AMOUNT RETURNED TO THE CUSTOMER IN CHANGE, THE
7 DATE AND TIME OF THE PURCHASE, THE NAME, ADDRESS AND IDENTIFICATION
8 NUMBER OF THE VENDOR, AND THE RECEIPT OR INVOICE NUMBER OF THE TRANS-
9 ACTION.

10 (G) "TRANSACTION REPORTS" SHALL MEAN A REPORT DOCUMENTING, BUT NOT
11 LIMITED TO, THE SALES, TAXES COLLECTED, MEDIA TOTALS AND DISCOUNT VOIDS
12 AT AN ELECTRONIC CASH REGISTER THAT IS PRINTED ON CASH REGISTER TAPE AT
13 THE END OF A DAY OR SHIFT, OR A REPORT DOCUMENTING EVERY ACTION AT AN
14 ELECTRONIC CASH REGISTER THAT IS STORED ELECTRONICALLY.

15 (H) "TECHNOLOGICAL COUNTERMEASURES" SHALL MEAN ANY ELECTRONIC DEVICE,
16 COMPUTER SYSTEM OR SOFTWARE PROGRAM DESIGNED TO ASSIST AUDITORS IN
17 DETECTING THE PRESENCE AND/OR USE OF ZAPPERS OR PHANTOM-WARE IN ELEC-
18 TRONIC CASH REGISTERS, BY VERIFYING THE AUTHENTICITY OF TRANSACTION DATA
19 RECORDED IN SUPPORTING DOCUMENTS AND/OR TRANSACTION REPORTS.

20 2. THE DEPARTMENT IS HEREBY AUTHORIZED AND DIRECTED TO PREPARE A
21 COMPREHENSIVE STUDY DOCUMENTING THE PREVALENCE OF ZAPPERS AND
22 PHANTOM-WARE WITHIN THE STATE'S RETAIL INDUSTRY, FOCUSING ON CASH TRANS-
23 ACTIONS, BUT NOT LIMITED TO, THE USE OF ZAPPERS AND PHANTOM-WARE AT
24 RESTAURANTS, MOVIE THEATERS, HAIRDRESSERS, AMUSEMENT PARKS, GROCERY
25 STORES, CONVENIENCE STORES OR ANY OTHER RETAIL ESTABLISHMENT WHERE THERE
26 IS A HIGH VOLUME OF CASH TRANSACTIONS.

27 (A) SUCH STUDY SHALL ALSO PROVIDE AN ESTIMATE ON THE TOTAL FISCAL
28 IMPACT THAT ZAPPERS AND PHANTOM-WARE HAVE ON THE STATE, FOCUSING ON, BUT
29 NOT LIMITED TO, THE ESTIMATED TOTAL REDUCTION IN GROSS RETAIL SALES, AS
30 WELL AS THE ESTIMATED TOTAL AMOUNT OF TAX REVENUES THE STATE DOES NOT
31 COLLECT BECAUSE OF THE FALSIFIED TRANSACTION DATA PRODUCED BY ZAPPERS
32 AND PHANTOM-WARE.

33 (B) SUCH STUDY SHALL CONSIDER TECHNOLOGICAL COUNTERMEASURES THE STATE
34 COULD EMPLOY OR REQUIRE BUSINESSES TO USE TO ENHANCE THE DETECTION OF
35 ZAPPERS OR PHANTOM-WARE USED IN OR INSTALLED IN ELECTRONIC CASH REGIS-
36 TERS. THE DEPARTMENT IS AUTHORIZED AND DIRECTED TO INCLUDE IN THIS STUDY
37 ITS RECOMMENDATION OF WHICH TECHNOLOGICAL COUNTERMEASURE WOULD BE THE
38 MOST EFFECTIVE AND COST-EFFICIENT.

39 3. THE DEPARTMENT SHALL SUBMIT THE FINDINGS OF SUCH STUDY IN A REPORT
40 TO THE DIRECTOR OF THE DIVISION OF THE BUDGET, THE TEMPORARY PRESIDENT
41 OF THE SENATE, THE SENATE MINORITY LEADER, THE SPEAKER OF THE ASSEMBLY
42 AND THE ASSEMBLY MINORITY LEADER NO MORE THAN FIVE HUNDRED FORTY DAYS
43 AFTER THE ENACTMENT OF THIS SECTION.

44 4. NOTHING IN THIS SECTION SHALL PERMIT OR REQUIRE THE DEPARTMENT TO
45 INCLUDE IN THE REPORT DESCRIBED IN SUBDIVISION TWO OF THIS SECTION ANY
46 LISTING OF ANY INDIVIDUAL BUSINESSES' TAX LIABILITY, PROFITS, SALES OR
47 LOSSES OR ANY INFORMATION PERTAINING TO ANY ON-GOING ADMINISTRATIVE OR
48 CRIMINAL INVESTIGATION BY THE DEPARTMENT, U.S. INTERNAL REVENUE SERVICE
49 OR ANY LAW ENFORCEMENT ENTITY INTO THE USE, INSTALLATION, MANUFACTURING,
50 OR LEASING OF ZAPPERS OR PHANTOM-WARE.

51 S 2. This act shall take effect on the ninetieth day after it shall
52 have become a law.