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

3314

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sens. KRUEGER, DILAN, PARKER, STAVISKY -- 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:

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

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

S 170-C. AUTOMATED SALES SUPPRESSION STUDY AND REPORT. 1. DEFINITIONS. (A) "AUTOMATED SALES SUPPRESSION DEVICE" OR "ZAPPER" SHALL MEAN A SOFTWARE PROGRAM, CARRIED ON A MEMORY STICK, REMOVABLE COMPACT DISC, ACCESSED THROUGH AN INTERNET LINK OR ACCESSED THROUGH ANY OTHER MEANS, THAT FALSIFIES THE ELECTRONIC RECORDS OF POINT-OF-SALE SYSTEMS FOR THE PURPOSE OF TAX EVASION.

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

(C) "ELECTRONIC CASH REGISTER" SHALL MEAN 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 WHATEVER MANNER.

(D) "PHANTOM-WARE" SHALL MEAN A HIDDEN, PRE-INSTALLED 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 CAN BE USED TO CREATE A VIRTUAL SECOND TILL OR MAY ELIMINATE OR MANIPULATE 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.

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

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

(F) "TRANSACTION DATA" SHALL INCLUDE 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.

(G) "TRANSACTION REPORTS" SHALL MEAN 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.

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

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

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

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

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

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

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