

# STATE OF NEW YORK

5852--A

2017-2018 Regular Sessions

## IN SENATE

May 3, 2017

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

3 § 1816. Automated sales suppression. (a) Definitions. As used in this  
4 section:

5 (1) "Automated sales suppression device" or "zapper" means a software  
6 program, carried on a memory stick or removable compact disc, accessed  
7 through an Internet link, or accessed through any other means, that  
8 falsifies the electronic records of electronic cash registers and other  
9 point-of-sale systems, including, but not limited to, transaction data  
10 and transaction reports.

11 (2) "Electronic cash register" means a device that keeps a register or  
12 supporting documents through the means of an electronic device or  
13 computer system designed to record transaction data for the purpose of  
14 computing, compiling, or processing transaction data.

15 (3) "Phantom-ware" means a hidden, preinstalled, or installed at a  
16 later time programming option embedded in the operating system of an  
17 electronic cash register or hardwired into the electronic cash register  
18 that with intent or by specific design is used to create a virtual  
19 second till or may eliminate or manipulate transaction records that may  
20 or may not be preserved in digital formats to represent the true or  
21 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.

LBD03089-02-8

1     (4) "Transaction data" means data associated with items purchased by a  
2 customer, the price for each item, a taxability determination for each  
3 item, a segregated tax amount for each of the taxed items, the amount of  
4 cash or credit tendered, the net amount returned to the customer in  
5 change, the date and time of the purchase, the name, address, and iden-  
6 tification number of the vendor, and the receipt, sequence or invoice  
7 number of the transaction.

8     (5) "Transaction report" means a report documenting data, including,  
9 but not limited to, data associated with sales, taxes collected, media  
10 totals, and discount voids at an electronic cash register that is print-  
11 ed on cash register tape at the end of a day or shift, or a report docu-  
12 menting every action at an electronic cash register that is stored elec-  
13 tronically.

14     (6) "Person" shall have the same definition as in subdivision (a) of  
15 section eleven hundred one of this chapter.

16     (b) Prohibitions. (1) It is an offense for a person to knowingly  
17 purchase, possess, install, update, maintain, upgrade, transfer or use  
18 any automated sales suppression device, zapper or phantom-ware. It is  
19 also an offense to transmit transaction data with the intent of data  
20 manipulation for the purpose of evading any taxes under this article.

21     (2) A violation of paragraph one of this subdivision is a class E  
22 felony punishable by a fine of not less than five thousand dollars but  
23 not more than twenty-five thousand dollars and, for a second offense  
24 within five years, by a fine of not less than twenty-five thousand  
25 dollars but not more than one hundred thousand dollars and, for a third  
26 or subsequent offense within ten years, by a fine of not less than one  
27 hundred thousand dollars but not more than five hundred thousand  
28 dollars.

29     (3) It is an offense for a person to knowingly sell any automated  
30 sales suppression device, zapper or phantom-ware.

31     (4) A violation of paragraph three of this subdivision is a class E  
32 felony punishable by a fine of twenty-five thousand dollars per inci-  
33 dent.

34     (5) The offenses created by this section shall be in addition to and  
35 considered a separate offense from any offense of section eighteen  
36 hundred seventeen of this part.

37     § 2. This act shall take effect on the first of January next succeed-  
38 ing the date upon which it shall have become a law.