

AN ACT

ENTITLED, An Act to prohibit the use of certain automated sales suppression devices and to provide penalties for their use.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 10-59 be amended by adding a NEW SECTION to read:

Terms used in this Act mean:

- (1) "Automated sales suppression device," a software program accessed through any method that falsifies the electronic records, transaction data, or transaction reports of electronic cash registers and other point-of-sale systems;
- (2) "Electronic cash register," 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 or transaction reports;
- (3) "Phantom-ware," a programming option embedded in the operating system or hardwired into the electronic cash register that can be used to create a false till, or eliminate or manipulate transaction data before it is entered in the original till;
- (4) "Transaction data," information regarding items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each item subject to tax, the amount of cash or credit tendered, the amount returned to the customer in change, the date and time of purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction;
- (5) "Transaction report," a report documenting sales, tax collected, media totals, discount voids, or other transaction data of an electronic cash register for a given day or shift, or any report documenting actions of an electronic cash register.

Section 2. That chapter 10-59 be amended by adding a NEW SECTION to read:

It is unlawful to knowingly own, sell, rent, lease, purchase, install, transfer, possess, use, access, design, manufacture, or program any automated sales suppression device or phantom-ware. A violation of this section is a Class 5 felony.

Section 3. That chapter 10-59 be amended by adding a NEW SECTION to read:

Any person convicted of a violation under section 2 of this Act shall be assessed a civil penalty at the time of sentencing in addition to, and not in substitution for, any other penalties provided by law for the offense in the amount of ten thousand dollars for each return period in which sales data, transaction data, or transaction reports were altered. However, the civil penalty may not exceed one hundred twenty thousand dollars. The civil penalty shall be deposited in the state general fund.

Section 4. That chapter 10-59 be amended by adding a NEW SECTION to read:

In addition to any civil or criminal penalty, any person violating section 2 of this Act is liable for all sales and use tax, contractor's excise tax, or any other tax imposed by title 10, including any municipal sales and use tax, and all associated penalties and interest due the state as a result of the use of an automated sales suppression device or phantom-ware.

Section 5. That chapter 10-59 be amended by adding a NEW SECTION to read:

An automated sales suppression device or phantom-ware or any cash register or device containing an automated sales suppression device or phantom-ware is contraband and may be seized without a warrant by the secretary, agents or employees of the secretary, or any law enforcement officer of this state. The disposition of any property seized under this section shall be conducted pursuant to chapter 23A-37.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1051

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1051
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State