

Representative Patrice M. Arent proposes the following substitute bill:

**PROHIBITION OF SALE OR USE OF CERTAIN
SOFTWARE PROGRAMS**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: John L. Valentine

Cosponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Criminal Code by prohibiting the use, purchase, installation, transfer, or sale of any automated sales suppression device or phantomware.

Highlighted Provisions:

This bill:

- ▶ provides definitions, including defining automated sales suppression device and phantomware;
- ▶ prohibits a person from knowingly selling, purchasing, installing, transferring, using, or possessing any automated sales suppression device or phantomware **Ⓜ→ [;] ←Ⓜ**
- ▶ provides that the penalty for a first offense is a third degree felony and any subsequent offense is a second degree felony; and
- ▶ provides an additional penalty of a fine not to exceed twice the amount of the applicable taxes that would otherwise be due for any person convicted of violating these provisions.



24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill takes effect on July 1, 2012.

28 **Utah Code Sections Affected:**

29 ENACTS:

30 **76-6-1301**, Utah Code Annotated 1953

31 **76-6-1302**, Utah Code Annotated 1953

32 **76-6-1303**, Utah Code Annotated 1953

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34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **76-6-1301** is enacted to read:

36 **Part 13. Utah Automated Sales Suppression Device Act**

37 **76-6-1301. Title.**

38 This part is known as the "Utah Automated Sales Suppression Device Act."

39 Section 2. Section **76-6-1302** is enacted to read:

40 **76-6-1302. Definitions.**

41 As used in this part:

42 (1) "Automated sales suppression device" means:

43 (a) a software program that falsifies the electronic records of electronic cash registers
44 or any other point-of-sale systems, including transaction data and transaction reports; or

45 (b) a general reference to a device that allows for, creates, or supports an automated
46 sales suppression system or any kind of phantomware.

47 (2) "Electronic cash register" means any device, wherever located, that maintains a
48 transaction register or supporting documents by means of an electronic device or computer
49 system designed to record transaction data for the purpose of computing, compiling, or
50 processing retail, wholesale, or any other sales transaction data.

51 (3) "Person" means an individual, business, or entity.

52 (4) "Phantomware" means a programming option that:

53 (a) is pre-installed, installed at a later time, or otherwise embedded in the operating
54 system of an electronic cash register or hardwired into the electronic cash register; and

55 (b) can be used to create a virtual alternate register or to eliminate or manipulate
 56 transaction records that may or may not be preserved in digital formats in order to represent a
 57 manipulated record or records of transactions in the electronic cash register.

58 (5) "Transaction data" includes items purchased by a customer, the price for each item,
 59 a taxability determination for each item, a segregated tax amount for each of the taxed items,
 60 the amount of cash or credit tendered, the net amount returned to the customer in change or in a
 61 refund, the date and time of the purchase, the name, address, and identification number of the
 62 vendor, and the receipt or invoice number of the transaction.

63 (6) "Transaction report" means a report that includes the sales, taxes collected, media
 64 totals, and discount voids at an electronic cash register and that is generated at the end of a day
 65 or shift. The report is printed on cash register tape or is stored electronically.

66 Section 3. Section **76-6-1303** is enacted to read:

67 **76-6-1303. Possession, sale, or use of automated sales suppression device unlawful**
 68 **-- Penalties.**

69 (1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer,
 70 use, or possess in this state any automated sales suppression device or phantomware ~~It~~ **with the**
 71 **intent to defraud** ~~It~~ , except
 72 that any second or subsequent violation of this Subsection (1) is a second degree felony.

73 (2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection
 74 (1) may be fined not more than twice the amount of the applicable taxes that would otherwise
 75 be due, but for the use of the automated sales suppression device or phantomware.

76 (3) Any person convicted of a violation of Subsection (1):

77 (a) is liable for all applicable taxes, penalties under Section 59-1-401, and interest
 78 under Section 59-1-402 that would otherwise be due, but for the use of the automated sales
 79 suppression device or phantomware to evade the payment of taxes; and

80 (b) shall disgorge all profits associated with the sale or use of an automated sales
 81 suppression device or phantomware.

82 (4) An automated sales suppression device and any device containing an automated
 83 sales suppression device is contraband and subject to forfeiture under Title 24, Chapter 1, Utah
 84 Uniform Forfeiture Procedures Act.

85 Section 4. **Effective date.**

This bill takes effect on July 1, 2012.