

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

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: _____

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;
- ▶ provides an additional penalty of a fine between \$10,000 and \$100,000 for any person convicted of violating these provisions; and
- ▶ provides a period of amnesty until January 1, 2014, for any person to voluntarily correct and fully report any previously underreported sales records, provided that the person fully remits any taxes, fees, and charges that are due and the person is not found to be in violation of this section for any new or previously unreported



27 offenses for a period of five years subsequent to the granting of amnesty.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 ENACTS:

34 **76-6-1301**, Utah Code Annotated 1953

35 **76-6-1302**, Utah Code Annotated 1953

36 **76-6-1303**, Utah Code Annotated 1953

37 **76-6-1304**, Utah Code Annotated 1953



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

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

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

42 **76-6-1301. Title.**

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

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

45 **76-6-1302. Definitions.**

46 As used in this part:

47 (1) "Amnesty" means a person is not subject to the criminal and civil penalties detailed
48 in Section 76-6-1303.

49 (2) "Automated sales suppression device" means:

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

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

54 (3) "Commission" means the Utah Tax Commission.

55 (4) "Electronic cash register" means any device, wherever located, that maintains a
56 transaction register or supporting documents by means of an electronic device or computer
57 system designed to record transaction data for the purpose of computing, compiling, or

58 processing retail, wholesale, or any other sales transaction data.

59 (5) "Person" means an individual, business, or entity.

60 (6) "Phantomware" means a programming option that:

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

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

66 (7) "Transaction data" includes items purchased by a customer, the price for each item,
67 a taxability determination for each item, a segregated tax amount for each of the taxed items,
68 the amount of cash or credit tendered, the net amount returned to the customer in change or in a
69 refund, the date and time of the purchase, the name, address, and identification number of the
70 vendor, and the receipt or invoice number of the transaction.

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

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

75 **76-6-1303. Possession, sale, or use of automated sales suppression device unlawful**
76 **-- Penalties.**

77 (1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer,
78 use, or possess in this state any automated sales suppression device or phantomware, except
79 that any second or subsequent violation of this Subsection (1) is a second degree felony.

80 (2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection
81 (1) shall pay a fine of at least \$10,000 but not more than \$100,000.

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

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

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

88 (4) An automated sales suppression device and any device containing an automated

89 sales suppression device is contraband and subject to forfeiture under Title 24, Chapter 1, Utah
90 Uniform Forfeiture Procedures Act.

91 Section 4. Section **76-6-1304** is enacted to read:

92 **76-6-1304. Amnesty.**

93 (1) Notwithstanding Section 76-6-1303, before any criminal action is initiated under
94 this part the commission may grant amnesty to any person who voluntarily corrects and
95 accurately reports any previously underreported sales records prior to January 1, 2014,
96 provided that the correction and resulting payment are not the subject of an audit or
97 investigation.

98 (2) This section may not be construed to restrict or affect a person's liability for taxes
99 and interest due or for any other liabilities arising from the underreporting of sales.

100 (3) Any amnesty the commission grants to a person under this section remains in effect
101 if that person remits to the commission the taxes, fees, and charges that are due and is not
102 found to be in violation of Section 76-6-1303 for any new or previously unreported offenses for
103 a period of five years subsequent to the date payments are made under the granting of amnesty.

104 (4) The commission may not grant a person amnesty under this section if, with respect
105 to a tax, fee, or charge for which the person would otherwise be granted amnesty under
106 Subsection (1), the person has committed an intentional misrepresentation of a material fact,
107 separate from the use of any automated suppression device or phantomware as defined in this
108 part.

Legislative Review Note
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Office of Legislative Research and General Counsel