State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

<u>400X0169</u>

HOUSE BILL NO. **1051**

Introduced by: The Committee on Taxation at the request of the Department of Revenue

1   FOR AN ACT ENTITLED, An Act to prohibit the use of certain automated sales suppression

2   devices and to provide penalties for their use.

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

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

5   Terms used in this Act mean:

6   (1)   "Automated sales suppression device," a software program accessed through any

7   method that falsifies the electronic records, transaction data, or transaction reports

8   of electronic cash registers and other point-of-sale systems;

9   (2)   "Electronic cash register," a device that keeps a register or supporting documents

10   through the means of an electronic device or computer system designed to record

11   transaction data for the purpose of computing, compiling, or processing retail sales

12   transaction data or transaction reports;

13   (3)   "Phantom-ware," a programming option embedded in the operating system or

14   hardwired into the electronic cash register that can be used to create a false till, or

15   eliminate or manipulate transaction data before it is entered in the original till;

1   (4)   "Transaction data," information regarding items purchased by a customer, the price

2   for each item, a taxability determination for each item, a segregated tax amount for

3   each item subject to tax, the amount of cash or credit tendered, the amount returned

4   to the customer in change, the date and time of purchase, the name, address, and

5   identification number of the vendor, and the receipt or invoice number of the

6   transaction;

7   (5)   "Transaction report," a report documenting sales, tax collected, media totals, discount

8   voids, or other transaction data of an electronic cash register for a given day or shift,

9   or any report documenting actions of an electronic cash register.

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

11   It is unlawful to knowingly own, sell, rent, lease, purchase, install, transfer, possess, use,

12   access, design, manufacture, or program any automated sales suppression device or

13   phantom-ware. A violation of this section is a Class 5 felony.

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

15   Any person convicted of a violation under section 2 of this Act shall be assessed a civil

16   penalty at the time of sentencing in addition to, and not in substitution for, any other penalties

17   provided by law for the offense in the amount of ten thousand dollars for each return period in

18   which sales data, transaction data, or transaction reports were altered. However, the civil penalty

19   may not exceed one hundred twenty thousand dollars. The civil penalty shall be deposited in the

20   state general fund.

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

22   In addition to any civil or criminal penalty, any person violating section 2 of this Act is

23   liable for all sales and use tax, contractor's excise tax, or any other tax imposed by title 10,

24   including any municipal sales and use tax, and all associated penalties and interest due the state

1   as a result of the use of an automated sales suppression device or phantom-ware.

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

3   An automated sales suppression device or phantom-ware or any cash register or device

4   containing an automated sales suppression device or phantom-ware is contraband and may be

5   seized without a warrant by the secretary, agents or employees of the secretary, or any law

6   enforcement officer of this state. The disposition of any property seized under this section shall

7   be conducted pursuant to chapter 23A-37.