

HOUSE BILL 2226

By Miller D

AN ACT to amend Tennessee Code Annotated, Title 38;
Title 39; Title 40 and Title 67, relative to fraud.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 7, is amended by adding the following as a new section:

39-14-704.

(a) For purposes of this section:

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

(2) "Electronic cash register" means 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.

(3) "Phantom-ware" means a hidden, preinstalled, or installed at a later time programming option embedded in the operating system of an electronic cash register or hardwired into the electronic cash register that can be used to create a virtual second till or may eliminate or manipulate transaction records that may or may not be preserved in digital formats to

represent the true or manipulated record of transactions in the electronic cash register.

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

(5) "Transaction report" means a report documenting data, including, but not limited to, data associated with sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

(b) It is an offense for a corporation or individual to knowingly sell, purchase, possess, install, transfer or use any automated sales suppression device, zapper or phantom-ware.

(c) A violation of subsection (b) is a Class E felony punishable by a fine only up to one hundred thousand dollars (\$100,000).

(d) It is a defense to prosecution under this section that the person purchased, possessed, installed, transferred or used an automated sales suppression device, zapper or phantom-ware for a legitimate purpose.

(e) The offense created by this section shall be in addition to and considered a separate offense from any offense related to the non payment of taxes owed to the state or any political subdivision thereof.

(f)

(1) Any automated sales suppression device, zapper or phantom-ware or any device containing an automated sales suppression device, zapper or phantom-ware is contraband and is subject to seizure, confiscation and forfeiture in accordance with chapter 11, part 7 of this title.

(2) After any contraband under subdivision (1) has been forfeited to the state pursuant to chapter 11, part 7 of this title, the court hearing the criminal charges resulting in the forfeiture shall order the destruction of the contraband. If the district attorney general or law enforcement agency does not believe that the contraband should be destroyed in a particular case, the district attorney general shall petition the court for an alternate disposition of the contraband. If the court finds that the proposed alternate disposition reasonably ensures that the contraband will not be used in an unlawful manner in this state, the court may grant the petition and order the disposition of the contraband in accordance with the petition.

(g)

(1) Where a person reports a violation of subsection (b) to law enforcement in good faith, the report and the identity of the person shall remain confidential, except when the court having jurisdiction determines

the testimony of the person reporting to be material to an indictment or prosecution.

(2)

(A) A person who makes a report to law enforcement under subdivision (1) is entitled to receive fifty percent (50%) of any fine collected by the state against an individual or corporation up to ten thousand dollars (\$10,000).

(B) Where multiple individuals file a report under subdivision (1), each individual is entitled to an equal share any award under subdivision (2)(A).

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.