WEST VIRGINIA CODE: §61-3-22a

§61-3-22a. Possession or use of automated sales suppression devices; penalty.

(a) General. -- When used in this article, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. --

(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 in whatever manner.

(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" includes 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, but not limited to, the 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.

(c) It is unlawful to willfully and knowingly sell, purchase, install, transfer or possess in this state any automated sales suppression device or zapper or phantom-ware.

(d) Any person convicted of a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be confined in a correctional institution for not less than

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one nor more than five years, or fined not less than $10,000 nor more than $100,000, or both confined and fined.

(e) Any person violating subsection (c) of this section is liable for all taxes and penalties due the state as the result of the fraudulent use of an automated sales suppression device, zapper or phantom-ware and shall forfeit all profits associated with the sale or use of an automated sales suppression device or phantom-ware.

(f) An automated sales suppression device or phantom-ware and any cash register or device containing such device or software is contraband and, as such, subject to seizure and destruction by any duly authorized law-enforcement agency in the state, including the Criminal Investigation Division of the State Tax Department.

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