

JAN 24 2013

A BILL FOR AN ACT

RELATING TO TAX FRAUD.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to prohibit the use
2 of zappers, or automated sales suppression devices, which bring
3 new technologies to an old tax fraud - skimming cash sales.
4 Technology has made it possible to skim large amounts of sales
5 receipts while at the same time making it virtually undetectable
6 in point of sale terminals. For example, one of the largest tax
7 fraud cases in Connecticut involved the use of a zapper to hide
8 \$17,000,000 in receipts. Likewise, a taxpayer in Michigan
9 skimmed \$20,000,000 in cash sales through the use of a zapper.
10 Zapper frauds originated in Europe but have spread to the United
11 States, Canada, Brazil, Australia, and many other countries.

12 SECTION 2. Chapter 231, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§231-A Possession or use of automated sales suppression
16 devices. (a) As used in this section:

17 "Automated sales suppression device" or "zapper" means a
18 software program, carried on a memory stick or removable compact

1 disc, accessed through an Internet link or accessed through any
2 other means, that falsifies the electronic records of electronic
3 cash registers and other point-of-sale systems, including, but
4 not limited to, transaction data and transaction reports.

5 "Electronic cash register" means a device that keeps a
6 register or supporting documents through the means of an
7 electronic device or computer system designed to record
8 transaction data for the purpose of computing, compiling or
9 processing retail sales transaction data in whatever manner.

10 "Person" includes one or more individuals, a company,
11 corporation, a partnership, an association, or any other type of
12 legal entity, and also includes an officer or employee of a
13 corporation, a partner or employee of a partnership, a trustee
14 of a trust, a fiduciary of an estate, or a member, employee, or
15 principal of any other entity, who as such officer, employee,
16 partner, trustee, fiduciary, member, or principal is under a
17 duty to perform and is principally responsible for performing
18 the act.

19 "Phantom-ware" means a hidden, preinstalled or installed at
20 a later time, programming option embedded in the operating
21 system of an electronic cash register or hardwired into the
22 electronic cash register that may be used to create a virtual

1 second till, or may eliminate or manipulate transaction records
2 that may or may not be preserved in digital formats to represent
3 the true or manipulated record of transactions in the electronic
4 cash register.

5 "Transaction data" means information that includes items
6 purchased by a customer, the price for each item, a taxability
7 determination for each item, a segregated tax amount for each of
8 the taxed items, the amount of cash or credit tendered, the net
9 amount returned to the customer in change, the date and time of
10 the purchase, the name, address and identification number of the
11 retailer, and the receipt or invoice number of the transaction.

12 "Transaction report" means a report that includes, but need
13 not be limited to, sales, taxes collected, media totals, and
14 discount voids at an electronic cash register that is printed on
15 cash register tape at the end of a day or shift, or a report
16 that documents every action at an electronic cash register that
17 is stored electronically.

18 (b) It is an offense for a person to knowingly purchase,
19 possess, install, update, maintain, upgrade, transfer, use, or
20 create any automated sales suppression device, zapper, or
21 phantom-ware.

1 (c) Any person who wilfully and knowingly sells,
2 purchases, installs, transfers or possesses any automated sales
3 suppression device or phantom-ware shall:

4 (1) Be guilty of a Class B felony and be fined not more
5 than \$25,000 or imprisoned for not less than two or
6 more than twenty years, or both;

7 (2) Be liable for all taxes, penalties, and interest due
8 to the State as a result of such sale, purchase,
9 installation, transfer, use, or possession; and

10 (3) Forfeit all profits resulting from the sale or use of
11 such automated sales suppression device or phantom-
12 ware.

13 (d) An automated sales suppression device or phantom-ware
14 and any device containing such device or software shall be
15 contraband, and shall be subject to confiscation by the
16 department."

17 SECTION 6. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

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S.B. NO. 1189

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SECTION 7. This Act, upon its approval, shall take effect
on January 1, 2013.

INTRODUCED BY: *Shirley M. Dworkin*

BY REQUEST

SB. NO. 1189

Report Title:

Tax Fraud

Description:

Prohibits the use of zappers, or automated sales suppression devices, used to commit tax fraud.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAX FRAUD.

PURPOSE: The purpose of this bill is to prohibit the use of zappers, or automated sales suppression devices, which bring new technologies to an old tax fraud - skimming cash sales.

MEANS: Adds a new section to chapter 231, Hawaii Revised Statutes.

JUSTIFICATION: Technology has made it possible to skim large amounts of sales receipts while at the same time making it virtually undetectable in point of sale terminals. For example, one of the largest tax fraud cases in Connecticut involved the use of a zapper to hide \$17,000,000 in receipts. Likewise, a taxpayer in Michigan skimmed \$20,000,000 in cash sales through the use of a zapper. Zapper frauds originated in Europe but have spread to the United States, Canada, Brazil, Australia, and many other countries.

Impact on the public: There is no effect on the law abiding taxpayer. This measure seeks to create a substantial disincentive to anyone who may be tempted to sell, purchase, possess, install, update, maintain, upgrade, transfer, use, or create any automated sales suppression device, zapper, or phantom-ware.

Impact on the department and other agencies: The change is expected to assist the department in enforcing the tax laws and to insure that all taxpayers pay their fair share of taxes due.

GENERAL FUND: Any revenues from taxes collected from a violator, or because a taxpayer chose not to

use a zipper or automated sales suppression device, will increase the general fund but by an indeterminate amount.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: January 1, 2013