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## State of Minnesota

## HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1770

02/27/2017 Authored by Slocum and Davids  
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices Policy  
03/13/2017 Adoption of Report: Amended and re-referred to the Committee on Taxes

1.1 A bill for an act  
1.2 relating to taxation; providing regulation of sales suppression devices; imposing  
1.3 criminal penalties; amending Minnesota Statutes 2016, sections 289A.60, by adding  
1.4 a subdivision; 289A.63, by adding a subdivision; 609.5316, subdivision 3;  
1.5 proposing coding for new law in Minnesota Statutes, chapter 289A.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **[289A.14] USE OF AUTOMATED SALES SUPPRESSION DEVICES;**  
1.8 **DEFINITIONS.**

1.9 (a) For the purposes of sections 289A.60, subdivision 32, 289A.63, subdivision 12, and  
1.10 609.5316, subdivision 3, the following terms have the meanings given.

1.11 (b) "Automated sales suppression device" or "zapper" means a software program, carried  
1.12 on any tangible medium, or accessed through any other means, that falsifies the electronic  
1.13 records of electronic cash registers and other point-of-sale systems including, but not limited  
1.14 to, transaction data and transaction reports.

1.15 (c) "Electronic cash register" means a device that keeps a register or supporting documents  
1.16 through the means of an electronic device or computer system designed to record transaction  
1.17 data for the purpose of computing, compiling, or processing retail sales transaction data in  
1.18 whatever manner.

1.19 (d) "Phantom-ware" means hidden preinstalled or later-installed programming option  
1.20 embedded in the operating system of an electronic cash register or hardwired into the  
1.21 electronic cash register that can be used to create a virtual second electronic cash register  
1.22 or may eliminate or manipulate transaction records that may or may not be preserved in

2.1 digital formats to represent the true or manipulated record of transactions in the electronic  
2.2 cash register.

2.3 (e) "Transaction data" includes items purchased by a customer, the price of each item,  
2.4 the taxability determination for each item, a segregated tax amount for each of the taxed  
2.5 items, the date and time of the purchase, the name, address, and identification number of  
2.6 the vendor, and the receipt or invoice number of the transaction.

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

2.11 **EFFECTIVE DATE.** This section is effective for activities enumerated in Minnesota  
2.12 Statutes, section 289A.63, subdivision 12, or 289A.60, subdivision 32, that occur on or after  
2.13 August 1, 2017.

2.14 Sec. 2. Minnesota Statutes 2016, section 289A.60, is amended by adding a subdivision to  
2.15 read:

2.16 Subd. 32. **Sales suppression.** (a) A person who:

2.17 (1) sells;

2.18 (2) transfers;

2.19 (3) develops;

2.20 (4) manufactures; or

2.21 (5) possesses with the intent to sell or transfer an automated sales suppression device,  
2.22 zapper, phantom-ware, or similar device capable of being used to commit tax fraud or  
2.23 suppress sales is liable for a civil penalty calculated under paragraph (b).

2.24 (b) The amount of the civil penalty equals the greater of (1) \$2,000, or (2) the total  
2.25 amount of all taxes and penalties due that are attributable to the use of any automated sales  
2.26 suppression device, zapper, phantom-ware, or similar device facilitated by the sale, transfer,  
2.27 development, or manufacture of the automated sales suppression device, zapper,  
2.28 phantom-ware, or similar device by the person.

2.29 (c) The definitions in section 289A.14 apply to this subdivision.

2.30 **EFFECTIVE DATE.** This section is effective for activities enumerated that occur on  
2.31 or after August 1, 2017.

Sec. 3. Minnesota Statutes 2016, section 289A.63, is amended by adding a subdivision to read:

Subd. 12. **Felony.** (a) A person who knowingly:

(1) sells;

(2) purchases;

(3) installs;

(4) transfers;

(5) possesses;

(6) develops;

(7) manufactures;

(8) accesses; or

(9) uses an automated sales suppression device, zapper, phantom-ware, or similar device knowing that the device or phantom-ware is capable of being used to commit tax fraud or suppress sales, with intent that it be so used, is guilty of a felony and may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than \$10,000, or both.

(b) An automated sales suppression device, zapper, phantom-ware, and any other device containing an automated sales suppression, zapper, or phantom-ware device or software is contraband and subject to forfeiture under section 609.5316.

(c) The definitions in section 289A.14 apply to this subdivision.

**EFFECTIVE DATE.** This section is effective for activities enumerated that occur on or after August 1, 2017.

Sec. 4. Minnesota Statutes 2016, section 609.5316, subdivision 3, is amended to read:

**Subd. 3. Weapons, telephone cloning paraphernalia, automated sales suppression devices, and bullet-resistant vests.** Weapons used are contraband and must be summarily forfeited to the appropriate agency upon conviction of the weapon's owner or possessor for a controlled substance crime; for any offense of this chapter or chapter 624, or for a violation of an order for protection under section 518B.01, subdivision 14. Bullet-resistant vests, as defined in section 609.486, worn or possessed during the commission or attempted commission of a crime are contraband and must be summarily forfeited to the appropriate agency upon conviction of the owner or possessor for a controlled substance crime or for

any offense of this chapter. Telephone cloning paraphernalia used in a violation of section 609.894, and automated sales suppression devices, phantom-ware, and other devices containing an automated sales suppression or phantom-ware device or software used in violation of section 289A.63, subdivision 12, are contraband and must be summarily forfeited to the appropriate agency upon a conviction.

**EFFECTIVE DATE.** This section is effective for activities enumerated in Minnesota Statutes, section 289A.63, subdivision 12, that occur on or after August 1, 2017.