

Introduced by

Senators Cook, Campbell, Dotzenrod

Representatives Belter, Headland, Meier

1 A BILL for an Act to create and enact section 12.1-23-16 and a new subsection to section  
2 57-39.2-14 of the North Dakota Century Code, relating to the prohibition of automated sales  
3 suppression devices; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Section 12.1-23-16 of the North Dakota Century Code is created and enacted  
6 as follows:

7 **12.1-23-16. Automated sales suppression device, zapper, or phantom-ware -**

8 **Prohibition - Penalties.**

9 1. For purposes of this section:

- 10 a. "Automated sales suppression device" or "zapper" means a software program  
11 carried on a memory stick or removable compact disc, accessed through an  
12 internet link, or accessed through any other method, which falsifies the electronic  
13 records, transaction data, or transaction reports of electronic cash registers and  
14 other point-of-sale systems.
- 15 b. "Electronic cash register" means a device that keeps a register or supporting  
16 documents through the use of an electronic device or computer system designed  
17 to record transaction data for the purpose of computing, compiling, or processing  
18 retail sales transaction data or transaction reports.
- 19 c. "Phantom-ware" means a hidden, preinstalled or installed at a later time,  
20 programming option embedded in the operating system of an electronic cash  
21 register or hardwired into the electronic cash register, which can be used to  
22 create a virtual second cash register or that can eliminate or manipulate  
23 transaction records that may be preserved in digital formats to represent the true  
24 or manipulated transaction data or reports in the electronic cash register and is

1           intended to falsify the electronic records of an electronic cash register or other  
2           point-of-sale system.

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

9           e. "Transaction report" means a report documenting sales, the tax collected,  
10           methods of payment, voided sales, or other information at an electronic cash  
11           register which is printed on cash register tape at the end of a day or shift, or a  
12           report documenting every transaction at an electronic cash register that is stored  
13           electronically.

14           2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or  
15           use in this state, an automated sales suppression device, zapper, or phantom-ware.

16           3. Any person convicted of a violation under subsection 2 is guilty of a class B felony.  
17           ~~and any~~ Any person convicted of a second or subsequent violation of subsection 2 is  
18           ~~guilty of a class A felony~~ subject to a civil penalty of not more than one hundred  
19           thousand dollars.

20           4. It is a defense to prosecution under this section that the person purchased,  
21           possessed, installed, transferred, owned, or used in this state, an automated sales  
22           suppression device, zapper, or phantom-ware for a legitimate purpose.

23           5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or  
24           other tax under title 57, and any county or city sales and use tax imposed under  
25           sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the  
26           state as the result of the fraudulent use of an automated sales suppression device,  
27           zapper, or phantom-ware. Any tax found to be due must be assessed at double the  
28           amount so determined.

29           6. The person shall forfeit all proceeds associated with the sale or use of an automated  
30           sales suppression device, zapper, or phantom-ware. The proceeds forfeited under this  
31           section must be deposited with the state treasurer for deposit in the state general fund.

1        7. An automated sales suppression device, zapper, or phantom-ware, and the cash  
2            register or other device containing the device or the software, is contraband and  
3            subject to forfeiture in accordance with chapter 29-31.1.

4        **SECTION 2.** A new subsection to section 57-39.2-14 of the North Dakota Century Code is  
5 created and enacted as follows:

6            Whenever the holder of a permit is convicted of violating section 12.1-23-16, the  
7            commissioner shall revoke the permit and the holder is not eligible to receive another  
8            permit for a period of ten years from the date of revocation.