125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document   **No. 1764**

H.P. 1297   House of Representatives, January 10, 2012

An Act To Prohibit Computer Software Programs Used To Evade Sales Tax

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Taxation suggested and ordered printed.

HEATHER J.R. PRIEST
Clerk

Presented by Representative BERRY of Bowdoinham.
Cosponsored by Senator WOODBURY of Cumberland and
Representatives: HASKELL of Portland, KNIGHT of Livermore Falls, PLUMMER of Windham.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** automated sales suppression devices, commonly referred to as "zappers"
4 and "phantom-ware," are used to underreport sales and have enabled fraud and theft from
5 government, from shareholders and business partners and from other state and federal
6 taxpayers; and

7 **Whereas,** the Province of Quebec, on Maine's northern border, has found that in one
8 recent year it lost approximately $425,000,000 to fraud from zappers and phantom-ware
9 in restaurants alone; and

10 **Whereas,** if adjusted for Maine's smaller gross domestic product and lower tax
11 rates, the same degree of undetected tax evasion from Maine's restaurant sector alone
12 would mean the loss of $50,000,000 annually in sales tax, corporate income tax, personal
13 income tax and related employment taxes; and

14 **Whereas,** many foreign governments and several states have already acted to reduce
15 and prevent the use of zappers and phantom-ware and their actions have yielded positive
16 results; and

17 **Whereas,** the Department of Administrative and Financial Services, Bureau of
18 Revenue Services presently lacks sufficient technological and auditing resources to
19 detect, document and control zapper and phantom-ware fraud and theft; and

20 **Whereas,** the reputations and the fiscal competitiveness of all law-abiding
21 businesses are harmed by the continued existence of this threat; and

22 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
23 the meaning of the Constitution of Maine and require the following legislation as
24 immediately necessary for the preservation of the public peace, health and safety; now,
25 therefore,

26 **Be it enacted by the People of the State of Maine as follows:**

27 **Sec. 1. 17-A MRSA §909** is enacted to read:

28 **§909. Possession of automated sales suppression device**

29 **1.** A person is guilty of possession of an automated sales suppression device if the
30 person sells, purchases, installs, manufactures, transfers or owns any automated sales
31 suppression device or phantom-ware.

32 **2.** Possession of an automated sales suppression device is a Class C crime.

33 **3.** As used in this section, unless the context otherwise indicates, the following
34 terms have the following meanings.

A. "Automated sales suppression device" means a computer software program, which may be stored on magnetic or optical media, accessed through the Internet or accessed through any other means, that is designed or used primarily to falsify the electronic records of an electronic cash register or other point-of-sale system, including, but not limited to, transaction data and transaction reports.

B. "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.

C. "Phantom-ware" means a hidden, preinstalled or installed 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 2nd cash register or to eliminate or manipulate transaction records, which may or may not be preserved in digital formats, and can represent either the true or the manipulated records of transactions in the electronic cash register.

D. "Transaction data" includes a description of items purchased by a customer; the price for each item; a taxability determination for each item; a segregated tax amount for each taxed item; 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.

E. "Transaction report" means a report that includes, but is not limited to, sales, taxes collected, methods of payment and voided sales at an electronic cash register that is printed on cash register tape at the end of a day or shift or a report that includes every action at an electronic cash register that is stored electronically.

Sec. 2. Interim compliance period. Notwithstanding the Maine Revised Statutes, Title 17-A, section 909 or any other law, a person who corrects and fully reports any previously underreported sales records between the effective date of this Act and September 1, 2012 is not subject to criminal and civil penalties for violating Title 17-A, section 909 in the absence of any audit, investigation or request by the Department of Administrative and Financial Services, Bureau of Revenue Services to correct and fully report previously underreported sales records. Nothing in this section may be construed to restrict a person's liability for taxes and interest due to the State or Federal Government, for restitution to a person's shareholders or business partners or for any other liabilities arising from the underreporting of sales. To qualify for a waiver of penalties under this section, a person must notify the bureau of the person's possession of an automated sales suppression device on or before September 1, 2012 and provide any information requested by the bureau, including but not limited to transaction records, software specifications, encryption keys, passwords and other data. The bureau shall work with the business community to notify potentially affected taxpayers and may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 3. Review and report. The Department of Administrative and Financial Services, Bureau of Revenue Services shall immediately review its audit practices and

results with respect to cash-intensive businesses and identify steps to improve the bureau's ability to audit those businesses and identify and prevent crimes involving automated sales suppression devices. The bureau shall update the joint standing committee of the Legislature having jurisdiction over taxation matters on these efforts orally in January 2013 and submit to the committee a final, written report by December 2014. The final report must include an estimate of the extent of crimes involving automated sales suppression devices in the State and an update on the efforts of the bureau and of other domestic and international authorities in better identifying and preventing crimes involving automated sales suppression devices.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill prohibits the possession of automated sales suppression devices, which alter the amounts of sales made by a business for the express purpose of illegally withholding or skimming sales taxes paid by customers. For those persons who correct and fully report any previously underreported sales records before September 1, 2012, certain penalties are reduced but other existing financial liabilities are not reduced. The bill also authorizes the Department of Administrative and Financial Services, Bureau of Revenue Services to adopt routine technical rules to implement this interim compliance period. The bill also requires the bureau to report to the joint standing committee in January 2013 and December 2014 on efforts to detect and prevent crimes involving automated sales suppression devices.