

HOUSE BILL REPORT

HB 1427

As Reported by House Committee On:
Finance

Title: An act relating to addressing the evasion of taxes by the use of certain electronic means.

Brief Description: Addressing the evasion of taxes by the use of certain electronic means.

Sponsors: Representatives Orcutt, Carlyle, Nealey, Vick and Wilcox.

Brief History:

Committee Activity:

Finance: 2/1/13, 2/15/13, 2/19/13 [DP].

Brief Summary of Bill

- Makes the sale or possession of an automated sales suppression device or phantom-ware a class C felony.
- Allows the Department of Revenue (DOR) to revoke a taxpayer's certificate of registration if the taxpayer is convicted of selling or possessing an automated sales suppression device or phantom-ware.
- Establishes a process of seizure and forfeiture for any automated sales suppression device or phantom-ware.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 13 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Pollet, Reykdal, Springer, Vick and Wilcox.

Staff: Dominique Meyers (786-7150).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any person doing business in Washington is required to obtain a master business license from the state. In addition, any person that engages in business must apply for a certificate of registration from the DOR unless:

- gross income or sales from all taxable business activities is less than \$12,000;
- the business is not required to collect or pay any tax or fee which the DOR is authorized to collect; and
- the business is not required to obtain an additional license with their master business license.

A business making a retail sale is required to collect sales tax from the purchaser and remit the tax to the DOR. Sales tax receipts are legally considered trust funds of the state. A business that fails to remit collected sales tax receipts can be charged with a class C felony. In addition, any business that is found guilty of making false or fraudulent tax returns can be charged with a class C felony.

The DOR can revoke the certificate of registration of any business if a tax warrant is not paid within 30 days after it has been filed or if a business is delinquent for three consecutive reporting periods of retail sales tax collected by the business. A certificate that has been revoked cannot be reinstated until the amount due on the warrant is paid, all taxes and penalties are paid or the DOR has approved provisions for payment.

Automated sales suppression devices or phantom-ware "zapper-software" is a program that falsifies the electronic records or transactions of a point of sale system (POS) or cash register. Zapper-software can be plugged into a POS system using a USB drive or can be programmed into the system. In general, zapper software is most commonly used by cash-heavy businesses. It is not illegal to distribute or own zapper software in Washington.

Summary of Bill:

Any person who commits electronic tax fraud using an automated sales suppression device or phantom-ware will be charged with a class C felony. Any person who provides an automated sales suppression device or phantom-ware to another person will be subject to an additional mandatory fine that is the greater of \$10,000 or the amount lawfully due from the person who received and used the device.

The DOR has the authority to revoke the certificate of registration for any business found using an automated sales suppression device. In addition to current provisions in law, a business cannot have their certificate of registration reinstated unless they agree to have the DOR monitor sales transactions through an electronic monitoring system, to be paid for by the business for five years.

Automated sales suppression devices or phantom-ware are considered contraband and are subject to seizure and forfeiture.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill would comprehensively address tax evasion by those who use sales tax suppression technology. State revenue losses from sales suppression devices can be significant. These devices have been documented as being used in Washington and Canada. Thirteen other states have passed sales tax suppression device legislation. It is important to deal with the sales and use of this software and this legislation would get to the source of the supply of the software instead of just finding the businesses using it. Further amendments may be necessary to insure that the provisions in the bill go after the right person who is using the technology, and not just go after the employer in cases where they are not responsible for the use of the suppression device.

(Opposed) None.

Persons Testifying: Drew Shirk, Department of Revenue; and Amber Carter, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.