Legislative Analysis

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SALES SUPPRESSION DEVICES

Senate Bill 768 (Substitute H-1)
Senate Bill 769 without amendments *(Enacted as Public Acts 146 and 147 of 2012)*
Sponsor: Sen. John Pappageorge
House Committee: Commerce
Senate Committee: Judiciary

Complete to 5-2-12

A SUMMARY OF SENATE BILLS 768 AND 769 AS REPORTED FROM HOUSE COMMITTEE

Senate Bill 768 would make it a felony for a person to knowingly sell, purchase, install, transfer, or possess any automated sales suppression device or zapper or phantom-ware.

Generally speaking, these are devices that falsify the electronic records of electronic cash registers and other point-of-sale systems. The devices reduce collections of sales taxes, income taxes, and business taxes.

The penalty would be a prison term of at least one year and not more than five years and a fine of up to $100,000. Also, a violator would be liable for all taxes and penalties due the state as a result of the fraudulent use of one of these devices and would have to disgorge all associated profits.

Senate Bill 769 would make a complementary amendment to the sentencing guidelines in the Code of Criminal Procedure. The offense would be a Class E felony against the public order with a statutory maximum term of imprisonment of five years.

An automated sales suppression device or "zapper" is defined as a software program carried on a memory stick or removable compact disc, accessed through an internet link or any other means that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including transaction data and transaction reports.

The term "phantom-ware" refers to a hidden, preinstalled, or subsequently installed programming option embedded in the operating system of an electronic cash register or hardwired into the register that can be used to create a virtual "second till" or to eliminate or manipulate transaction records. "Transaction data" refers to information about 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 amount returned to a 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.

The bills are tie-barred to each other, meaning neither would take effect unless both are enacted, and would take effect 90 days after being enacted.

FISCAL IMPACT:

To the extent that the bill increases felony convictions, it would increase state and/or local incarceration costs. Local incarceration costs at local jails vary by county. The average cost of incarceration in a state prison is roughly $34,000 per prisoner per year. However, the incremental cost of adding one or more prisoners to the system can vary significantly around this average depending on the availability of open beds. Costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about $2,100 per supervised offender per year. Any increase in penal fine revenues resulting from the bills would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

POSITIONS:

The Michigan Restaurant Association and the Michigan Chamber of Commerce indicated support for the bills to the House Commerce Committee on 2-21-12.

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