

HOUSE BILL No. 5050

October 3, 2013, Introduced by Reps. Heise, Singh, VerHeulen, Yanez, Faris, Pscholka, Daley, Foster, McBroom, Clemente, Hooker, Nesbitt, Townsend, Yonker, Lyons and Oakes and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 411w (MCL 750.411w), as added by 2012 PA 146.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 411w. (1) A person shall not knowingly sell, purchase,
2 install, transfer, or possess in this state any automated sales
3 suppression device or zapper, ~~or~~ phantom-ware, **OR A SKIMMING**
4 **DEVICE.**

5 (2) A person who violates subsection (1) is guilty of a felony
6 and shall be imprisoned for not less than 1 year or more than 5
7 years and, in addition, may be fined not more than \$100,000.00.

8 (3) A person who violates subsection (1) is liable for all
9 taxes and penalties due the state as the result of the fraudulent
10 use of an automated sales suppression device, ~~or~~ phantom-ware, **OR A**

1 **SKIMMING DEVICE** and shall disgorge all profits associated with the
2 sale or use of an automated sales suppression device, ~~or~~ phantom-
3 ware, **OR A SKIMMING DEVICE.**

4 (4) As used in this section:

5 (a) "Automated sales suppression device" or "zapper" means a
6 software program carried on a memory stick or removable compact
7 disc, accessed through an internet link, or accessed through any
8 other means, that falsifies the electronic records of electronic
9 cash registers and other point-of-sale systems, including, but not
10 limited to, transaction data and transaction reports.

11 (b) "Electronic cash register" means a device that keeps a
12 register or supporting documents through the means of an electronic
13 device or computer system designed to record transaction data for
14 the purpose of computing, compiling, or processing retail sales
15 transaction data in whatever manner.

16 (C) **"FINANCIAL TRANSACTION DEVICE" MEANS THAT TERM AS DEFINED**
17 **IN SECTION 157M OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL**
18 **750.157M.**

19 (D) **"PERSONAL IDENTIFYING INFORMATION" AND "PERSONAL**
20 **INFORMATION" MEAN THOSE TERMS AS DEFINED IN SECTION 3 OF THE**
21 **IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.63.**

22 (E) ~~(e)~~ "Phantom-ware" means a hidden, preinstalled, or
23 installed at a later time programming option embedded in the
24 operating system of an electronic cash register or hardwired into
25 the electronic cash register that can be used to create a virtual
26 second till or may eliminate or manipulate transaction records that
27 may or may not be preserved in digital formats to represent the

1 true or manipulated record of transactions in the electronic cash
2 register.

3 (F) "SKIMMING DEVICE" MEANS ANY COMBINATION OF DEVICES OR
4 METHODS THAT ARE DESIGNED OR ADAPTED TO BE PLACED ON THE PHYSICAL
5 PROPERTY OF ANOTHER PERSON AND TO OBTAIN THE PERSONAL INFORMATION
6 OR PERSONAL IDENTIFYING INFORMATION OF ANOTHER, OR ANY OTHER
7 INFORMATION THAT ALLOWS ACCESS TO A PERSON'S FINANCIAL ACCOUNTS,
8 FROM A FINANCIAL TRANSACTION DEVICE WITHOUT THE PERMISSION OF THE
9 OWNER OF THE FINANCIAL TRANSACTION DEVICE.

10 (G) ~~(d)~~—"Transaction data" includes information regarding
11 items purchased by a customer, the price for each item, a
12 taxability determination for each item, a segregated tax amount for
13 each of the taxed items, the amount of cash or credit tendered, the
14 net amount returned to the customer in change, the date and time of
15 the purchase, the name, address, and identification number of the
16 vendor, and the receipt or invoice number of the transaction.

17 (H) ~~(e)~~—"Transaction report" means a report that includes, but
18 need not be limited to, the sales, taxes collected, media totals,
19 and discount voids at an electronic cash register that is printed
20 on cash register tape at the end of a day or shift, or a report
21 documenting every action at an electronic cash register that is
22 stored electronically.