



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bills 768 and 769 (as reported without amendment)  
Sponsor: Senator John Pappageorge  
Committee: Judiciary

### **CONTENT**

Senate Bill 768 would amend the Michigan Penal Code to do the following:

- Prohibit and prescribe a felony penalty for the sale, purchase, installation, transfer, or possession of any "automated sales suppression device", "zapper", or "phantom-ware".
- Subject a violator to liability for taxes and penalties.
- Require a violator to disgorge all profits associated with the sale or use of the banned device.
- Allow an automated sales suppression device or phantom-ware to be seized without process.

Specifically, a person could not knowingly sell, purchase, install, transfer, or possess any automated sales suppression device, zapper, or phantom-ware. A violation would be a felony requiring imprisonment for not less than one year or more than five years. A violator also could be fined up to \$100,000.

"Automated sales suppression device" or "zapper" would mean 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.

"Phantom-ware" would mean a hidden 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 second till or may eliminate or manipulate transaction records that may or may not be preserved in digital format to represent the true or manipulated record of transactions in the electronic cash register.

Senate Bill 769 would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 768 in the sentencing guidelines as a Class E felony against the public order, with a statutory maximum sentence of five years' imprisonment.

Senate Bill 769 is tie-barred to Senate Bill 768.

The bills would take effect 90 days after their enactment.

Proposed MCL 750.411w (S.B. 768)  
MCL 777.16t (S.B. 769)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Date Completed: 11-9-11

Fiscal Analyst: Matthew Grabowski

floor\sb768

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.