




Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 768 and 769 (as introduced 10-20-11)  
Sponsor: Senator John Pappageorge  
Committee: Judiciary

Date Completed: 11-7-11

### **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.**

**Senate Bill 769 would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 768 in the sentencing guidelines.**

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

The bills would take effect 90 days after their enactment.

### **Senate Bill 768**

Under the bill, 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 fine up to \$100,000.

A person who violated the bill would be liable for all taxes and penalties due to the State as the result of the fraudulent use of an automated sales suppression device or phantom-ware, and would have to disgorge all profits associated with the sale or use of the device.

The bill specifies that an automated sales suppression device or phantom-ware, and any device containing an automated sales suppression device or phantom-ware, would be contraband and could be seized without process by any police officer.

"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**

Under the bill, selling or possessing an automated sales suppression device, zapper, or phantom-ware would be designated in the sentencing guidelines as a Class E felony against the public order, with a statutory maximum sentence of five years' imprisonment.

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.

Fiscal Analyst: Matthew Grabowski

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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.