

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2126

Introduced by

Senators Cook, Campbell, Dotzenrod

Representatives Belter, Headland, Meier

1 A BILL for an Act to create and enact section 12.1-23-16 and a new subsection to section
2 57-39.2-14 of the North Dakota Century Code, relating to the prohibition of automated sales
3 suppression devices; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Section 12.1-23-16 of the North Dakota Century Code is created and enacted
6 as follows:

7 **12.1-23-16. Automated sales suppression device, zapper, or phantom-ware -**
8 **Prohibition - Penalties.**

9 1. For purposes of this section:

- 10 a. "Automated sales suppression device" or "zapper" means a software program
11 carried on a memory stick or removable compact disc, accessed through an
12 internet link, or accessed through any other method, which falsifies the electronic
13 records, transaction data, or transaction reports of electronic cash registers and
14 other point-of-sale systems.
- 15 b. "Electronic cash register" means a device that keeps a register or supporting
16 documents through the use of an electronic device or computer system designed
17 to record transaction data for the purpose of computing, compiling, or processing
18 retail sales transaction data or transaction reports.
- 19 c. "Phantom-ware" means a hidden, preinstalled or installed at a later time,
20 programming option embedded in the operating system of an electronic cash
21 register or hardwired into the electronic cash register, which can be used to
22 create a virtual second cash register or that can eliminate or manipulate
23 transaction records that may be preserved in digital formats to represent the true
24 or manipulated transaction data or reports in the electronic cash register and is

1 intended to falsify the electronic records of an electronic cash register or other
2 point-of-sale system.

3 d. "Transaction data" means items purchased by a customer, the price for each
4 item, a taxability determination for each item, a segregated tax amount for each
5 of the taxed items, the amount of cash or credit tendered, the net amount
6 returned to the customer in change, the date and time of purchase, the name,
7 address, and identification number of the vendor, and the receipt or invoice
8 number of the transaction.

9 e. "Transaction report" means a report documenting sales, the tax collected,
10 methods of payment, voided sales, or other information at an electronic cash
11 register which is printed on cash register tape at the end of a day or shift, or a
12 report documenting every transaction at an electronic cash register that is stored
13 electronically.

14 2. It is unlawful to willfully sell, purchase, possess, install, transfer, manufacture, own, or
15 use in this state, an automated sales suppression device, zapper, or phantom-ware.

16 3. Any person convicted of a violation under subsection 2 is guilty of a class B felony.
17 Any person convicted of a second or subsequent violation of subsection 2 is subject to
18 a civil penalty of not more than one hundred thousand dollars.

19 4. It is a defense to prosecution under this section that the person purchased,
20 possessed, installed, transferred, owned, or used in this state, an automated sales
21 suppression device, zapper, or phantom-ware for a legitimate purpose.

22 5. Any person violating subsection 2 is liable for all sales and use tax, income tax, or
23 other tax under title 57, and any county or city sales and use tax imposed under
24 sections 11-09.2-05 and 40-05.1-06, and associated penalties and interest due the
25 state as the result of the fraudulent use of an automated sales suppression device,
26 zapper, or phantom-ware. Any tax found to be due must be assessed at double the
27 amount so determined.

28 6. The person shall forfeit all proceeds associated with the sale or use of an automated
29 sales suppression device, zapper, or phantom-ware. The proceeds forfeited under this
30 section must be deposited with the state treasurer for deposit in the state general fund.

1 7. An automated sales suppression device, zapper, or phantom-ware, and the cash
2 register or other device containing the device or the software, is contraband and
3 subject to forfeiture in accordance with chapter 29-31.1.

4 **SECTION 2.** A new subsection to section 57-39.2-14 of the North Dakota Century Code is
5 created and enacted as follows:

6 Whenever the holder of a permit is convicted of violating section 12.1-23-16, the
7 commissioner shall revoke the permit and the holder is not eligible to receive another
8 permit for a period of ten years from the date of revocation.