

Department of Finance and Administration

Legislative Impact Statement

Bill: SB718

Bill Subtitle: TO CREATE CRIMINAL AND CIVIL PENALTIES FOR CERTAIN ACTIVITIES RELATING TO SOFTWARE AND OTHER DEVICES AND MECHANISMS THAT MODIFY OR FALSIFY ELECTRONIC RECORDS FOR THE PURPOSE OF EVADING TAXES.

Basic Change :

Senator Files

The proposal would create criminal and civil penalties for activities relating to the use of software and other devices and mechanisms used to modify or falsify electronic records for the purpose of evading taxes. The proposal provides that it is unlawful for a person to knowingly manufacture, sell, rent, lease, make available, purchase, install, transfer, possess, or use software or any other device or mechanism designed to falsify the electronic records of an electronic cash register or other point-of-sale system. The software is commonly known as "Automated Sales Suppression Device," "Zapper," or "Phantom-ware." The purpose of the software is to suppress the cash sales from the business's accounting records at the cash register level. The sales are simply eliminated from the system and the user of the software pockets the cash. The use of the software allows for the fraudulent reporting for sales and income taxes by deleting or erasing transactions within the business' electronic accounting records.

The proposal also provides for any person who violates the provisions of the bill, upon conviction is guilty of a Class C felony and is liable for all taxes assessed by the Department of Finance and Administration. The person who violates the provisions is also liable for a civil penalty in the amount of the tax evaded. The proposal would be effective 90 days after final adjournment.

Revenue Impact :

Possible fraudulent reporting of state and local taxes by use of sales suppression software and hardware will be subject to criminal and civil penalties. Risk of loss of tax revenue should be reduced.

Taxpayer Impact :

Sellers and taxpayers using sales suppression software and other devices will be subject to criminal and civil penalties upon conviction.

Resources Required :

None

Time Required :

None

Procedural Changes :

None

Other Comments :

None

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Legal Analysis :

This bill creates civil and criminal penalties for retailers who use automated sales suppression software in their electronic cash registers to conceal actual sales data from auditors. Use of this software, also known as "zappers" and "phantom-ware," allows a retailer or other user to evade or defeat tax liability on the sales that are "zapped" out and removed from the retailers' electronic records. This results in loss of sales tax revenue and underreporting of personal and corporate income tax liabilities because records of taxable sales no longer exist.

A person charged criminally may be found guilty of a Class C Felony and be liable for all taxes assessed by the Department of Finance and Administration under the Arkansas Tax Procedure Act.

The civil penalty is equal to the total amount of the tax evaded, not collected, or not accounted for and paid to the Department of Finance and Administration due to the use of the sales suppression software.

The effective date will be 90 days following adjournment.