

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

***** 750.411w.amended THIS AMENDED SECTION IS EFFECTIVE APRIL 1, 2014 *****

750.411w.amended Automated sales suppression device or zapper, phantom-ware, or skimming device; sale, purchase, installation, transfer, or possession prohibited; violation as felony; liability for taxes and penalties; exception; definitions.

Sec. 411w. (1) A person shall not knowingly sell, purchase, install, transfer, or possess in this state any automated sales suppression device or zapper, phantom-ware, or a skimming device.

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

(3) A person who violates subsection (1) is liable for all taxes and penalties due the state as the result of the fraudulent use of an automated sales suppression device, phantom-ware, or a skimming device and shall disgorge all profits associated with the sale or use of an automated sales suppression device, phantom-ware, or a skimming device.

(4) Subsection (1) does not apply to equipment or technology utilized by a law enforcement officer while the officer is in the lawful performance of his or her duties as a law enforcement officer.

(5) As used in this section:

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

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

(c) "Financial transaction device" means that term as defined in section 157m of the Michigan penal code, 1931 PA 328, MCL 750.157m.

(d) "Personal identifying information" and "personal information" mean those terms as defined in section 3 of the identity theft protection act, 2004 PA 452, MCL 445.63.

(e) "Phantom-ware" means a hidden, preinstalled, or installed at a later time 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 formats to represent the true or manipulated record of transactions in the electronic cash register.

(f) "Skimming device" means any combination of devices or methods that are designed or adapted to be placed on the physical property of another person and to obtain the personal information or personal identifying information of another, or any other information that allows access to a person's financial accounts, from a financial transaction device without the permission of the owner of the financial transaction device.

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

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

History: Add. 2012, Act 146, Eff. Aug. 29, 2012;—Am. 2013, Act 212, Eff. Apr. 1, 2014.