

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1764

H.P. 1297

House of Representatives, January 10, 2012

### **An Act To Prohibit Computer Software Programs Used To Evade Sales Tax**

(EMERGENCY)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative BERRY of Bowdoinham.  
Cosponsored by Senator WOODBURY of Cumberland and  
Representatives: HASKELL of Portland, KNIGHT of Livermore Falls, PLUMMER of  
Windham.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** automated sales suppression devices, commonly referred to as "zappers"  
4 and "phantom-ware," are used to underreport sales and have enabled fraud and theft from  
5 government, from shareholders and business partners and from other state and federal  
6 taxpayers; and

7           **Whereas,** the Province of Quebec, on Maine's northern border, has found that in one  
8 recent year it lost approximately \$425,000,000 to fraud from zappers and phantom-ware  
9 in restaurants alone; and

10          **Whereas,** if adjusted for Maine's smaller gross domestic product and lower tax  
11 rates, the same degree of undetected tax evasion from Maine's restaurant sector alone  
12 would mean the loss of \$50,000,000 annually in sales tax, corporate income tax, personal  
13 income tax and related employment taxes; and

14          **Whereas,** many foreign governments and several states have already acted to reduce  
15 and prevent the use of zappers and phantom-ware and their actions have yielded positive  
16 results; and

17          **Whereas,** the Department of Administrative and Financial Services, Bureau of  
18 Revenue Services presently lacks sufficient technological and auditing resources to  
19 detect, document and control zapper and phantom-ware fraud and theft; and

20          **Whereas,** the reputations and the fiscal competitiveness of all law-abiding  
21 businesses are harmed by the continued existence of this threat; and

22          **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
23 the meaning of the Constitution of Maine and require the following legislation as  
24 immediately necessary for the preservation of the public peace, health and safety; now,  
25 therefore,

26 **Be it enacted by the People of the State of Maine as follows:**

27           **Sec. 1. 17-A MRSA §909** is enacted to read:

28 **§909. Possession of automated sales suppression device**

29           **1. A person is guilty of possession of an automated sales suppression device if the**  
30 **person sells, purchases, installs, manufactures, transfers or owns any automated sales**  
31 **suppression device or phantom-ware.**

32           **2. Possession of an automated sales suppression device is a Class C crime.**

33           **3. As used in this section, unless the context otherwise indicates, the following**  
34 **terms have the following meanings.**

1           A. "Automated sales suppression device" means a computer software program,  
2           which may be stored on magnetic or optical media, accessed through the Internet or  
3           accessed through any other means, that is designed or used primarily to falsify the  
4           electronic records of an electronic cash register or other point-of-sale system,  
5           including, but not limited to, transaction data and transaction reports.

6           B. "Electronic cash register" means a device that keeps a register or supporting  
7           documents through the means of an electronic device or computer system designed to  
8           record transaction data for the purpose of computing, compiling or processing retail  
9           sales transaction data.

10          C. "Phantom-ware" means a hidden, preinstalled or installed programming option  
11          embedded in the operating system of an electronic cash register or hardwired into the  
12          electronic cash register that can be used to create a virtual 2nd cash register or to  
13          eliminate or manipulate transaction records, which may or may not be preserved in  
14          digital formats, and can represent either the true or the manipulated records of  
15          transactions in the electronic cash register.

16          D. "Transaction data" includes a description of items purchased by a customer; the  
17          price for each item; a taxability determination for each item; a segregated tax amount  
18          for each taxed item; the amount of cash or credit tendered; the net amount returned to  
19          the customer in change; the date and time of the purchase; the name, address and  
20          identification number of the vendor; and the receipt or invoice number of the  
21          transaction.

22          E. "Transaction report" means a report that includes, but is not limited to, sales, taxes  
23          collected, methods of payment and voided sales at an electronic cash register that is  
24          printed on cash register tape at the end of a day or shift or a report that includes every  
25          action at an electronic cash register that is stored electronically.

26          **Sec. 2. Interim compliance period.** Notwithstanding the Maine Revised  
27          Statutes, Title 17-A, section 909 or any other law, a person who corrects and fully reports  
28          any previously underreported sales records between the effective date of this Act and  
29          September 1, 2012 is not subject to criminal and civil penalties for violating Title 17-A,  
30          section 909 in the absence of any audit, investigation or request by the Department of  
31          Administrative and Financial Services, Bureau of Revenue Services to correct and fully  
32          report previously underreported sales records. Nothing in this section may be construed  
33          to restrict a person's liability for taxes and interest due to the State or Federal  
34          Government, for restitution to a person's shareholders or business partners or for any  
35          other liabilities arising from the underreporting of sales. To qualify for a waiver of  
36          penalties under this section, a person must notify the bureau of the person's possession of  
37          an automated sales suppression device on or before September 1, 2012 and provide any  
38          information requested by the bureau, including but not limited to transaction records,  
39          software specifications, encryption keys, passwords and other data. The bureau shall  
40          work with the business community to notify potentially affected taxpayers and may adopt  
41          rules to implement this section. Rules adopted pursuant to this section are routine  
42          technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

43          **Sec. 3. Review and report.** The Department of Administrative and Financial  
44          Services, Bureau of Revenue Services shall immediately review its audit practices and

1 results with respect to cash-intensive businesses and identify steps to improve the  
2 bureau's ability to audit those businesses and identify and prevent crimes involving  
3 automated sales suppression devices. The bureau shall update the joint standing  
4 committee of the Legislature having jurisdiction over taxation matters on these efforts  
5 orally in January 2013 and submit to the committee a final, written report by December  
6 2014. The final report must include an estimate of the extent of crimes involving  
7 automated sales suppression devices in the State and an update on the efforts of the  
8 bureau and of other domestic and international authorities in better identifying and  
9 preventing crimes involving automated sales suppression devices.

10 **Emergency clause.** In view of the emergency cited in the preamble, this  
11 legislation takes effect when approved.

## 12 SUMMARY

13 This bill prohibits the possession of automated sales suppression devices, which alter  
14 the amounts of sales made by a business for the express purpose of illegally withholding  
15 or skimming sales taxes paid by customers. For those persons who correct and fully  
16 report any previously underreported sales records before September 1, 2012, certain  
17 penalties are reduced but other existing financial liabilities are not reduced. The bill also  
18 authorizes the Department of Administrative and Financial Services, Bureau of Revenue  
19 Services to adopt routine technical rules to implement this interim compliance period.  
20 The bill also requires the bureau to report to the joint standing committee in January 2013  
21 and December 2014 on efforts to detect and prevent crimes involving automated sales  
22 suppression devices.