

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2488**

As Agreed to May 2, 2018

Brief*

HB 2488 would create the crime of knowingly selling, purchasing, installing, transferring, manufacturing, creating, designing, updating, repairing, using, or possessing automated sales suppression devices.

The bill would define such devices to include a computer software program carried on a memory stick or removable compact disc that is accessed through an Internet link or any other means that falsifies electronic records of electronic cash registers and other point-of-sale systems. Certain “phantom-ware” also would be included in the bill’s provisions, generally defined as a hidden programming option embedded in the operating system or hardwired into an electronic cash register that is used to create a virtual second till or eliminate or manipulate selected transaction records.

Unlawful acts under the bill would be considered a severity level 7 nonperson felony. The bill would also clarify that persons convicted under the law would be liable for all taxes, interest, and penalties due as a result of such unlawful acts.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Conference Committee Action

The Conference Committee agreed to delete the contents of HB 2488 (pertaining to the definition of “special fuels” in KSA 2017 Supp. 79-3401(s) [these provisions are currently in an agreement to be placed in HB 2228]) and insert the contents of HB 2527, as amended by the House Committee on Taxation.

Background

HB 2488 previously addressed the definition of “special fuels” in motor fuel tax law. Those provisions are currently included in the Conference Committee Report for HB 2228.

HB 2527 (Crimes Involving Sales Suppression Devices)

The bill was introduced at the request of the Department of Revenue. In the House Committee on Taxation hearing on February 6, the representative of the Department of Revenue explained that similar provisions were enacted by Georgia in 2011 and have now been enacted by about half of the states levying sales taxes. The representative said the states wanted an effective deterrence measure in place given the growing sophistication of certain devices and software designed to under-report transactions for sales tax purposes. No other testimony was provided.

The bill, as introduced, would have established the new crime as a severity level 6 nonperson felony. The House Committee amended the bill to change the crime to a severity level 7 nonperson felony following a discussion about the desire to place additional emphasis on presumptive probation.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates there could be an impact on the court system but that any

such impact could most likely be accommodated within the existing schedule of court cases and would not require additional resources. The Kansas Sentencing Commission notes the bill could result in increased prison admissions and beds, but it could not provide an estimate. Any fiscal effect associated with enactment of the bill, as introduced, is not reflected in *The FY 2019 Governor's Budget Report*.

automated sales suppression devices, criminal law

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