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House Committee on Taxation

Testimony of The Kansas Department of Revenue in Support of House Bill 2527

by Michael Hale

Chairman Johnson and Members of the Committee:

The Department of Revenue respectfully submits the following testimony to the Committee in support of House Bill 2527.

This bill makes it unlawful to knowingly sell, purchase, install, transfer, or possess in Kansas any automated sales suppression device or zapper or phantom-ware that falsifies the electronic records of electronic cash registers and other point-of-sale systems.

An Automated Sales Suppression Device, colloquially known as a 'zapper' is a software program generally installed at the point of sale that falsifies the electronic records of point of sale (POS) systems for the purpose of tax evasion.

The point of sale software creates a database of transactions that is used to calculate a business' tax obligations. Revenue suppression software, or "zappers" is used to modify a business' POS database for the purpose of tax evasion. When executed, the zapper program deletes all or some of the business' cash transactions, and then reconciles the books of the business. The result is a set of business records that appear to be complete and accurate but, in fact, are false because they show less than total income earned.

In 2011, Georgia was the first state to outlaw the possession, creation, sale, and use of zappers in addition to the actual fraud of underreporting sales. Since Georgia's statute, nearly half of all states have followed suit, with most laws modeled on the Georgia law and definitions. Penalties range from mere fines of \$5000 or less on the low end, to fines and potential imprisonment on the

high end. A small number of states classify possession of a zipper as a misdemeanor, but most classify it as some form of felony.

This bill would prohibit the under reporting of sales taxes by use of electronic devices or software that falsify sales reported to Kansas. One of the core missions of the Department is to insure compliance with the Retailers' Sales and Compensating Tax Acts and the collection of sales and compensating tax revenues to fund state programs and agencies. This legislation would further the Department's mission in these regards.

This bill does provide for substantial monetary penalties and potential imprisonment upon conviction, and confiscation and destruction of the device as well as the taxes, civil penalties and interest that are due from the underreported from the use of this type of device.