

1 HB283
2 156626-1
3 By Representative McMillan
4 RFD: Judiciary
5 First Read: 16-JAN-14

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8 SYNOPSIS: Under existing law, it is not specifically
9 illegal to possess or use an automated sales
10 suppression device or phantom-ware, which are
11 devices used to delete records of sales
12 transactions from cash register records, so that
13 sales taxes are under-reported to the state,
14 county, and municipal tax collecting authorities.

15 This bill would make the possession or use
16 of an automated sales suppression device, or
17 phantom-ware a felony, punished by a fine of not
18 more than \$100,000, or \$500,000 in the case of a
19 corporation, or imprisonment for not more than
20 three years, or both, and the person would be
21 liable for all lost revenue.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

19
20 Relating to crimes and offenses; to add Section
21 40-29-121, Code of Alabama 1975, to make it unlawful to
22 knowingly sell, purchase, install, transfer, or possess in
23 this state any automated sales suppression device or
24 phantom-ware; to provide for definitions; to provide for
25 criminal penalties; to provide that the devices and software
26 are contraband; to amend Section 40-29-119, Code of Alabama
27 1975, to provide for the limitation period on the offense; and

1 in connection therewith would have as its purpose or effect
2 the requirement of a new or increased expenditure of local
3 funds within the meaning of Amendment 621 of the Constitution
4 of Alabama of 1901, now appearing as Section 111.05 of the
5 Official Recompilation of the Constitution of Alabama of 1901,
6 as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 40-29-121 is added to Chapter 29,
9 Title 40, Code of Alabama 1975, as follows:

10 §40-29-121.

11 (a) For purposes of this section, the following
12 words have the following meanings:

13 (1) AUTOMATED SALES SUPPRESSION DEVICE. A software
14 program carried on a memory stick or removable compact disc,
15 accessed through an Internet link, or by any other means, that
16 falsifies the electronic records of electronic cash registers
17 and other point-of-sale systems, including, but not limited
18 to, transaction data and transaction reports.

19 (2) ELECTRONIC CASH REGISTER. A device that keeps a
20 register or supporting documents through the use of an
21 electronic device or computer system designed to record
22 transaction data for the purpose of computing, compiling, or
23 processing retail sales and other transaction data.

24 (3) PHANTOM-WARE. Any hidden or concealed
25 programming option embedded in the operating system of an
26 electronic cash register or hardwired into the electronic cash
27 register that can be used to create a second set of records or

1 to eliminate or manipulate transaction records that may or may
2 not be preserved in digital formats in order to represent the
3 true or manipulated record of a transaction in the electronic
4 cash register.

5 (4) TRANSACTION DATA. Data relating to a transaction
6 which includes, but is not limited to, data identifying each
7 item purchased by a customer, the price for each item, a
8 taxability determination for each item, a segregated tax
9 amount for each of the taxed items, the amount of cash or
10 credit tendered, the net amount returned to the customer in
11 change, the date and time of the purchase, the name, address,
12 and identification number of the vendor, and the receipt or
13 invoice number of the transaction.

14 (5) TRANSACTION REPORTS. Either of the following or
15 any variation thereof:

16 a. A report that contains, but is not limited to,
17 documentation of sales, taxes, or fees collected; media
18 totals; and discount voids at an electronic cash register, and
19 that is printed on a cash register tape at the end of a day or
20 shift, or

21 b. A report that documents every action at an
22 electronic cash register and that is stored electronically.

23 (b) It is unlawful to knowingly sell, purchase,
24 install, transfer, or possess in this state any automated
25 sales suppression device or phantom-ware.

26 (c) Any person convicted of a violation of this
27 section is guilty of a felony and upon conviction, shall be

1 fined not more than one hundred thousand dollars (\$100,000),
2 or in the case of a corporation, not more than five hundred
3 thousand dollars (\$500,000), or may be imprisoned for not more
4 than three years, or both fine and imprisonment. In addition,
5 the person shall be liable for all taxes, fees, penalties, and
6 interest due the state as the result of the fraudulent use of
7 an automated sales suppression device or phantom-ware and
8 shall forfeit to the state, as an additional penalty, all
9 profits associated with the sale or use of an automated sales
10 suppression device or phantom-ware.

11 (d) An automated sales suppression device or
12 phantom-ware and any device containing such device or software
13 shall be contraband and shall be forfeited to the state.

14 Section 2. Section 40-29-119, Code of Alabama 1975,
15 is amended to read as follows:

16 "§40-29-119.

17 "(a) No person shall be prosecuted, tried, or
18 punished for any of the various offenses arising under the
19 revenue laws unless the indictment is found or the prosecution
20 instituted within three years next after the commission of the
21 offense, except that the period of limitation shall be six
22 years:

23 "(1) For offenses involving the defrauding or
24 attempting to defraud the State of Alabama or any agency
25 thereof, whether by conspiracy or not, and in any manner;

26 "(2) For the offense of willfully attempting in any
27 manner to evade or defeat any tax or the payment thereof;

1 "(3) For the offense of willfully aiding or
2 assisting in, or procuring, counseling, or advising, the
3 preparation or presentation under, or in connection with any
4 matter arising under, the statute revenue laws, of a false or
5 fraudulent return, affidavit, claim or document (whether or
6 not such falsity or fraud is with the knowledge or consent of
7 the person authorized or required to present such return,
8 affidavit, claim, or document);

9 "(4) For the offense of willfully failing to pay any
10 tax, or make any return at the time or times required by law
11 or regulations;

12 "(5) For offenses described in Sections 40-29-115
13 and 40-29-116 (relating to false statements and fraudulent
14 documents);

15 "(6) For the offense described in Section 40-29-118
16 (relating to intimidation of officers and employees of the
17 State of Alabama);

18 "(7) For the offense described in Section 40-29-121
19 (relating to the possession or use of an automated sales
20 suppression device or phantom-ware).

21 "(b) The time during which the person committing any
22 of the various offenses arising under the revenue laws is
23 outside the State of Alabama or is a fugitive from justice
24 within the meaning of the Code of Alabama, shall not be taken
25 as any part of the time limited by law for the commencement of
26 such proceedings."

1 Section 3. All laws or parts of laws which conflict
2 with this act are repealed.

3 Section 4. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 5. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.