

1 SB29
2 170846-1
3 By Senator Livingston
4 RFD: Finance and Taxation General Fund
5 First Read: 03-AUG-15

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

1 connection therewith would have as its purpose or effect the
2 requirement of a new or increased expenditure of local funds
3 within the meaning of Amendment 621 of the Constitution of
4 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 40-29-119, Code of Alabama 1975,
9 is amended to read as follows:

10 "§40-29-119.

11 "(a) No person shall be prosecuted, tried, or
12 punished for any of the various offenses arising under the
13 revenue laws unless the indictment is found or the prosecution
14 instituted within three years next after the commission of the
15 offense, except that the period of limitation shall be six
16 years:

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

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

22 "(3) For the offense of willfully aiding or
23 assisting in, or procuring, counseling, or advising, the
24 preparation or presentation under, or in connection with any
25 matter arising under, the statute revenue laws, of a false or
26 fraudulent return, affidavit, claim or document (whether or
27 not such falsity or fraud is with the knowledge or consent of

1 the person authorized or required to present such return,
2 affidavit, claim, or document);

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

6 "(5) For offenses described in Sections 40-29-115
7 and 40-29-116 (relating to false statements and fraudulent
8 documents);

9 "(6) For the offense described in Section 40-29-118
10 (relating to intimidation of officers and employees of the
11 State of Alabama); or

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

15 "(b) The time during which the person committing any
16 of the various offenses arising under the revenue laws is
17 outside the State of Alabama or is a fugitive from justice
18 within the meaning of the Code of Alabama, shall not be taken
19 as any part of the time limited by law for the commencement of
20 such proceedings.

21 Section 2. Section 40-29-121 is added to Chapter 29,
22 Title 40, Code of Alabama 1975, as follows:

23 "§40-29-121.

24 "(a) For purposes of this section, the following
25 words have the following meanings:

26 "(1) AUTOMATED SALES SUPPRESSION DEVICE. A software
27 program carried on a memory stick or removable compact disc,

1 accessed through an Internet link, or by any other means, that
2 falsifies the electronic records of electronic cash registers
3 and other point-of-sale systems, including, but not limited
4 to, transaction data and transaction reports.

5 "(2) ELECTRONIC CASH REGISTER. A device that keeps a
6 register or supporting documents through the use of an
7 electronic device or computer system designed to record
8 transaction data for the purpose of computing, compiling, or
9 processing retail sales and other transaction data.

10 "(3) PHANTOM-WARE. Any hidden or concealed
11 programming option embedded in the operating system of an
12 electronic cash register or hardwired into the electronic cash
13 register that can be used to create a second set or records or
14 to eliminate or manipulate transaction records that may or may
15 not be preserved in digital formats in order to represent the
16 true or manipulated record of a transaction in the electronic
17 cash register.

18 "(4) TRANSACTION DATA. Data relating to a
19 transaction which includes, but is not limited to, data
20 identifying each item purchased by a customer, the price for
21 each item, a taxability determination for each item, a
22 segregated tax amount for each of the taxed items, the amount
23 of cash or credit tendered, the net amount returned to the
24 customer in change, the date and time of the purchase, the
25 name, address, and identification number of the vendor, and
26 the receipt or invoice number of the transaction.

1 "(5) TRANSACTION REPORTS. Either of the following or
2 any variation thereof:

3 "a. A report that contains, but is not limited to,
4 documentation of sales, taxes, or fees collected; media
5 totals; and discount voids at an electronic cash register, and
6 that is printed on a cash register tape at the end of a day or
7 shift, or

8 "b. A report that documents every action at an
9 electronic cash register and that is stored electronically.

10 "(b). It is unlawful to knowingly sell, purchase,
11 install, transfer, use, or possess in this state any automated
12 sales suppression device or phantom-ware.

13 "(c). Any person convicted of a violation of this
14 section is guilty of a felony and upon conviction, shall be
15 fined not more than one hundred thousand dollars (\$100,000),
16 or in the case of a corporation, not more than five hundred
17 thousand dollars (\$500,000), or may be imprisoned for not more
18 than three years, or both fine and imprisonment. In addition,
19 the person shall be liable for all taxes, fees, penalties, and
20 interest due the state as the result of the fraudulent use of
21 an automated sales suppression device or phantom-ware and
22 shall forfeit to the state, as an additional penalty, all
23 profits associated with the sale or use of an automated sales
24 suppression device or phantom-ware.

25 "(d). An automated sales suppression device or
26 phantom-ware and any device containing such device or software
27 shall be contraband and shall be forfeited to the state.

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.