

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 781

Introduced by Assembly Member Bocanegra

February 21, 2013

An act to add Sections 7153.6 and 55363.5 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 781, as amended, Bocanegra. Sales and use taxes: fees: administration: violations for noncompliance: sales suppression devices.

Existing law requires the payment of taxes, fees, and surcharges that are administered by the State Board of Equalization under the provisions of the Sales and Use Tax Law and the Fee Collection Procedures Law, as prescribed.

This bill would, under those laws, provide that a person who knowingly sells, purchases, installs, transfers, ~~or~~ possesses, *or uses* in this state any automated sales suppression device or zapper or phantom-ware is guilty of ~~a felony punishable by imprisonment for one, 3, or 5 years, and by a fine of not more than \$100,000~~ *an offense punishable by a fine, imprisonment, or both, as specified*. This bill would also provide that the person is liable for all taxes, interest, and penalties due as the result of the use of an automated sales suppression device or zapper or phantom-ware ~~and is required to forfeit to the state all profits associated with the sale or use of an automated sales suppression device or zapper or phantom-ware~~. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7153.6 is added to the Revenue and
 2 Taxation Code, to read:

3 7153.6. (a) Notwithstanding any other provision of this part,
 4 a person who knowingly sells, purchases, installs, transfers, or
 5 possesses, or uses in this state any automated sales suppression
 6 device or zapper or phantom-ware is guilty of a felony punishable
 7 by imprisonment pursuant to subdivision (h) of Section 1170 of
 8 the Penal Code for one, three, or five years, and by a fine of not
 9 more than one hundred thousand dollars (\$100,000). In addition,
 10 the person shall be liable for all taxes, interest, and penalties due
 11 as the result of the use of an automated sales suppression device
 12 or zapper or phantom-ware and shall forfeit to the state all profits
 13 associated with the sale or use of an automated sales suppression
 14 device or zapper or phantom-ware *an offense punishable by a fine*
 15 *of not more than ten thousand dollars (\$10,000), by imprisonment*
 16 *in a county jail for not more than one year; or, pursuant to*
 17 *subdivision (h) of Section 1170 of the Penal Code, for 16 months,*
 18 *or two, or three years, or by both that fine and imprisonment. In*
 19 *addition, any person who uses an automated sales suppression*
 20 *device or zapper or phantom-ware shall be liable for all taxes,*
 21 *interest, and penalties due as a result of the use of that device.*

22 (b) For purposes of this section:

23 (1) “Automated sales suppression device” or “zapper” means
 24 a software program carried on a memory stick or removable
 25 compact disc, accessed through an Internet link, or accessed
 26 through any other means, that falsifies the electronic records of
 27 electronic cash registers and other point-of-sale systems, including,
 28 but not limited to, transaction data and transaction reports.

29 (2) “Electronic cash register” means a device that keeps a
 30 register or supporting documents through the means of an

1 electronic device or computer system designed to record transaction
2 data for the purpose of computing, compiling, or processing retail
3 sales transaction data in whatever manner.

4 (3) “Phantom-ware” means a hidden, preinstalled, or installed
5 at a later time programming option embedded in the operating
6 system of an electronic cash register or hardwired into the
7 electronic cash register that can be used to create a virtual second
8 till or may eliminate or manipulate transaction records that may
9 or may not be preserved in digital formats to represent the true or
10 manipulated record of transactions in the electronic cash register.

11 (4) “Transaction data” includes information regarding items
12 purchased by a customer, the price for each item, a taxability
13 determination for each item, a segregated tax amount for each of
14 the taxed items, the amount of cash or credit tendered, the net
15 amount returned to the customer in change, the date and time of
16 the purchase, the name, address, and identification number of the
17 vendor, and the receipt or invoice number of the transaction.

18 SEC. 2. Section 55363.5 is added to the Revenue and Taxation
19 Code, to read:

20 55363.5. (a) Notwithstanding any other provision of this part,
21 a person who knowingly sells, purchases, installs, transfers, or
22 possesses, *or uses* in this state any automated sales suppression
23 device or zapper or phantom-ware is guilty of a felony punishable
24 by imprisonment pursuant to subdivision (h) of Section 1170 of
25 the Penal Code for one, three, or five years, and by a fine of not
26 more than one hundred thousand dollars (\$100,000). In addition,
27 the person shall be liable for all fees, interest, and penalties due
28 as the result of the use of an automated sales suppression device
29 or zapper or phantom-ware and shall forfeit to the state all profits
30 associated with the sale or use of an automated sales suppression
31 device or zapper or phantom-ware *an offense punishable by a fine*
32 *of not more than ten thousand dollars (\$10,000), by imprisonment*
33 *in a county jail for not more than one year, or, pursuant to*
34 *subdivision (h) of Section 1170 of the Penal Code, for 16 months,*
35 *or two, or three years, or by both that fine and imprisonment. In*
36 *addition, any person who uses an automated sales suppression*
37 *device or zapper or phantom-ware shall be liable for all taxes,*
38 *interest, and penalties due as a result of the use of that device.*

39 (b) For purposes of this section:

1 (1) “Automated sales suppression device” or “zapper” means
2 a software program carried on a memory stick or removable
3 compact disc, accessed through an Internet link, or accessed
4 through any other means, that falsifies the electronic records of
5 electronic cash registers and other point-of-sale systems, including,
6 but not limited to, transaction data and transaction reports.

7 (2) “Electronic cash register” means a device that keeps a
8 register or supporting documents through the means of an
9 electronic device or computer system designed to record transaction
10 data for the purpose of computing, compiling, or processing retail
11 sales transaction data in whatever manner.

12 (3) “Phantom-ware” means a hidden, preinstalled, or installed
13 at a later time programming option embedded in the operating
14 system of an electronic cash register or hardwired into the
15 electronic cash register that can be used to create a virtual second
16 till or may eliminate or manipulate transaction records that may
17 or may not be preserved in digital formats to represent the true or
18 manipulated record of transactions in the electronic cash register.

19 (4) “Transaction data” includes information regarding items
20 purchased by a customer, the price for each item, a taxability
21 determination for each item, a segregated tax or fee amount for
22 each of the items subject to the tax or fee, the amount of cash or
23 credit tendered, the net amount returned to the customer in change,
24 the date and time of the purchase, the name, address, and
25 identification number of the vendor, and the receipt or invoice
26 number of the transaction.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.