

AMENDED IN SENATE JULY 9, 2013
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 *sales and use taxes, and specified 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~~ *respectively*.

This bill would, under those laws, provide that a person who ~~knowingly~~ *purchases, installs, or uses in this state any automated sales suppression device or zipper or phantom-ware with the intent to defeat or evade the determination of an amount due or collected pursuant to those laws is guilty of a misdemeanor, and would provide that any person who, for commercial gain, sells, purchases, installs, transfers, possesses, or uses or possesses* in this state any automated sales suppression device or zipper or phantom-ware *with the knowledge that the sole purpose of the device is to defeat or evade the determination of an amount due or collected* is guilty of 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. 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~~ *any person who purchases, installs, or uses in this state any*
 5 *automated sales suppression device or zapper or phantom-ware*
 6 *with the intent to defeat or evade the determination of an amount*
 7 *due pursuant to this part is guilty of a misdemeanor.*
 8 (b) (1) Any person who ~~knowingly~~, *for commercial gain, sells,*
 9 *purchases, installs, transfers, possesses, or uses or possesses in*
 10 *this state any automated sales suppression device or zapper or*
 11 *phantom-ware with the knowledge that the sole purpose of the*
 12 *device is to defeat or evade the determination of an amount due*
 13 *pursuant to this part is guilty of an offense punishable by a fine*
 14 ~~of not more than ten thousand dollars (\$10,000)~~ *as specified in*
 15 *paragraph (2), by imprisonment in a county jail for not more than*
 16 *one year, or, pursuant to subdivision (h) of Section 1170 of the*
 17 *Penal Code, for 16 months, or ~~two~~, two or three years, or by both*
 18 *that fine and imprisonment. In addition, any person who uses an*
 19 *automated sales suppression device or zapper or phantom-ware*
 20 *shall be liable for all taxes, interest, and penalties due as a result*
 21 *of the use of that device.*
 22 (2) (A) *Where a person is guilty of the offense described in*
 23 *paragraph (1) and the person sold, installed, transferred, or*
 24 *possessed three or fewer automated sales suppression devices or*
 25 *zappers or phantom-ware, that person shall be guilty of an offense*
 26 *punishable by a fine of not more than five thousand dollars*
 27 *(\$5,000).*

1 (B) Where a person is guilty of the offense described in
2 paragraph (1) and the person sold, installed, transferred, or
3 possessed more than three automated sales suppression devices
4 or zappers or phantom-ware, that person shall be guilty of an
5 offense punishable by a fine of not more than ten thousand dollars
6 (\$10,000).

7 ~~(b)~~

8 (c) For purposes of this section:

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

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

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

27 (4) “Transaction data” includes information regarding items
28 purchased by a customer, the price for each item, a taxability
29 determination for each item, a segregated tax amount for each of
30 the taxed items, the amount of cash or credit tendered, the net
31 amount returned to the customer in change, the date and time of
32 the purchase, the name, address, and identification number of the
33 vendor, and the receipt or invoice number of the transaction.

34 (d) *This section shall not preclude prosecution under any other*
35 *law.*

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

38 55363.5. (a) Notwithstanding any other provision of this part,
39 *a any person who purchases, installs, or uses in this state any*
40 *automated sales suppression device or zapper or phantom-ware*

1 *with the intent to defeat or evade the determination of an amount*
2 *collected pursuant to this part is guilty of a misdemeanor.*

3 *(b) (1) Any person who knowingly, for commercial gain, sells,*
4 *purchases, installs, transfers, possesses, or uses or possesses in*
5 *this state any automated sales suppression device or zapper or*
6 *phantom-ware with the knowledge that the sole purpose of the*
7 *device is to defeat or evade the determination of an amount*
8 *collected pursuant to this part is guilty of an offense punishable*
9 *by a fine of not more than ten thousand dollars (\$10,000) as*
10 *specified in paragraph (2), by imprisonment in a county jail for*
11 *not more than one year, or, pursuant to subdivision (h) of Section*
12 *1170 of the Penal Code, for 16 months, or two, two or three years,*
13 *or by both that fine and imprisonment. In addition, any person who*
14 *uses an automated sales suppression device or zapper or*
15 *phantom-ware shall be liable for all taxes, interest, and penalties*
16 *due as a result of the use of that device.*

17 *(2) (A) Where a person is guilty of the offense described in*
18 *paragraph (1) and the person sold, installed, transferred, or*
19 *possessed three or fewer automated sales suppression devices or*
20 *zappers or phantom-ware, that person shall be guilty of an offense*
21 *punishable by a fine of not more than five thousand dollars*
22 *(\$5,000).*

23 *(B) Where a person is guilty of the offense described in*
24 *paragraph (1) and the person sold, installed, transferred, or*
25 *possessed more than three automated sales suppression devices*
26 *or zappers or phantom-ware, that person shall be guilty of an*
27 *offense punishable by a fine of not more than ten thousand dollars*
28 *(\$10,000).*

29 ~~(b)~~

30 *(c) For purposes of this section:*

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

37 *(2) “Electronic cash register” means a device that keeps a*
38 *register or supporting documents through the means of an*
39 *electronic device or computer system designed to record transaction*

1 data for the purpose of computing, compiling, or processing retail
2 sales transaction data in whatever manner.

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

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

18 (d) *This section shall not preclude prosecution under any other*
19 *law.*

20 SEC. 3. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.