

AMENDED IN SENATE AUGUST 12, 2013

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, respectively.

This bill would, under those laws, provide that a person who purchases, installs, or uses in this state any automated sales suppression device or zapper 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, or possesses in this state any automated sales suppression device or zapper 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 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, for commercial gain, sells, purchases,
9 installs, transfers, or possesses in this state any automated sales
10 suppression device or zapper or phantom-ware with the knowledge
11 that the sole purpose of the device is to defeat or evade the
12 determination of an amount due pursuant to this part is guilty of
13 an offense punishable by a fine as specified in paragraph (2), by
14 imprisonment in a county jail for not more than one year, or,
15 pursuant to subdivision (h) of Section 1170 of the Penal Code, for
16 16 months, or two or three years, or by both that fine and
17 imprisonment. In addition, any person who uses an automated
18 sales suppression device or zapper or phantom-ware shall be liable
19 for all taxes, interest, and penalties due as a result of the use of
20 that device.

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

7 (3) *This subdivision shall not apply to a person that is a*
8 *corporation that possesses any automated sales suppression device*
9 *or zapper or phantom-ware for the sole purpose of developing*
10 *hardware or software to combat the evasion of taxes by use of*
11 *automated sales suppression devices or zappers or phantom-ware.*

12 (c) For purposes of this section:

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

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

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

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

38 (d) This section shall not preclude prosecution under any other
39 law.

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

3 55363.5. (a) Notwithstanding any other provision of this part,
 4 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 collected pursuant to this part is guilty of a misdemeanor.

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

21 (2) (A) Where a person is guilty of the offense described in
 22 paragraph (1) and the person sold, installed, transferred, or
 23 possessed three or fewer automated sales suppression devices or
 24 zappers or phantom-ware, that person shall be guilty of an offense
 25 punishable by a fine of not more than five thousand dollars
 26 (\$5,000).

27 (B) Where a person is guilty of the offense described in
 28 paragraph (1) and the person sold, installed, transferred, or
 29 possessed more than three automated sales suppression devices or
 30 zappers or phantom-ware, that person shall be guilty of an offense
 31 punishable by a fine of not more than ten thousand dollars
 32 (\$10,000).

33 (3) *This subdivision shall not apply to a person that is a*
 34 *corporation that possesses any automated sales suppression device*
 35 *or zapper or phantom-ware for the sole purpose of developing*
 36 *hardware or software to combat the evasion of taxes by use of*
 37 *automated sales suppression devices or zappers or phantom-ware.*

38 (c) For purposes of this section:

39 (1) “Automated sales suppression device” or “zapper” means
 40 a software program carried on a memory stick or removable

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

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

10 (3) “Phantom-ware” means a hidden, preinstalled, or installed
11 at a later time programming option embedded in the operating
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15 or may not be preserved in digital formats to represent the true or
16 manipulated record of transactions in the electronic cash register.

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

25 (d) This section shall not preclude prosecution under any other
26 law.

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.