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SENATE BILL NO. 611

Offered January 14, 2014

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 58.1 a section numbered 58.1-18, relating to possession or transfer of automated sales suppression devices; penalty.

Patron—Saslaw

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 58.1 a section numbered 58.1-18 as follows:

§ 58.1-18. Possession or transfer of automated sales suppression devices; penalty.

A. As used in this section:

"Automated sales suppression device" means (i) any software program, carried on a memory stick or removable compact disk, accessed through an Internet link, or accessed through any other means, that falsifies the electronic records of electronic cash registers and other point-of-sale systems, including, but not limited to, transaction data and transaction reports, or (ii) any programming option embedded in the operating system of an electronic cash register, whether hidden, preinstalled, or installed at a later time, capable of being used to create a virtual electronic cash register or eliminate or manipulate transaction records in order to omit suppressed sales transactions when representing the record of transactions in the electronic cash register, whether or not the true or manipulated records are preserved in digital or other formats.

"Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data in whatever manner.

"Transaction data" includes items purchased by a customer; the price for each item; a taxability determination for each item; a segregated tax amount for each of the taxed items; the amount of cash or credit tendered; the net amount returned to the customer in change; the date and time of the purchase; the name, address, and identification number of the vendor; and the receipt or invoice number of the transaction.

"Transaction report" means a report documenting, but not limited to, the sales, taxes collected, media totals, and discount voids at an electronic cash register that is printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register that is stored electronically.

B. It shall be unlawful to willfully and knowingly sell, purchase, install, transfer, or possess in the Commonwealth any automated sales suppression device.

C. A violation of subsection B is a Class 6 felony.

D. Any person who violates subsection B is liable for all applicable state and local taxes and any penalties due the state or locality as the result of the fraudulent use of any automated sales suppression device and shall disgorge all profits associated with the sale or use of an automated sales suppression device.

E. In addition to the criminal penalty provided in subsection C and any other civil or criminal penalty provided in this title, any person violating subsection B shall pay a civil penalty of \$10,000, to be assessed and collected by the Department as other taxes are collected and deposited into the general fund.

F. If any person who violates the provisions of subsection B has been issued any certificate of registration, license, or bond pursuant to the tax laws of the Commonwealth, the issuing tax official, upon hearing, after giving such person 10 days' notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration, license, or bond should not be revoked or suspended, may revoke or suspend such certificate of registration, license, or bond.

G. Notwithstanding any other provision of this title, there shall be no time limitation on the assessment and collection of taxes, penalties, and interest attributable to the use of automated sales suppression devices.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the

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59 necessary appropriation cannot be determined for periods of commitment to the custody of the
60 Department of Juvenile Justice.