Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 611
(Patron – Saslaw)

LD#: 14101322 **Date:** 12/4/2013

Topic: Sales suppression devices

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** $50,000 *
- **Local Adult Correctional Facilities:** Cannot be determined
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Correctional Centers:** Cannot be determined
- **Juvenile Detention Facilities:** Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 806 of the 2013 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000.

Summary of Proposed Legislation:

The proposed legislation amends the *Code of Virginia* by adding § 58.1-18, relating to automated sales suppression devices. Under the proposal, the term "automated sales suppression device" is defined as a software program that falsifies the electronic records of electronic cash registers and other point-of-sale systems or any programming option embedded in the operating system of an electronic cash register that is capable of being used to create a virtual electronic cash register or eliminate or manipulate transaction records to omit suppressed sales transactions.

Under the proposal, willfully and knowingly selling, purchasing, installing, transferring, or possessing an automated sales suppression device would be punishable as a Class 6 felony with a civil penalty of $10,000. The offender would also be liable for all state and local taxes and any penalties due the state or locality as the result of using the device. In addition, all profits gained through the use of the device would be relinquished and the issuing taxing authority could revoke or suspend any registration, license, or bond after a hearing.

Analysis:

Currently, sales tax fraud can be prosecuted under §§ 58.1-1800 through 58.1-1816 of the *Code*, but no additional penalty is prescribed for using fraud-facilitating technology. Georgia was the first state to pass legislation to address the use of sales suppression devices, also known as "zappers" or "phantom-ware." As of 2012, Utah, West Virginia, New York, Tennessee, Michigan, Florida, Indiana, and Oklahoma have either introduced or passed legislation to combat the use of sales suppression devices.[1] Available

[1] Ainsworth, R.T., (2012), *An American Look at the Use of Zappers,* Working Paper No. 12-14. Boston University School of Law.

Virginia data do not contain sufficient detail to determine the number of incidents involving the use of sales suppression devices or the number of convictions that could result from prohibiting the sale, purchase, transfer, possession, or use of sales suppression devices.

Impact of Proposed Legislation:

State adult correctional facilities. Because it creates a new Class 6 felony offense, which is punishable by one to five years imprisonment in a state correctional facility, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. However, existing data do not provide sufficient detail to estimate the number of new felony convictions, or potentially longer sentences, that could result from enactment of the proposal. Therefore, the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the proposal may increase the local-responsible (jail) bed space needs of the Commonwealth. However, the magnitude of the impact on jail bed space needs cannot be determined.

Adult community corrections resources. Because the proposal could result in additional felony convictions and subsequent supervision requirements for additional offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases that may be affected cannot be determined, the potential impact on community corrections resources cannot be determined.

Virginia's sentencing guidelines. As a new felony in the *Code of Virginia*, the sentencing guidelines would not cover violations of § 58.1-18 as the primary (most serious) offense in a case. However, convictions for this crime may augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

Juvenile detention facilities. The Department of Juvenile Justice reports that the proposal's impact on the bed space needs of juvenile detention facilities cannot be determined.

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 2013 Acts of Assembly 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 necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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