

1 HB18
2 171030-6
3 By Representatives McMillan, Williams (P), Davis, Williams
4 (JW), Wilcox and Hurst
5 RFD: Ways and Means Education
6 First Read: 03-AUG-15

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2 ENROLLED, An Act,

3 Relating to crimes and offenses; to amend Section
4 40-29-119, Code of Alabama 1975, to provide for the limitation
5 period on the offense; to add Section 40-29-121, Code of
6 Alabama 1975, to make it unlawful to knowingly sell, purchase,
7 install, transfer, or possess in this state any automated
8 sales suppression device or phantom-ware; to provide for
9 definitions; to provide for criminal penalties; to provide
10 that the devices and software are contraband; and in
11 connection therewith would have as its purpose or effect the
12 requirement of a new or increased expenditure of local funds
13 within the meaning of Amendment 621 of the Constitution of
14 Alabama of 1901, now appearing as Section 111.05 of the
15 Official Recompilation of the Constitution of Alabama of 1901,
16 as amended.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 40-29-119, Code of Alabama 1975,
19 is amended to read as follows:

20 "§40-29-119.

21 "(a) No person shall be prosecuted, tried, or
22 punished for any of the various offenses arising under the
23 revenue laws unless the indictment is found or the prosecution
24 instituted within three years next after the commission of the

offense, except that the period of limitation shall be six years:

"(1) For offenses involving the defrauding or attempting to defraud the State of Alabama or any agency thereof, whether by conspiracy or not, and in any manner;

"(2) For the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof;

"(3) For the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the statute revenue laws, of a false or fraudulent return, affidavit, claim or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document);

"(4) For the offense of willfully failing to pay any tax, or make any return at the time or times required by law or regulations;

"(5) For offenses described in Sections 40-29-115 and 40-29-116 (relating to false statements and fraudulent documents);

"(6) For the offense described in Section 40-29-118 (relating to intimidation of officers and employees of the State of Alabama)-; or

1 "(7) For the offense described in Section 40-29-121
2 (relating to the possession or use of an automated sales
3 suppression device or phantom-ware).

4 "(b) The time during which the person committing any
5 of the various offenses arising under the revenue laws is
6 outside the State of Alabama or is a fugitive from justice
7 within the meaning of the Code of Alabama, shall not be taken
8 as any part of the time limited by law for the commencement of
9 such proceedings."

10 Section 2. Section 40-29-121 is added to Chapter 29,
11 Title 40, Code of Alabama 1975, as follows:

12 §40-29-121.

13 (a) For purposes of this section, the following
14 words have the following meanings:

15 (1) AUTOMATED SALES SUPPRESSION DEVICE. A software
16 program carried on a memory stick or removable compact disc,
17 accessed through an Internet link, or by any other means, that
18 falsifies the electronic records of electronic cash registers
19 and other point-of-sale systems, including, but not limited
20 to, transaction data and transaction reports.

21 (2) ELECTRONIC CASH REGISTER. A device that keeps a
22 register or supporting documents through the use of an
23 electronic device or computer system designed to record
24 transaction data for the purpose of computing, compiling, or
25 processing retail sales and other transaction data.

1 (3) PHANTOM-WARE. Any hidden or concealed
2 programming option embedded in the operating system of an
3 electronic cash register or hardwired into the electronic cash
4 register that can be used to create a second set ~~or~~ of records
5 or to eliminate or manipulate transaction records that may or
6 may not be preserved in digital formats in order to represent
7 the true or manipulated record of a transaction in the
8 electronic cash register.

9 (4) TRANSACTION DATA. Data relating to a transaction
10 which includes, but is not limited to, data identifying each
11 item purchased by a customer, the price for each item, a
12 taxability determination for each item, a segregated tax
13 amount for each of the taxed items, the amount of cash or
14 credit tendered, the net amount returned to the customer in
15 change, the date and time of the purchase, the name, address,
16 and identification number of the vendor, and the receipt or
17 invoice number of the transaction.

18 (5) TRANSACTION REPORTS. Either of the following or
19 any variation thereof:

20 a. A report that contains, but is not limited to,
21 documentation of sales, taxes, or fees collected; media
22 totals; and discount voids at an electronic cash register, and
23 that is printed on a cash register tape at the end of a day or
24 shift, or

1 b. A report that documents every action at an
2 electronic cash register and that is stored electronically.

3 (b) It is unlawful to knowingly sell, purchase,
4 install, transfer, use, or possess in this state any automated
5 sales suppression device or phantom-ware.

6 (c) Any person convicted of a violation of this
7 section is guilty of a Class C felony and upon conviction,
8 shall also be fined not more than one hundred thousand dollars
9 (\$100,000), or in the case of a corporation, not more than
10 five hundred thousand dollars (\$500,000), ~~or may be imprisoned~~
11 ~~for not more than three years, or both fine and imprisonment.~~
12 In addition, the person shall be liable for all taxes, fees,
13 penalties, and interest due the state and any locality as the
14 result of the fraudulent use of an automated sales suppression
15 device or phantom-ware and shall forfeit to the state, as an
16 additional penalty, all profits associated with the sale or
17 use of an automated sales suppression device or phantom-ware.

18 (d) An automated sales suppression device or
19 phantom-ware and any device containing such device or software
20 shall be contraband and shall be forfeited to the state.

21 Section 3. All laws or parts of laws which conflict
22 with this act are repealed.

23 Section 4. The provisions of this act are severable.
24 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 5. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 6. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 05-AUG-15, as amended.

Jeff Woodard
Clerk

Senate	10-AUG-15	Amended and Passed
House	10-AUG-15	Concurred in Sen- ate Amendment