

SENATE BILL REPORT

SB 5715

As of February 20, 2013

Title: An act relating to addressing the evasion of taxes by the use of certain electronic means.

Brief Description: Addressing the evasion of taxes by the use of certain electronic means.

Sponsors: Senators Hill, Carrell and Hargrove.

Brief History:

Committee Activity: Ways & Means: 2/19/13.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Juliana Roe (786-7438)

Background: Any person doing business in Washington must obtain a master business license from the state. In addition, any person that engages in business must apply for a certificate of registration from the Department of Revenue (DOR) unless:

- gross income or sales from all taxable business activities is less than \$12,000;
- the business is not required to collect or pay any tax or fee which DOR is authorized to collect; and
- the business is not required to obtain an additional license with their master business license.

A business making a retail sale must collect sales tax from the purchaser and remit the tax to DOR. Sales tax receipts are legally considered trust funds of the state. A business that fails to remit collected sales tax receipts can be charged with a class C felony. In addition, any business that is found guilty of making false or fraudulent tax returns can be charged with a class C felony.

DOR can revoke the certificate of registration of any business if a tax warrant is not paid within 30 days after it has been filed or if a business is delinquent for three consecutive reporting periods of retail sales tax collected by the business. A certificate that has been revoked cannot be reinstated until the amount due on the warrant is paid, all taxes and penalties are paid, or DOR has approved provisions for payment.

An automated sales suppression device, known as phantom-ware or zapper-software, is a program that falsifies the electronic records or transactions of a point of sale system (POS) or

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

cash register. Zapper software can be plugged into a POS system using a USB drive or can be programmed into the system. In general, zapper software is most commonly used by cash-heavy businesses. It is not illegal to distribute or own zapper software in Washington.

Summary of Bill: Any person who commits electronic tax fraud using an automated sales suppression device or phantom-ware will be charged with a class C felony. Any person who provides an automated sales suppression device or phantom-ware to another person will be subject to an additional mandatory fine that is the greater of \$10,000 or the amount lawfully due from the person who received and used the device.

DOR has the authority to revoke the certificate of registration for any business found using an automated sales suppression device. In addition to current provisions in law, a business cannot have their certificate of registration reinstated unless they agree to have DOR monitor sales transactions through an electronic monitoring system, to be paid for by the business for five years.

Automated sales suppression devices or phantom-ware are considered contraband and are subject to seizure and forfeiture.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There has been an outcropping of these devices on POS systems that allow you to dodge the sales tax. Thirteen other states have enacted laws to address this new technology that we are trying to get ahead of. Our state is losing sales tax as a result.

This bill is intended to address sales suppression technology. This technology has emerged from Canada and is quickly moving into the United States. The software can be downloaded off of the internet. These devices and software make it appear as though fewer transactions have taken place. In some cases they produce two sets of books, one that is accurate and another that is not. Quebec enacted legislation that requires every POS system to install software to detect the use of this technology. We are not requiring that here. This bill merely puts penalties in place for those who are caught selling, using, and possessing this technology.

Losses can be significant. In Quebec, they estimated that in 2008-09, there was over \$400 million in lost revenue.

It is important to note that in normal tax audit function we can identify fraud or evasion when a business underreports its taxes. This technology allows a business to eliminate that record altogether. This hampers our ability to assess whether taxes have been evaded because we have no record to use as evidence.

The business community does not condone this kind of behavior. We want to get ahead of this problem in our state. The only issue that we wanted to be sure was addressed in this bill is in cases of embezzlement or fraud. We do not want an employer to be penalized for something an employee is doing without their knowledge. This is addressed here.

Persons Testifying: PRO: Senator Hill, prime sponsor; Drew Shirk, DOR; Amber Carter, Assn. of WA Businesses.