HB0096S01 compared with HB0096

{deleted text} shows text that was in HB0096 but was deleted in HB0096S01.

inserted text shows text that was not in HB0096 but was inserted into HB0096S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Patrice M. Arent proposes the following substitute bill:

PROHIBITION OF SALE OR USE OF CERTAIN SOFTWARE PROGRAMS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: _____

Cosponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Criminal Code by prohibiting the use, purchase, installation, transfer, or sale of any automated sales suppression device or phantomware.

Highlighted Provisions:

This bill:

‣ provides definitions, including defining automated sales suppression device and phantomware;

‣ prohibits a person from knowingly selling, purchasing, installing, transferring,

using, or possessing any automated sales suppression device or phantomware;

‣ provides that the penalty for a first offense is a third degree felony and any subsequent offense is a second degree felony; and

‣ provides an additional penalty of a fine {between $10,000 and $100,000}not to exceed twice the amount of the applicable taxes that would otherwise be due for any person convicted of violating these provisions{; and

‣ provides a period of amnesty until January 1, 2014, for any person to voluntarily correct and fully report any previously underreported sales records, provided that the person fully remits any taxes, fees, and charges that are due and the person is not found to be in violation of this section for any new or previously unreported offenses for a period of five years subsequent to the granting of amnesty.}.

Money Appropriated in this Bill:

None

Other Special Clauses:

{   None} This bill takes effect on July 1, 2012.

Utah Code Sections Affected:

ENACTS:

76-6-1301, Utah Code Annotated 1953

76-6-1302, Utah Code Annotated 1953

76-6-1303, Utah Code Annotated 1953

{   76-6-1304, Utah Code Annotated 1953

}

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-6-1301** is enacted to read:

Part 13. Utah Automated Sales Suppression Device Act

76-6-1301. Title.

This part is known as the "Utah Automated Sales Suppression Device Act."

Section 2. Section **76-6-1302** is enacted to read:

76-6-1302. Definitions.

As used in this part:

{   (1) "Amnesty" means a person is not subject to the criminal and civil penalties detailed in Section 76-6-1303.

}   ([{2}]1) "Automated sales suppression device" means:

(a) a software program that falsifies the electronic records of electronic cash registers or any other point-of-sale systems, including transaction data and transaction reports; or

(b) a general reference to a device that allows for, creates, or supports an automated sales suppression system or any kind of phantomware.

{   (3) "Commission" means the Utah Tax Commission.

}   ([{4}]2) "Electronic cash register" means any device, wherever located, that maintains a transaction register or supporting documents by means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail, wholesale, or any other sales transaction data.

([{5}]3) "Person" means an individual, business, or entity.

([{6}]4) "Phantomware" means a programming option that:

(a) is pre-installed, installed at a later time, or otherwise embedded in the operating system of an electronic cash register or hardwired into the electronic cash register; and

(b) can be used to create a virtual alternate register or to eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to represent a manipulated record or records of transactions in the electronic cash register.

([{7}]5) "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 or in a refund, 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.

([{8}]6) "Transaction report" means a report that includes the sales, taxes collected, media totals, and discount voids at an electronic cash register and that is generated at the end of a day or shift. The report is printed on cash register tape or is stored electronically.

Section 3. Section **76-6-1303** is enacted to read:

76-6-1303. Possession, sale, or use of automated sales suppression device unlawful -- Penalties.

(1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer,

use, or possess in this state any automated sales suppression device or phantomware, except that any second or subsequent violation of this Subsection (1) is a second degree felony.

(2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection (1) {shall pay a fine of at least $10,000 but not more than $100,000}may be fined not more than twice the amount of the applicable taxes that would otherwise be due, but for the use of the automated sales suppression device or phantomware.

(3) Any person convicted of a violation of Subsection (1):

(a) is liable for all applicable taxes, penalties under Section 59-1-401, and interest under Section 59-1-402 that would otherwise be due, but for the use of the automated sales suppression device or phantomware to evade the payment of taxes; and

(b) shall disgorge all profits associated with the sale or use of an automated sales suppression device or phantomware.

(4) An automated sales suppression device and any device containing an automated sales suppression device is contraband and subject to forfeiture under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

Section 4. {Section 76-6-1304 is enacted to read:

76-6-1304. Amnesty.

(1) Notwithstanding Section 76-6-1303, before any criminal action is initiated under this part the commission may grant amnesty to any person who voluntarily corrects and accurately reports any previously underreported sales records prior to January 1, 2014, provided that the correction and resulting payment are not the subject of an audit or investigation.

(2) This section may not be construed to restrict or affect a person's liability for taxes and interest due or for any other liabilities arising from the underreporting of sales.

(3) Any amnesty the commission grants to a person under this section remains in effect if that person remits to the commission the taxes, fees, and charges that are due and is not found to be in violation of Section 76-6-1303 for any new or previously unreported offenses for a period of five years subsequent to the date payments are made under the granting of amnesty.

(4) The commission may not grant a person amnesty under this section if, with respect to a tax, fee, or charge for which the person would otherwise be granted amnesty under Subsection (1), the person has committed an intentional misrepresentation of a material fact,

separate from the use of any automated suppression device or phantomware as defined in this part:

Legislative Review Note

as of   1-23-12 12:02 PM

Office of Legislative Research and General Counsel}Effective date.

This bill takes effect on July 1, 2012.