

Tab 1	SB 228 by Bradley (CO-INTRODUCERS) Burgess; (Identical to H 00121) Notaries Public					
267620	A	S	RCS	CM, Bradley	Delete L.320 - 341:	01/26 09:39 AM

Tab 2	SB 50 by Gruters (CO-INTRODUCERS) Perry, Hooper, Torres, Taddeo, Burgess; (Compare to H 00015) Sales and Use Tax					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Hooper, Chair
Senator Wright, Vice Chair

MEETING DATE: Monday, January 25, 2021
TIME: 2:30—5:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Burgess, Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
	Introduction of Committee Members and Staff		Presented
	Brief Overview of the Committee's Jurisdiction		Presented
1	SB 228 Bradley (Identical H 121)	Notaries Public; Authorizing an employer of a notary public to require the use of a particular technology and provider in performing a notarial act with respect to an electronic record; modifying requirements for entries in the electronic journal maintained by an online notary public; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; clarifying limitations on fees charged for online notarizations, etc. CM 01/25/2021 Fav/CS JU RC	Fav/CS Yeas 11 Nays 0
2	SB 50 Gruters (Compare H 15)	Sales and Use Tax; Expanding the definition of the term "retail sale" to include sales facilitated through a marketplace; defining the terms "remote sale" and "substantial number of remote sales"; providing that every person making a substantial number of remote sales is a dealer for purposes of the sales and use tax; providing that certain marketplace providers are dealers for purposes of the sales and use tax; providing that a marketplace seller, rather than the marketplace provider, is liable for sales tax collection and remittance under certain circumstances, etc. CM 01/25/2021 Favorable FT AP	Favorable Yeas 11 Nays 0

Other Related Meeting Documents

<p>Commerce and Tourism (CM) Staff: Jessie Harmsen, Todd McKay, Carter McMillan, Madeline Reeve, Kathryn Vigrass</p>	
<p align="center">Subject Matter Areas</p>	<p align="center">Entities</p>
<ol style="list-style-type: none"> 1) Advertisers 2) Business organizations 3) Commercial activity 4) Consumer protection, including: <ol style="list-style-type: none"> a) sale of goods and services, including contracts and rebates b) safety c) FDUTPA 5) Economic development, including: <ol style="list-style-type: none"> a) business recruitment b) incentives c) technology research d) minority businesses e) small businesses f) capital g) job creation h) international trade 6) Event tickets and admissions 7) Film and entertainment industries 8) Non-agricultural consumer services 9) Notaries 10) Retail and retailers 11) Sales and use tax, including exemptions and internet sales (with FT) 12) Sports 13) Technology 14) Tourism 15) Trade issues 16) Triumph Gulf Coast 17) Workforce issues, including: <ol style="list-style-type: none"> a) reemployment assistance b) reemployment services c) employment agencies d) minimum wage e) labor and employment issues 	<p>Dept of Economic Opportunity (DEO) Dept of Agriculture and Consumer Services (non agriculture, including Division of Consumer Services and Division of Licensing) Dept of State (Division of Corporations) Enterprise Florida, Inc. Florida Sports Foundation Office of Film & Entertainment Visit Florida CareerSource Florida Regional Workforce Boards Florida Development Finance Corporation</p>

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 228

INTRODUCER: Commerce and Tourism Committee and Senator Bradley

SUBJECT: Notaries Public

DATE: January 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 228 provides updates to the recently created process for online notarizations in ch. 117, F.S. In part, the bill:

- Institutes a self-certification requirement for remote online notarization service providers to ensure their eligibility to assist with the provision of notary services;
- Transfers specific duties from online notaries public to their remote online notarization service providers;
- Requires the Department of State to publish information about active and inactive online notaries public and remote online notarization service providers;
- Permits online notaries to rely on a foreign passport of an individual who is currently outside of the borders of the United States to perform an online notarization;
- Implements privacy requirements for personally identifying information given during an online notarization; and
- Provides several clarifications and technical updates to the process of online notarizations provided for in ch. 117, F.S.

The bill takes effect on October 1, 2021.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 117, F.S., to authorize notaries public, civil-law notaries, and commissioners of deeds to register as online notaries to provide online notary

services through two-way, remote audio-visual communication technology, similar to skype and zoom.¹

Florida is one of 29 states that permits remote online notarization (RON).² Virginia was the first to enact a RON law in 2012,³ and the proposed SECURE Act in Congress would permit all current notaries public appointed in the U.S. to perform RON in connection with interstate transactions.⁴ Additionally, RON has been expanded through federal agency guidance, state emergency powers, and specific court's administrative orders to allow necessary business to continue during the COVID-19 pandemic.⁵ The Florida Supreme Court issued an administrative order that permits notaries and all other parties qualified to administer oaths in Florida to swear a witness remotely by audio-video communication technology from a location within the State of Florida.⁶

Online Notaries Public in Florida

The Department of State (department) governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:⁷

- Be commissioned or appointed as a notary public pursuant to ch. 117, F.S., a civil-law notary under ch. 118, or a commissioner of deeds under part IV of ch. 721;
- Complete training that covers the duties, obligations, and technology requirements for serving as an online notary;
- Pay a \$10 notary public registration fee;
- Have a current contract with a RON service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and
- Maintain a \$25,000 bond and a current errors and omissions insurance policy.

As of January 2021, 6,278 online notaries had registered with the department.⁸

¹ Chapter 2019-71, L.O.F. CS/CS/HB 409 (2019) was signed into law on June 7, 2019, and took effect on January 1, 2020.

² M.H.K. Tank, D. Whitaker, E.S.M. Caires, A. Grant, *Coronavirus: Federal and State Governments Work Quickly to Enable Remote Online Notarization to Meet Global Crisis*, DLAPiper Publications (Jan. 4, 2021), https://www.dlapiper.com/en/us/insights/publications/2020/03/coronavirus-federal-and-state-governments-work-quickly-to-enable-remote-online-notarization/#:~:text=Currently%2C%20there%20are%2028%20states,Dakota*%2C%20Tennessee%2C%20Texas%2C (last visited Jan. 25, 2021).

³ Lauren Silverman, *Notaries are Starting to Put Down the Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Jan. 25, 2021). See Office of the Secretary of the Commonwealth of Virginia, Notary Public Division, *A Handbook for Virginia Notary Publics*, <https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-administration/Virginia-Remote-Online-Notarization-Guidance.pdf> (last visited Jan. 25, 2021).

⁴ Tank, et al. *supra* note 2. Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020, S.B. 3533, 116th Cong. (2020), available at <https://www.congress.gov/bill/116th-congress/senate-bill/3533/text?q=%7B%22search%22%3A%5B%223533%22%5D%7D&r=4&s=2> (last visited Jan. 25, 2021).

⁵ Tank, et al. *supra* note 2.

⁶ Florida Supreme Court, *In Re: COVID-19 Emergency Procedures for the Administering of Oaths via Remote Audio-Video Communication Equipment*, Fla. Admin. Order No. AOSC20-16, (Mar. 18, 2020) available at <https://www.floridasupremecourt.org/content/download/632105/file/AOSC20-16.pdf> (last visited Jan. 25, 2021).

⁷ Section 117.225, F.S.; Fla. Admin. Code, R. 1N-7.001 (2020). See also, Department of State, *Remote Online Notary Public*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/> (last visited Jan. 25, 2021).

⁸ Email from Department of State staff (Jan. 13, 2021) (on file with the Senate Committee on Commerce and Tourism).

An online notary can administer oaths or affirmations, take acknowledgements, attest to photocopies, verify vehicle identification numbers, and certify the contents of a safe-deposit box. The online notary must perform the notarial service from Florida, but the individual who seeks the notarial service (principal) and any witnesses can login to the RON platform from anywhere in the world. An online notary may charge a fee of no more than \$25 for performing a notarial service.⁹

Online notaries differ from notaries public in that they may use audio-visual technology to notarize a document for a principal who is in a different physical location; a notary public must be physically present with the principal to notarize a document. Additionally, although notaries public can solemnize marriages, an online notary cannot.¹⁰

Remote Online Notarization (RON) Service Providers

A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries to facilitate their performance of online notarizations.¹¹ More concretely, a RON service provider hosts a platform that provides the audiovisual technology that allows the notary and signer to see, hear and communicate with each other over the internet.¹²

Online Notarization

To perform an online notarization service, an online notary must first determine whether the principal is located outside of Florida at the time of notarization. If so, the online notary must confirm that the principal understands that the notarization will occur according to Florida law.

Next, the online notary must confirm the principal's identity.¹³ An online notary may do so by documenting that he or she personally knows the principal, or, if the notary does not know the principal, by documenting all of the following:

- The principal's remote presentation of a government-issued identification;¹⁴
- The notary's credential analysis¹⁵ of the identification to ensure its validity; and

⁹ Section 117.275, F.S.

¹⁰ Section 117.209(1), F.S.

¹¹ Section 117.201(14), F.S.

¹² David Thun, The National Notary Magazine, *The State of Remote Online Notarization* (Nov. 19, 2019), available at <https://www.nationalnotary.org/notary-bulletin/blog/2019/11/the-state-of-remote-online-notarization> (last visited Jan. 25, 2021).

¹³ Section 117.265(4), F.S.

¹⁴ Section 117.05(5)(b)2 lists acceptable identification as: Florida identification card or driver license; a U.S. passport; a passport issued by a foreign government if it is stamped by the U.S. Bureau of Citizenship and Immigration Services; a driver license or id card issued by a state other than Florida, or a territory in the U.S., Canada, or Mexico; an id card issued by the U.S. armed forces; a veteran health id card; an inmate id card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an id card issued by the U.S. Bureau of Citizenship and Immigration Services; or, where all of the inmate's identifications were confiscated upon his or her confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

¹⁵ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

- The notary's identity proofing¹⁶ of the principal, wherein a third-party provides knowledge-based authentication questions that must be correctly answered by the principal in a limited amount of time.

If the notary cannot document these steps, then he or she is not permitted to perform the online notarization.

Should the online notarization also require a witness, the online notary must confirm the witness' identity.¹⁷ If the witness is physically present with the principal, he or she can confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-visual communication technology (outside of the principal's presence), the online notary must confirm the witness' identity by presentation of government-issued identification and performance of a credential analysis and identity proofing, as required for the principal.

Should the notary succeed in confirming the pertinent identities, then the notary may witness the principal electronically sign the document. Then the notary adds his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.¹⁸

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-visual component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;¹⁹ and
- Create an entry in his or her electronic journal of notarizations that notes specific information about the notarization, including types of identification used and the names and addresses of all parties involved.²⁰

The online notary must maintain both the electronic journal and the recordings for at least 10 years after the notarization. An online notary, his or her estate, or guardian may transfer these documents to a secure repository should he or she become incapable of maintaining them before the 10 years have elapsed.²¹

III. Effect of Proposed Changes:

Section 117.021, F.S., currently grants a notary public the right to perform notarial acts, with respect to an electronic record, with whatever form of technology he or she chooses. **Section 1** amends s. 117.021, F.S., to accommodate an employer's requirement that a notary public who performs notarial acts as a part of his or her job use technology and providers chosen by the employer within the scope of employment. This allows a business to standardize its services and contracts. The notary public's right to use his or her preferred technology outside of the scope of employment is not changed by this amendment.

¹⁶ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

¹⁷ Section 117.285, F.S.

¹⁸ Section 117.255, F.S. *See also*, Silverman *supra* note 3.

¹⁹ Section 117.245(2), F.S.

²⁰ Section 117.245(1), F.S.

²¹ Section 117.245(4), F.S.

Section 2 amends s. 117.05, F.S., to clarify that a notary public may not charge a fee in excess of \$10 per each signature per document, rather than for each “notarial act.”

Section 3 amends s. 117.201, F.S., to permit an online notary to use a passport issued by a foreign government that *does not* include an immigration stamp from the U.S. Bureau of Citizenship and Immigration services to validate a principal’s identity. This accommodates online notarizations where the principal has not entered the United States, and appears via audio-visual technology for the notarization.

Section 4 amends s. 117.215, F.S., to make non-substantive changes to clarify that a notary must verify the identification of a witness who is not in the principal’s physical presence at the time of the notarization in the same manner an online notary verifies the principal’s identity. It is unclear how this amendment will affect witnesses who are in the principal’s physical presence at the time of notarization, as s. 117.285(2), F.S., allows a physically-present witness’ identity to be confirmed by the witness’ statement of his or her name and current address on the audio-video recording.

Section 5 amends s. 117.225(1), F.S., to change the requirement that online notary registrants submit a copy of their commission or appointment as a notary public, civil-law notary, or commissioner of deeds, to accommodate instances in which the original copy of the appointment or commission is lost. The amendment now requires *proof of* a commission or appointment as a notary public, civil-law notary, or commissioner of deeds.

This section also amends s. 117.225(5), F.S., to permit online notary registrants to identify one or more RON service providers with whom they have contracted to provide online notarizations.

Sections 6 and 7 amend ss. 117.245 and 117.255, F.S., to transfer the duty to maintain a recording of the audio-video communication in which an online notarization was performed from the online notary to the RON service provider used for the services. The RON service provider must keep a copy of the recording at least 10 years, but it does not have a duty to transfer its maintained recordings to a repository should it be unable to meet the repository requirement.

The bill also extends the duty to provide access to the RON service provider’s stored recordings, or a copy thereof, to specific parties upon their request. The bill permits the RON service provider to charge a fee of no more than \$20 for producing a copy of the recording, and requires disclosure of the fee in a timely manner.

Section 6 is also reorganized to clarify an online notary’s duty to note in his or her electronic journal that a principal’s government-issued identification satisfied the credential analysis only when the online notary relied on a principal’s identification to prove his or her identity, not in cases where the online notary personally knew the principal.

Section 8 amends s. 117.265, F.S., to offer an accommodation to employers of online notaries to allow them to specify the RON service provider the online notary may use in his or her capacity as an employee, similar to the change made for notary public employers in section 1 of the bill.

This amendment also reiterates that an online notary public may choose to use any RON service provider outside of his or her employment relationship.

Section 9 amends s. 117.275, F.S., to specify that an online notary may not charge a fee in excess of \$25 per signature per document, rather than for each online notarization. It further clarifies that this fee ceiling does not govern fees charged by a RON service provider, and states that online notarization services are not considered closing services, as defined in s. 627.7711, F.S.

Section 10 amends s. 117.295, F.S., to create a process whereby RON service providers must certify with the department that they are eligible, pursuant to statute and rule, to provide audio-visual communication and related processes for assistance in the provision of online notarization services.

While these eligibility requirements exist in current statute, the duty to confirm the RON service provider's eligibility rests with the online notary at the time of his or her registration. **Section 5** deletes the online notary's duty to confirm a RON service provider's eligibility in s. 117.225(5), F.S., thereby completing the transfer of RON service provider eligibility certification from online notary to RON service provider.

Section 10 further amends s. 117.295, F.S., to require that the department publish on its website both a list of each online notary public, his or her past and present RON service providers, and the effective dates during which the online notary used the RON service provider; and a list of all RON service providers who have an active self-certification with the department.

The bill deletes the department's emergency rulemaking, but leaves the department's rulemaking authority intact to permit further rulemaking to implement remote online notarizations in Florida.

Lastly, section 10 implements privacy standards that prohibit a RON service provider from using, selling, or offering to sell or transfer for use or sale any personally identifying information that it obtained under part II of ch. 117, F.S., from a principal, witness, or person named in a record that was presented for notarization, except in cases where provision of the information is necessary to:

- Facilitate the notarial act;
- Effect, administer, enforce, service, or process a record provided by or on behalf of a principal or the transaction for which the record was provided;
- Comply with federal, state, or local law, or to comply with a lawful subpoena or court order; or
- Engage in the sale, merger, transfer, or exchange of all or a portion of the RON service provider's business—if the transferee agrees to comply with the statutory privacy restrictions in s. 117.295(8), F.S.

Section 11 provides that the bill takes effect on October 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Notaries public and online notaries may change their fee structure pursuant to the amendments to ss. 117.05 and 117.275, F.S., which apply the fee ceilings to each signature per document, rather than "any one notarial act" or "for performing an online notarization." This could result in higher costs to individuals who seek the services of a notary public or online notary.

RON service providers may have to update terms and processes to implement the privacy restrictions in this bill.

C. Government Sector Impact:

The department will be required to implement processes to publish and maintain lists of RON service providers and online notaries. It currently maintains a list of notaries public, their commission number, and their commission's expiration date—but does not

currently indicate whether a notary public is registered as an online notary public.²² The department states that this duty to publish additional information regarding online notaries public and RON service providers will “have a significant impact on its current technology systems. ... [and] will require additional funding and may require additional deliverables and/or timeframe be added to the COTS [commercial-off-the-shelf business registry system] contract in progress.” The department therefore “request[s] additional funding and FTE positions in order to perform the additional processing duties, responsibilities and services specified in the bill.”²³

The department also “suggests a fee for the RON service provider to file the self-certification.”²⁴ It is unclear if the department suggests this fee to defray costs related to the publication of information required under the bill.

Additionally, the department may have to adopt forms or rules to implement the certification of RON service providers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear what will occur to the recordings made and retained by RON service providers should the RON service provider become unable to retain the recording for 10 years. Previously, online notaries were required to transfer their recordings to a secure repository should they become incapable of meeting the retention requirement, but the bill has no such requirement for RON service providers.

Section 117.215, F.S., addresses witnesses, both those who appear on a RON platform in the physical presence of the principal and those who link up remotely from the principal. Section 4 of the bill amends s. 117.215, F.S., to address only witnesses who are not in the principal’s physical presence. It is unclear how this will affect identification procedures for witnesses who are in the physical presence of the principal.

The department states it does not currently index or store online notaries’ RON service providers, and therefore it will not be able to provide that information on the required published lists. The department recommends that the bill be amended to require only that it publish the online notary’s RON service providers’ information and service dates after the effective date of the bill.²⁵

²² Department of State, *Approved Notaries*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/approved-notaries/> (last visited Jan. 25, 2021).

²³ Department of State, *SB 228 Agency Analysis*, p. 5 (Jan. 7, 2021) (on file with the Senate Committee on Commerce and Tourism).

²⁴ *Id.*

²⁵ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.021, 117.05, 117.201, 117.215, 117.225, 117.245, 117.255, 117.265, 117.275, 117.295.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on January 25, 2021:

- Deletes “interim and emergency” rulemaking to implement provisions of the bill, but leaves the department’s general rulemaking authority intact;
- Requires RON service providers to self-certify each year instead of every two years; and
- Deletes the requirement that a RON service provider submit a new self-certification after each amendment to ch. 117, F.S., and any rules adopted pursuant thereto.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2021	.	
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The Committee on Commerce and Tourism (Bradley) recommended the following:

Senate Amendment

Delete lines 320 - 341

and insert:

(2) ~~By January 1, 2020,~~ The Department of State shall:

(a) Adopt forms, processes, and ~~interim or emergency~~ rules necessary to accept applications from and register online notaries public pursuant to s. 117.225.

(b) Publish on its website a list containing each online notary public, the online notary public's past and present RON



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11 service providers, and the effective dates during which the
12 online notary public used each RON service provider, as
13 identified pursuant to ss. 117.225(5) and 117.265(5)(b).

14 (4)(a) A RON service provider must file a self-
15 certification with the Department of State on a form adopted by
16 department rule confirming that its audio-video communication
17 technology and related processes, services, software, data
18 storage, or other services provided to online notaries public
19 for the purpose of directly facilitating their performance of
20 online notarizations satisfy the requirements of this chapter
21 and any rules adopted by the Department of State pursuant to
22 this section. Each certification shall remain active for a
23 period of 1 year from the date of filing. The Department of

By Senator Bradley

5-00405B-21

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1 A bill to be entitled
 2 An act relating to notaries public; amending s.
 3 117.021, F.S.; authorizing an employer of a notary
 4 public to require the use of a particular technology
 5 and provider in performing a notarial act with respect
 6 to an electronic record; amending s. 117.05, F.S.;
 7 revising limitations on notary public fees; amending
 8 s. 117.201, F.S.; revising definitions; amending s.
 9 117.215, F.S.; clarifying application of online
 10 electronic witnessing standards when a witness is not
 11 in the physical presence of the principal; amending s.
 12 117.225, F.S.; revising certain registration
 13 requirements for online notaries public; amending s.
 14 117.245, F.S.; modifying requirements for entries in
 15 the electronic journal maintained by an online notary
 16 public; requiring a remote online notarization service
 17 provider, rather than an online notary public, to
 18 maintain audio-video communication recordings of
 19 online notarizations; conforming provisions to changes
 20 made by the act; amending s. 117.255, F.S.; revising
 21 provisions governing access to audio-video
 22 communication recordings to conform to changes made by
 23 the act; authorizing a remote online notarization
 24 service provider to charge a fee for access to such
 25 recordings, subject to specified limitations; amending
 26 s. 117.265, F.S.; clarifying that an online notary
 27 public is entitled to select his or her remote online
 28 notarization service provider; authorizing an employer
 29 of an online notary public to require the use of a

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30 particular remote online notarization service provider
 31 in performing online notarizations; requiring an
 32 online notary public to notify the Department of State
 33 of the effective date of a change in the remote online
 34 notarization service provider used; amending s.
 35 117.275, F.S.; clarifying limitations on fees charged
 36 for online notarizations; amending s. 117.295, F.S.;
 37 requiring the department to publish on its website a
 38 list containing certain information on online notaries
 39 public; requiring a remote online notarization service
 40 provider to file a self-certification with the
 41 department; specifying the duration of a self-
 42 certification; requiring the department to publish on
 43 its website a list of self-certified remote online
 44 notarization service providers; prohibiting a remote
 45 online notarization service provider from using,
 46 selling, or offering to sell or transfer personal
 47 information obtained in the course of performing
 48 online notarizations; providing exceptions; providing
 49 an effective date.
 50
 51 Be It Enacted by the Legislature of the State of Florida:
 52
 53 Section 1. Subsection (4) of section 117.021, Florida
 54 Statutes, is amended to read:
 55 117.021 Electronic notarization.—
 56 (4) A notary public performing a notarial act with respect
 57 to an electronic record shall select the technology and provider
 58 to be used for such notarial act. A person may not require the a

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 59 notary public to use a particular ~~perform a notarial act with~~
 60 ~~respect to an electronic record with a form of technology or~~
 61 ~~provider; however, if the notary public is required by his or~~
 62 ~~her employer to perform notarial acts with respect to electronic~~
 63 ~~records, the employer may require the use of a particular~~
 64 ~~technology and provider for those notarial acts that the notary~~
 65 ~~public has not selected to use.~~

Section 2. Paragraph (a) of subsection (2) of section 117.05, Florida Statutes, is amended to read:

117.05 Use of notary commission; unlawful use; notary fee; seal; duties; employer liability; name change; advertising; photocopies; penalties.—

(2) (a) The fee of a notary public may not exceed \$10 per signature per document ~~for any one notarial act~~, except as provided in s. 117.045 or s. 117.275, for performing a notarization under this part.

Section 3. Subsections (6) and (14) of section 117.201, Florida Statutes, are amended to read:

117.201 Definitions.—As used in this part, the term:

(6) "Government-issued identification credential" means any approved credential for verifying identity under s. 117.05(5)(b)2. However, for an online notarization of a principal not located within the United States, a passport issued by a foreign government not including the stamp of the United States Bureau of Citizenship and Immigration Services may be used as a government-issued identification credential to verify the principal's identity.

(14) "Remote Online Notarization service provider" or "RON service provider" means a person that provides audio-video

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 88 communication technology and related processes, services,
 89 software, data storage, or other services to online notaries
 90 public for the purpose of directly facilitating their
 91 performance of online notarizations, in compliance with the
 92 requirements of this chapter and any rules adopted by the
 93 Department of State pursuant to s. 117.295.

Section 4. Subsection (2) of section 117.215, Florida Statutes, is amended to read:

117.215 Relation to other laws.—

(2) If a provision of law requires a signature or an act of a principal to be witnessed and the witness is not in the physical presence of the principal at the time of the signature or act, ~~compliance with the online electronic witnessing standards prescribed in s. 117.285 and any rules adopted thereunder must be complied with in order to satisfy~~ ~~satisfies~~ that requirement.

Section 5. Subsections (1) and (5) of section 117.225, Florida Statutes, are amended to read:

117.225 Registration; qualifications.—A notary public, a civil-law notary appointed under chapter 118, or a commissioner of deeds appointed under part IV of chapter 721 may complete registration as an online notary public with the Department of State by:

(1) Holding a current commission as a notary public under part I of this chapter, an appointment as a civil-law notary under chapter 118, or an appointment as a commissioner of deeds under part IV of chapter 721, and submitting ~~a copy of such commission or~~ proof of such commission or appointment with his or her registration.

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117 (5) Identifying the RON service provider or providers whose
 118 audio-video communication technology and processes for
 119 credential analysis and identity-proofing technologies the
 120 registrant intends to use for online notarizations, ~~and~~
 121 ~~confirming that such technology and processes satisfy the~~
 122 ~~requirements of this chapter and any rules adopted by the~~
 123 ~~Department of State pursuant to s. 117.295.~~

124 Section 6. Subsections (1), (2), (4), and (5) of section
 125 117.245, Florida Statutes, are amended to read:

126 117.245 Electronic journal of online notarizations.-

127 (1) An online notary public shall keep one or more secure
 128 electronic journals of online notarizations performed by the
 129 online notary public. For each online notarization, the
 130 electronic journal entry must contain all of the following:

131 (a) The date and time of the notarization.

132 (b) The type of notarial act performed, whether an oath or
 133 an acknowledgment.

134 (c) The type, the title, or a description of the electronic
 135 record or proceeding.

136 (d) The name and address of each principal involved in the
 137 transaction or proceeding.

138 (e) Evidence of identity of each principal involved in the
 139 transaction or proceeding in either any of the following forms:

140 1. A statement that the person is personally known to the
 141 online notary public; ~~or-~~

142 2. a. A notation of the type of government-issued
 143 identification credential provided to the online notary public;

144 b. An indication that the government-issued identification
 145 credential satisfied the credential analysis; and-

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146 ~~c. (f)~~ An indication that the principal satisfactorily
 147 passed the identity proofing.

148 ~~(g) An indication that the government-issued identification~~
 149 ~~credential satisfied the credential analysis.~~

150 ~~(f) (h)~~ The fee, if any, charged for the notarization.

151 (2) The RON service provider online notary public shall
 152 retain an uninterrupted and unedited copy of the recording of
 153 the audio-video communication in which an online notarization is
 154 performed. The recording must include all of the following:

155 (a) Appearance by the principal and any witness before the
 156 online notary public.

157 (b) Confirmation of the identity of the principal and any
 158 witness.

159 (c) A general description or identification of the records
 160 to be signed.

161 (d) At the commencement of the recording, recitation by the
 162 online notary public of information sufficient to identify the
 163 notarial act.

164 (e) A declaration by the principal that his or her
 165 signature on the record is knowingly and voluntarily made.

166 (f) All of the actions and spoken words of the principal,
 167 notary public, and any required witness during the entire online
 168 notarization, including the signing of any records before the
 169 online notary public.

170 (4) The electronic journal required under subsection (1)
 171 and the recordings of audio-video communications required under
 172 subsection (2) shall be maintained for at least 10 years after
 173 the date of the notarial act. However, a full copy of the
 174 recording of the audio-video communication required under

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175 subsection (2) relating to an online notarization session that
 176 involves the signing of an electronic will must be maintained by
 177 a qualified custodian in accordance with chapters 731 and 732.
 178 The Department of State maintains jurisdiction over the
 179 electronic journal and audio-video communication recordings to
 180 investigate notarial misconduct for a period of 10 years after
 181 the date of the notarial act. The online notary public, a
 182 guardian of an incapacitated online notary public, or the
 183 personal representative of a deceased online notary public may,
 184 by contract with a secure repository in accordance with any
 185 rules established under this chapter, delegate to the repository
 186 the online notary public's duty to retain the electronic journal
 187 ~~and the required recordings of audio video communications,~~
 188 provided that the Department of State is notified of such
 189 delegation of retention duties to the repository within 30 days
 190 thereafter, including the address and contact information for
 191 the repository. If an online notary public delegates to a secure
 192 repository under this section, the online notary public shall
 193 make an entry in his or her electronic journal identifying such
 194 repository, and provide notice to the Department of State as
 195 required in this subsection.

196 (5) An omitted or incomplete entry in the electronic
 197 journal does not impair the validity of the notarial act or of
 198 the electronic record which was notarized, but may be introduced
 199 as evidence to establish violations of this chapter; as evidence
 200 of possible fraud, forgery, impersonation, duress, incapacity,
 201 undue influence, minority, illegality, or unconscionability; or
 202 for other evidentiary purposes. However, if the recording of the
 203 audio-video communication required under subsection (2) relating

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204 to the online notarization of the execution of an electronic
 205 will cannot be produced by the RON service provider, the online
 206 notary public, or the qualified custodian, the electronic will
 207 shall be treated as a lost or destroyed will subject to s.
 208 733.207.

209 Section 7. Section 117.255, Florida Statutes, is amended to
 210 read:

211 117.255 Use of electronic journal, signature, and seal.—
 212 (1) An online notary public shall:

213 (a) ~~(1)~~ Take reasonable steps to ensure that any registered
 214 device used to create an electronic seal is current and has not
 215 been revoked or terminated by the issuing or registering
 216 authority of the device.

217 (b) ~~(2)~~ Keep the electronic journal and electronic seal
 218 secure and under his or her sole control, which includes access
 219 protection using passwords or codes under control of the online
 220 notary public. The online notary public may not allow another
 221 person to use the online notary public's electronic journal,
 222 electronic signature, or electronic seal, other than a RON
 223 service provider or other authorized person providing services
 224 to an online notary public to facilitate performance of online
 225 notarizations.

226 (c) ~~(3)~~ Attach or logically associate the electronic
 227 signature and seal to the electronic notarial certificate of an
 228 electronic record in a manner that is capable of independent
 229 verification using tamper-evident technology that renders any
 230 subsequent change or modification to the electronic record
 231 evident.

232 (d) ~~(4)~~ Notify an appropriate law enforcement agency and the

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233 Department of State of any unauthorized use of or compromise to
 234 the security of the electronic journal, official electronic
 235 signature, or electronic seal within 7 days after discovery of
 236 such unauthorized use or compromise to security.

237 ~~(2)(5)~~ An online notary public shall provide ~~make~~
 238 electronic copies, ~~upon request,~~ of the pertinent entries in the
 239 electronic journal, and a RON service provider shall provide
 240 access to the related audio-video communication recordings, or a
 241 copy thereof, to the following persons upon request:

242 (a) The parties to an electronic record notarized by the
 243 online notary public;

244 (b) The qualified custodian of an electronic will notarized
 245 by the online notary public;

246 (c) The title agent, settlement agent, or title insurer who
 247 insured the electronic record or engaged the online notary
 248 public with regard to a real estate transaction;

249 ~~(d) The online notary public's RON service provider whose~~
 250 ~~services were used by the online notary public to notarize the~~
 251 ~~electronic record;~~

252 ~~(e)~~ Any person who is asked to accept a power of attorney
 253 that was notarized by the online notary public;

254 ~~(e)(f)~~ The Department of State pursuant to a notary
 255 misconduct investigation; ~~and~~

256 ~~(f)(g)~~ Any other persons pursuant to a subpoena, court
 257 order, law enforcement investigation, or other lawful inspection
 258 demand;

259 (g) With respect to audio-video communication recordings of
 260 an online notarization, the online notary public performing that
 261 notarization; and

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262 (h) With respect to electronic copies of pertinent entries
 263 in the electronic journal, the RON service provider used for the
 264 online notarizations associated with those entries.

265 ~~(3)(6)~~ The online notary public may charge a fee not to
 266 exceed \$20 per transaction record for making and delivering
 267 electronic copies of a given series of related electronic
 268 records, and a RON service provider may charge a fee not to
 269 exceed \$20 for providing access to, or a copy of, the related
 270 audio-video communication recordings, except if requested by:

271 (a) A party to the electronic record;

272 (b) In a real estate transaction, the title agent,
 273 settlement agent, or title insurer who insured the electronic
 274 record or engaged the online notary public with regard to such
 275 transaction; ~~or~~

276 (c) The Department of State pursuant to an investigation
 277 relating to the official misconduct of an online notary public;

278 (d) With respect to audio-video communication recordings of
 279 an online notarization, the online notary public performing that
 280 notarization; or

281 (e) With respect to electronic copies of a given series of
 282 related electronic records, the RON service provider used for
 283 the online notarization of those records.

284
 285 If the online notary public or RON service provider charges ~~does~~
 286 charge a fee, the online notary public or RON service provider
 287 must ~~shall~~ disclose the amount of such fee to the requester
 288 before making the electronic copies or providing access to, or
 289 making a copy of, the requested audio-video communication
 290 recordings.

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291 Section 8. Subsection (5) of section 117.265, Florida
292 Statutes, is amended to read:

293 117.265 Online notarization procedures.—

294 (5) (a) An online notary public shall select the RON service
295 provider to be used to perform an online notarization, and a
296 person may not require the online notary public to use a
297 particular RON service provider; however, if the online notary
298 public is required by his or her employer to perform online
299 notarizations, the employer may require the use of a particular
300 RON service provider for those online notarizations.

301 (b) An online notary public may change his or her RON
302 service provider or providers from time to time, but shall
303 notify the Department of State of such change, and its effective
304 date, within 30 days thereafter.

305 Section 9. Section 117.275, Florida Statutes, is amended to
306 read:

307 117.275 Fees for online notarization.—An online notary
308 public or the employer of such online notary public may charge a
309 fee, not to exceed \$25 per signature per document, for
310 performing an online notarization under this part. Fees for
311 services other than notarial acts, including any fees charged by
312 a RON service provider, are not governed by this section, and
313 such services are not considered closing services, as defined in
314 s. 627.7711.

315 Section 10. Subsections (2) and (4) of section 117.295,
316 Florida Statutes, are amended, and subsection (8) is added to
317 that section, to read:

318 117.295 Standards for electronic and online notarization;
319 rulemaking authority.—

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320 (2) ~~By January 1, 2020~~, The Department of State shall:

321 (a) Adopt forms, processes, and interim or emergency rules
322 necessary to accept applications from and register online
323 notaries public pursuant to s. 117.225.

324 (b) Publish on its website a list containing each online
325 notary public, the online notary public's past and present RON
326 service providers, and the effective dates during which the
327 online notary public used each RON service provider, as
328 identified pursuant to ss. 117.225(5) and 117.265(5) (b).

329 (4) (a) A RON service provider must file a self-
330 certification with the Department of State, on a form adopted by
331 department rule, confirming that its audio-video communication
332 technology and related processes, services, software, data
333 storage, or other services provided to online notaries public
334 for the purpose of directly facilitating their performance of
335 online notarizations satisfy the requirements of this chapter
336 and any rules adopted by the Department of State pursuant to
337 this section. Each certification shall remain active for a
338 period of 2 years from the date of filing, and it must also be
339 updated and refiled within 60 days after the effective date of
340 any amendment to this chapter or to the rules adopted by the
341 Department of State pursuant to this chapter. The Department of
342 State must publish on its website a list of all RON service
343 providers that are the subject of an active self-certification.

344 (b) A RON service provider is deemed to have satisfied
345 tamper-evident technology requirements by use of technology that
346 renders any subsequent change or modification to the electronic
347 record evident.

348 (8) A RON service provider may not use, sell, or offer to

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349 sell or transfer to another person for use or sale any personal
350 information obtained under this part which identifies a
351 principal, a witness, or a person named in a record presented
352 for online notarization, except:

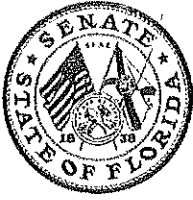
353 (a) As necessary to facilitate performance of a notarial
354 act;

355 (b) To effect, administer, enforce, service, or process a
356 record provided by or on behalf of a principal or the
357 transaction of which the record is a part;

358 (c) In accordance with this part and the rules adopted
359 pursuant to this part or any other applicable federal, state, or
360 local law, or to comply with a lawful subpoena or court order;
361 or

362 (d) In connection with a proposed or actual sale, merger,
363 transfer, or exchange of all or a portion of a business or
364 operating unit of the RON service provider, if the personal
365 information concerns only customers of the business or unit and
366 the transferee agrees to comply with the restrictions set forth
367 in this subsection.

368 Section 11. This act shall take effect October 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JENNIFER BRADLEY
5th District

December 29, 2020

Senator Ed Hooper, Chairman
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 228 be placed on the agenda of the Commerce and Tourism Committee at your earliest convenience. This bill relates to public notaries and electronic records.

Thank you for your consideration of this request. Please let me know if I can be of any assistance.

Sincerely,


Jennifer Bradley

cc: Mr. Todd McKay, Staff Director

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

Harmsen, Jessie

From: Dover, Brittany N. <Brittany.Dover@dos.myflorida.com>
Sent: Wednesday, January 13, 2021 3:53 PM
To: Harmsen, Jessie
Subject: Online Notaries

Jessie,

Pleasure speaking with you. Per your request, DOS has 6,278 online notaries registered to date.

Thank you,

Brittany N. Dover
Legislative Affairs Director
Department of State
850.245.6509 (office)
850.274.3105 (cell)



2019 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of State

BILL INFORMATION

BILL NUMBER:	SB 228
BILL TITLE:	<u>Notaries Public</u>
BILL SPONSOR:	Senator Bradley
EFFECTIVE DATE:	October 1, 2021

COMMITTEES OF REFERENCE

1) Commerce and Tourism
2) Judiciary
3) Rules
4) N/A
5) N/A

CURRENT COMMITTEE

Commerce & Tourism

SIMILAR BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	HB 121
SPONSOR:	Representative Garrison

Is this bill part of an agency package?

N/A

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	1/7/21
LEAD AGENCY ANALYST:	Brittany Dover
ADDITIONAL ANALYST(S):	Sean Toner
LEGAL ANALYST:	Colleen O'Brien
FISCAL ANALYST:	Click or tap here to enter text.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Authorizing an employer of a notary public to require the use of a particular technology and provider in performing a notarial act with respect to an electronic record; modifying requirements for entries in the electronic journal maintained by an online notary public; clarifying that an online notary public is entitled to select his or her remote online notarization service provider; clarifying limitations on fees charged for online notarizations, etc.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Current Chapter 117, F.S.

- A notary public cannot be required to perform a notarial act with respect to an electronic record with a form of technology that the notary public has not selected to use.
- Pursuant to section 117.05 the fee a notary charges may not exceed \$10 for any notarial act.
- Government-issued identification credential means any approved credential for verifying identity.
- Remote Online Notarization service provider or RON service provider means a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations.
- A copy of the commission of a notary public is required for registration for an online notary public.
- Requires a Remote Online Notary Public to identify a RON service provider whose audio-video communication technology and processes for credential analysis and identity-proofing technologies the registrant intends to use for online notarizations and confirms that such technology and processes satisfy the requirements of this chapter.
- Requires that the online notary public shall retain an uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization is performed.
- An online notary must provide electronic copies, upon request, of pertinent entries in the electronic journals and provide access to related audio-video communication recordings
- An online notary public may charge a fee not to exceed \$20 per transaction record for making and delivering electronic copies of a given series of related electronic records and should disclose the fee to the requestor before making electronic copies
- Online notary publics, or their employer may charge a fee not to exceed \$25 for performing an online notarization

2. EFFECT OF THE BILL:

- A notary public, or remote online notary will be required to select their provider for their electronic act. An online notary must use a RON service provider. They cannot be required to use a particular provider. However, when the employer of the notary public requires them to perform electronic notarial acts as part of their job duties, the employer may require the RON to use a particular technology and provider.
- The fee of a notary public shall not exceed \$10 per signature per document.
- Allows a passport issued by a foreign government not including the stamp of the United States Bureau of Citizenship and Immigration Services to be used as government-issued identification credential to verify the principal's identity.
- Does not require a copy of notary public's commission to be submitted as part of the RON application process; however, proof of commission or appointment will still be required.
- Requires that a RON applicant identify the RON service provider or providers that the applicant intends to use.
- Requires that the electronic journal entry must indicate the type of notarial act performed, whether an oath or acknowledgment.
- Requires the RON service provider to retain an uninterrupted and unedited copy of the recording of the audio-video communication in which an online notarization was performed.
- Requires an online notary public to provide electronic copies of pertinent entries in the electronic journal and requires RON service providers to provide access to the related audio-video communication recordings, or a copy thereof upon request to the parties of the electronic record notarized, qualified custodian of an electronic will notarized by an online notary public, title agent, settlement agent, or title insurer who insured the electronic record or engaged the online notary public with regard to a real estate transaction .
- The online notary public and RON service provider may charge a fee of not to exceed \$20 per transaction for making and delivering a copy of electronic records and related audio-video communication recordings.
- An online notary public performing the notarization and the RON service provider used for the online notarization of the records is not subject to a fee when requesting audio-video communication recordings of an online

notarization; nor is the RON service provider used for the online notarization of records with respect to electronic copies of a given series of related electronic records,

- A RON service provider must disclose fees to the requestor before making electronic copies or providing access to, or making a copy of, the requested audio-video communication recordings.
- An online notary public may change his or her RON service provider. If they do, they must notify the Department of State of such change and its effective date within 30 days thereafter.
- Allows an online notary public to charge \$25 per signature per document for performing an online notarization. Fees charged by a RON service provider are not covered by this act.
- Requires the Department of State to publish a list containing each online notary public, the online notary public's past and present RON service providers, and the applicable effective dates during which the online notary public used each RON service provider.
- Requires each RON service provider to file a self-certification with the Department of State confirming that its audio-video communication technology and related processes, services, software, data storage, or other services provided to online notaries public for the purposes of directly facilitating their performance of online notarizations satisfy the requirements of this chapter and any rules adopted by the Department of State. Each certification is active for 2 years from the date of filing. It must be updated and refiled within 60 days after the effective date of any amendment to this chapter or rules adopted by the Department of State. The Department of State must publish on its website a list of all RON service providers that are subject of an active self-certification.
- Effective October 1, 2021

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y N

If yes, explain:	The bill allows the Department of State to adopt rules to specify needed requirements/standards not specified by law.
Is the change consistent with the agency's core mission?	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	1N-7.001, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y N

If yes, provide a description:	n/a
Date Due:	n/a
Bill Section Number(s):	n/a

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y N

Board:	n/a
Board Purpose:	n/a

Who Appoints:	n/a
Changes:	n/a
Bill Section Number(s):	n/a

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y N

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation increase local taxes or fees? If yes, explain.	Unknown
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y N

Revenues:	Unknown
Expenditures:	Unknown
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y N

Revenues:	Unknown
Expenditures:	Unknown
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y N

<p>If yes, describe the anticipated impact to the agency including any fiscal impact.</p>	<p>This bill will have a significant impact on the Department of State's current technology systems. The bill, if passed, would require DOS to maintain and publish a listing of each online notary public's RON service providers, active and inactive, the dates of use for each RON service provider, the name of each RON service provider, and evidence of their self-certification compliance by October 1, 2021.</p> <p>DOS is actively working to implement a new commercial-off-the shelf (COTS) business registry system, which will allow DOS to: 1.) modernize its business registry; 2.) provide business owners with new and improved service deliverables; 3.) improve efficiency and productivity; 4.) provide more accurate data collection, processing, and retrieval; 5.) further improve statutory compliance, reporting, and statistical data; 6.) implement new, improved or revised statutory filing requirements; and 7.) systematically address and resolve issues such as unauthorized filing activity.</p> <p>The bill will require additional funding and may require additional deliverables and/or timeframe be added to the COTS contract in progress. The current scope of work is based upon existing law which does not require DOS to maintain and publish a listing of each online notary public's RON service providers, active or inactive, the dates of use of each RON service provider, the name of each RON service provider, nor proof of their self-certification.</p>
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FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y N

<p>If yes, describe the anticipated impact including any fiscal impact.</p>	<p>N/A</p>
---	------------

ADDITIONAL COMMENTS

The proposed bill needs to clarify:

- DOS would request additional funding and FTE positions in order to perform the additional processing duties, responsibilities and services specified in the bill.
- The online notary public's past and present RON service provider(s) currently are not indexed and stored. There is not a placeholder for this information nor are there for effective dates. DOS recommends the bill be amended to require this information from the date the bill becomes effective and forward. Previous RON service providers would not be listed.
- DOS suggests a fee for the RON service provider to file the self-certification.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	
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THE FLORIDA SENATE

APPEARANCE RECORD

1-25-21

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

228

Bill Number (if applicable)

Topic

Remote Online Notary

Amendment Barcode (if applicable)

Name

KARI HEBRANK

Job Title

Address

215 S. MONROE ST., #500

Phone

564-7824

Street

TALLAHASSEE FL 32301

Email

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

SOUTHERN TITLE

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/25/2021

Meeting Date

228

Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 508-8100

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Attorneys' Title Fund Services, LLC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 50

INTRODUCER: Senator Gruters and others

SUBJECT: Sales and Use Tax

DATE: January 22, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 50 requires marketplace providers and out-of-state retailers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the marketplace provider or out-of-state retailer makes a substantial number of sales into Florida.

A substantial number of remote sales means conducting any number of taxable remote sales in an amount exceeding \$100,000 during the previous calendar year.

The Revenue Estimating Conference has not yet estimated the revenue impact of this bill.

Except as otherwise provided in the bill, the bill takes effect July 1, 2021.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax (sales tax) on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² and a limited number of services, and a 5.5 percent sales and use tax on commercial real estate.³ Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances. Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.⁴

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ See ss. 212.07(2) and 212.06(3)(a), F.S.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁵ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.⁶

Remote Sales Tax Collection

As discussed above, sales tax is added to the price of taxable goods and the selling dealer is required to collect the tax from the purchaser at the time of sale.⁷ A dealer then remits the collected taxes to the Department of Revenue (department).⁸

For items sold by an out-of-state dealer and delivered to the in-state purchaser via mail (mail-order sales), states have relied on their use tax. Florida’s use tax requires an in-state purchaser to remit to the department a tax on their purchase of an untaxed item.⁹ However, use tax compliance is notoriously low. Avalara reports that use tax compliance can be as low as 2 percent and is difficult to enforce.¹⁰

States would prefer to have the out-of-state dealer collect the state’s sales tax at the time of sale and remit those taxes to the state. However, the U.S. Supreme Court has interpreted the Commerce Clause of the U.S. Constitution to require that a dealer have a “substantial nexus” with the taxing state before the taxing state may require the dealer to collect its sales taxes.¹¹ For decades, the U.S. Supreme Court has interpreted this substantial nexus requirement to require that the dealer have a physical presence (people or property) within the taxing state.¹² The Court reasoned that it was an undue burden on interstate commerce to allow a taxing state to require an out-of-state dealer located outside of the taxing state to collect tax on behalf of the taxing state.¹³

Under the “substantial nexus” and “physical presence” standard, Florida, in 1987, adopted its “mail order sales statute,” which defines a mail order sale to be the sale of tangible personal property, ordered from a dealer who receives the order in another state and then causes the property to be transported to a person in this state.¹⁴ Although the statute describes dealers who

⁵ Section 212.054, F.S.

⁶ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 2020 Local Discretionary Sales Surtax Rates in Florida’s Counties, 231-232 (2020), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Jan. 22, 2021).

⁷ Florida Dept. of Revenue, *Florida Sales and Use Tax*, available at http://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Jan. 22, 2021).

⁸ Section 212.15, F.S.

⁹ See s. 212.06, F.S.

¹⁰ Gail Cole, *5 questions about use tax reporting requirements for non-collecting businesses*, avalara.com, Feb. 16, 2018, available at <https://www.avalara.com/us/en/blog/2018/02/5-use-tax-reporting-requirements-questions-for-non-collecting-businesses.html> (last visited Jan. 22, 2021).

¹¹ See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

¹² *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

¹³ *Quill Corporation v. North Dakota*, at 314-315.

¹⁴ See s. 212.0596(1), F.S.

“receive [orders] in another state,” application of the statute was still limited by the U.S. Supreme Court’s physical presence standard.¹⁵ In fact, much of the statute is written in terms of being physically present within Florida.¹⁶

Taxation of Mail Order Sales

Section 212.0596, F.S., establishes when a dealer¹⁷ who makes a mail-order sale is subject to Florida’s sales tax. A “mail-order sale” is a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported to a person in Florida.¹⁸

Every dealer as defined in s. 212.06(2)(c), F.S., who makes a mail-order sale is subject to the power of Florida to levy and collect the tax imposed by this ch. 212, F.S., when:

- The dealer is a corporation doing business under the laws of this state or is a person domiciled in, a resident of, or a citizen of, this state.
- The dealer maintains retail establishments or offices in Florida.
- The dealer has agents in Florida who solicit business or transact business on behalf of the dealer.
- The property was delivered in Florida in fulfillment of a sales contract that was entered into in Florida when a person in Florida accepted an offer by ordering the property.
- The dealer, by purposefully or systematically exploiting the market provided by Florida by any media-assisted, media-facilitated, or media-solicited means, creates nexus with Florida.
- Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of Florida’s taxing power.
- The dealer consents, expressly or by implication, to the imposition of the tax imposed by ch. 212, F.S.
- The dealer is subject to service of process under s. 48.181, F.S.
- The dealer’s remote sales are subject to the power of Florida to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States.
- The dealer owns real property or tangible personal property that is physically in Florida.
- The dealer is a corporation that is a member of an affiliated group of corporations and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or subsidiary corporation in the affiliated group has nexus with Florida.
- The dealer or the dealer’s activities have sufficient connection with or relationship to Florida or its residents of some type, other than those described above, to create nexus empowering

¹⁵ See p. 3, *infra*, ‘Taxation of Mail Order Sales’ for further discussion of what activities subject a dealer to the levy and collection of tax pursuant to ch. 212, F.S.

¹⁶ See s. 212.0596(2)(j), F.S. (requiring dealers to collect tax on mail order sales if the dealer owns real property or tangible personal property that is physically in this state...).

¹⁷ Section 212.06(2)(a), F.S., defines “dealer” as every person, who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in Florida.

¹⁸ Section 212.0596(1), F.S.

this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax.¹⁹

Section 212.0596, F.S., also imposes a duty on dealers to cooperate in the collection of taxes, requires the department to enforce these provisions in other jurisdictions when the other jurisdiction consents, and specifies that sales tax required under this section is to be collected and any amount unreturned to a purchaser that is not tax but was collected from the purchaser under the representation that it was tax constitute funds of the State of Florida from the moment of collection.

A dealer who makes a mail order sale into this state is exempt from collecting and remitting any local option surtax on the sale.²⁰ The department may establish rules for collecting the use tax from unregistered persons who, but for their remote purchases, would not be required to remit sales or use tax directly to the department.²¹

Currently, a purchaser who remits use tax on an item imported into Florida for use or consumption is not required to include in the remittance any local discretionary sales surtax.²²

The Wayfair Decision

On June 21, 2018, the U.S. Supreme Court decided *South Dakota v. Wayfair*.²³ *Wayfair* involved a new South Dakota sales tax collection statute and Wayfair, Inc., a large online retailer with no physical presence in South Dakota that sells and ships tangible personal property to customers all over the United States.

The *Wayfair* decision overturned the “physical presence test.” The removal of the physical presence test will expand states’ abilities to collect sales taxes; however, the foundational constitutional requirement (substantial nexus) remains in place, and thus, the extent of states’ authority is largely unknown at this time.

The facts involved in *Wayfair* provide the only situation currently known to satisfy all constitutional requirements for a remote seller without physical presence in the taxing state to collect and remit a states’ sales and use tax.

For example:

- The South Dakota law only requires remote sellers with \$100,000 of sales or 200 individual transactions into South Dakota to collect tax. The law effectively has a “small seller exception” allowing small retailers—theoretically the ones most burdened by remote sales tax collection—to avoid collection responsibilities.
- The South Dakota law does not apply retroactively.
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement.

¹⁹ Section 212.0596(2), F.S.

²⁰ Section 212.0596(6), F.S.

²¹ Section 212.0596(7), F.S.

²² *Id.*

²³ *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

State Reactions to Wayfair

After the *Wayfair* decision, 43 states and the District of Columbia have enacted laws requiring remote sellers to collect the sales tax, and 38 states and the District of Columbia have enacted laws requiring a marketplace provider/facilitator to collect the sales tax.²⁴

III. Effect of Proposed Changes:

Taxation of Remote Sales and Marketplace Sales

The bill requires marketplace providers and out-of-state retailers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the provider or retailer makes a substantial number of sales into Florida.

Section 1 amends the definition of "retail sale" in s. 212.02, F.S., to include a remote sale and a sale facilitated through a marketplace.

Section 2 amends s. 212.05, F.S., to apply the sales and use tax to remote sales.

Section 3 substantially amends s. 212.0596, F.S. The bill changes the catch line to refer to the taxation of remote sales, removes references or requirements related to a "mail order sale," and provides that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S.

"Substantial number of remote sales" means conducting any number of taxable remote sales in an amount exceeding \$100,000 during the previous calendar year.

Section 4 creates s. 212.05965, F.S., which provides for the taxation of marketplace sales.

The bill defines:

- "Marketplace" to mean any physical place or electronic medium through which tangible personal property is offered for sale.
- "Marketplace provider" to mean a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace, and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

Excluded from the definition of marketplace provider is (1) any person who solely provides travel agency services, (2) a delivery network company, unless the delivery network company is a registered dealer that notifies all local merchants that sell through the delivery company's website or mobile application that the delivery network company must remit taxes in the same way as a marketplace provider, or (3) a payment processor business whose

²⁴ National Conference of State Legislatures, Remote Sales Tax Collection, (March 13, 2020), *available at* <https://www.ncsl.org/research/fiscal-policy/e-fairness-legislation-overview.aspx#Marketplace> (last visited Jan. 22, 2021).

sole activity with respect to marketplace sales is to handle payment transactions between two parties.

- “Marketplace seller” to mean a person who has an agreement with a marketplace provider and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

Marketplace providers with a physical presence in Florida, or those making or facilitating a substantial number of remote sales into this state, are subject to the requirements imposed on dealers by ch. 212, F.S., for registration and for the collection and remittance of taxes. A marketplace provider must certify to its marketplace sellers that it will collect and remit the tax to the department.

A marketplace seller may not collect and remit sales tax when the marketplace provider certifies that it will collect and remit the tax. A marketplace seller must exclude sales made through the marketplace from the marketplace seller’s tax return. A marketplace seller with a physical presence in Florida, or that makes a substantial number of remote sales must register, collect, and remit sales tax on taxable sales made outside of the marketplace.

A marketplace provider must allow the department to examine and audit its books and records. If the department audits a marketplace provider, the department may not propose a tax assessment on the marketplace seller for the same retail sales unless the marketplace seller provides incorrect or incomplete information to the marketplace provider.

The marketplace provider is relieved of liability for the tax, and the marketplace seller or customer is liable for the tax imposed under this chapter if the marketplace provider demonstrates that it made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but the failure to collect and pay the correct amount of tax imposed under this chapter was due to incorrect or incomplete information provided by the marketplace seller to the marketplace provider.

The bill defines:

- “Delivery network company” as a person who maintains a website or mobile application used to facilitate delivery services, the sale of local products, or both.
- “Delivery network courier” as an individual who provides delivery services through a delivery network company website or mobile application using a personal means of transportation, such as a motor vehicle as defined in s. 320.01(1), F.S., bicycle, scooter, or other similar means of transportation; using public transportation; or by walking.
- “Delivery services” as the pickup and delivery by a delivery network courier of one or more local products from a local merchant to a customer, which may include, the selection, collection, and purchase of the local product in connection with the delivery. The term does not include any delivery requiring more than 75 miles of travel from the local merchant to the customer.
- “Local merchant” as a kitchen, restaurant, or a third-party merchant, including a grocery store, retail store, convenience store, or business of another type, which is not under common ownership or control of the delivery network company.

- “Local product” as any tangible personal property, including food, but excluding freight, mail, or a package to which postage has been affixed.

Section 5 amends s. 212.06, F.S., to specify that the term “dealer” includes a retailer who transacts a remote sale or who is a marketplace provider.

Section 6 amends s. 212.12, F.S., to (1) remove the authority given to the executive director of the department to negotiate a collection allowance with a dealer who makes mail order sales and (2) delete language that kept dealers who made mail order sales from participating in the state’s 2.5 percent collection allowance.

Section 7 makes conforming changes to s. 212.18 F.S., to change the term “mail order sale” to “remote sale.”

Section 8 amends s. 212.20(4), F.S., to incorporate s. 212.05965, F.S.

Section 9 makes conforming changes to s. 213.27(5), F.S., to clarify that s. 213.27(5), F.S., applies to a person making or facilitating remote sales under s. 212.0596, F.S. or s. 212.05965, F.S.

Section 10 provides that this act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020.

Section 11 authorizes the department to adopt emergency rules to implement the bill. The emergency rulemaking grant is authorized upon the act becoming law, and expires July 1, 2022.

Section 12 provides that if any provision of the bill is found to be invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are severable.

Section 13 provides that this section take effect upon becoming law, and except as otherwise provided, the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provision does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19 of the Florida Constitution requires new or increased taxes or fees to be passed by a 2/3 vote of the membership of each house of the Legislature in a separate bill that contains no other subject.

Since 1990, Florida has required dealers who transact mail-order sales to collect Florida's tax when the activities of the dealer have sufficient connection with this state to create nexus under the U.S. Commerce Clause.²⁵

The bill neither imposes a tax where none was due before, nor does it increase the amount of a current state tax. Rather, the bill updates Florida's mail-order statute to align with U.S. Commerce Clause limitations, as redefined by the U.S. Supreme Court in *Wayfair*. As such, the bill does not appear to implicate the requirements of Article VII, s. 19 of the Florida Constitution.

E. Other Constitutional Issues:

The facts involved in *Wayfair* provide the only situation currently known to satisfy all constitutional requirements for a remote seller without physical presence in the taxing state to collect and remit a states' sales and use tax. The court did not decide the constitutionality of marketplace providers to collect and remit a states' sales and use tax on behalf of retailers who sell on a marketplace.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet estimated the revenue impact of this bill.

B. Private Sector Impact:

More remote sellers and marketplace providers will have to collect and remit Florida's sales tax.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

²⁵ Section 212.0596(2)(1), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.02, 212.05, 212.0596, 212.06, 212.12, 212.18, 212.20, and 213.27.

This bill creates section 212.05965 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Gruters

23-00343A-21

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1 A bill to be entitled
 2 An act relating to the sales and use tax; amending s.
 3 212.02, F.S.; expanding the definition of the term
 4 "retail sale" to include sales facilitated through a
 5 marketplace; conforming a provision to changes made by
 6 the act; amending s. 212.05, F.S.; conforming a
 7 provision to changes made by the act; amending s.
 8 212.0596, F.S.; replacing provisions relating to the
 9 taxation of mail order sales with provisions relating
 10 to the taxation of remote sales; defining the terms
 11 "remote sale" and "substantial number of remote
 12 sales"; providing that every person making a
 13 substantial number of remote sales is a dealer for
 14 purposes of the sales and use tax; creating s.
 15 212.05965, F.S.; defining terms; providing that
 16 certain marketplace providers are dealers for purposes
 17 of the sales and use tax; requiring marketplace
 18 providers to provide a certain certification to their
 19 marketplace sellers; specifying requirements for
 20 marketplace sellers; requiring marketplace providers
 21 to allow the Department of Revenue to examine and
 22 audit their books and records; specifying the
 23 examination and audit authority of the department;
 24 providing that a marketplace seller, rather than the
 25 marketplace provider, is liable for sales tax
 26 collection and remittance under certain circumstances;
 27 authorizing marketplace providers and marketplace
 28 sellers to enter into agreements for the recovery of
 29 certain taxes, interest, and penalties; providing

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30 construction and applicability; amending s. 212.06,
 31 F.S.; revising the definition of the term "dealer";
 32 conforming provisions to changes made by the act;
 33 amending s. 212.12, F.S.; deleting the authority of
 34 the department's executive director to negotiate a
 35 collection allowance with certain dealers; conforming
 36 provisions to changes made by the act; amending s.
 37 212.18, F.S.; conforming a provision to changes made
 38 by the act; amending s. 212.20, F.S.; providing
 39 applicability of requirements for refund of taxes
 40 adjudicated unconstitutionally collected to taxes
 41 levied or collected pursuant to marketplace
 42 provisions; amending s. 213.27, F.S.; conforming
 43 provisions to changes made by the act; providing
 44 applicability; authorizing the department to adopt
 45 emergency rules; providing for expiration of that
 46 authority; providing for severability; providing
 47 effective dates.
 48
 49 Be It Enacted by the Legislature of the State of Florida:
 50
 51 Section 1. Paragraph (e) of subsection (14) of section
 52 212.02, Florida Statutes, is amended, and paragraph (f) is added
 53 to that subsection, to read:
 54 212.02 Definitions.—The following terms and phrases when
 55 used in this chapter have the meanings ascribed to them in this
 56 section, except where the context clearly indicates a different
 57 meaning:
 58 (14)

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59 (e) The term "retail sale" includes a remote ~~mail order~~
60 sale, as defined in s. 212.0596(1).

61 (f) The term "retail sale" includes a sale facilitated
62 through a marketplace as defined in s. 212.05965(1).

63 Section 2. Section 212.05, Florida Statutes, is amended to
64 read:

65 212.05 Sales, storage, use tax.—It is hereby declared to be
66 the legislative intent that every person is exercising a taxable
67 privilege who engages in the business of selling tangible
68 personal property at retail in this state, including the
69 business of making or facilitating remote ~~mail order~~ sales; ~~or~~
70 who rents or furnishes any of the things or services taxable
71 under this chapter; ~~or~~ who stores for use or consumption in
72 this state any item or article of tangible personal property as
73 defined herein and who leases or rents such property within the
74 state.

75 (1) For the exercise of such privilege, a tax is levied on
76 each taxable transaction or incident, which tax is due and
77 payable as follows:

78 (a)1.a. At the rate of 6 percent of the sales price of each
79 item or article of tangible personal property when sold at
80 retail in this state, computed on each taxable sale for the
81 purpose of remitting the amount of tax due the state, and
82 including each and every retail sale.

83 b. Each occasional or isolated sale of an aircraft, boat,
84 mobile home, or motor vehicle of a class or type which is
85 required to be registered, licensed, titled, or documented in
86 this state or by the United States Government shall be subject
87 to tax at the rate provided in this paragraph. The department

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88 shall by rule adopt any nationally recognized publication for
89 valuation of used motor vehicles as the reference price list for
90 any used motor vehicle which is required to be licensed pursuant
91 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
92 party to an occasional or isolated sale of such a vehicle
93 reports to the tax collector a sales price which is less than 80
94 percent of the average loan price for the specified model and
95 year of such vehicle as listed in the most recent reference
96 price list, the tax levied under this paragraph shall be
97 computed by the department on such average loan price unless the
98 parties to the sale have provided to the tax collector an
99 affidavit signed by each party, or other substantial proof,
100 stating the actual sales price. Any party to such sale who
101 reports a sales price less than the actual sales price is guilty
102 of a misdemeanor of the first degree, punishable as provided in
103 s. 775.082 or s. 775.083. The department shall collect or
104 attempt to collect from such party any delinquent sales taxes.
105 In addition, such party shall pay any tax due and any penalty
106 and interest assessed plus a penalty equal to twice the amount
107 of the additional tax owed. Notwithstanding any other provision
108 of law, the Department of Revenue may waive or compromise any
109 penalty imposed pursuant to this subparagraph.

110 2. This paragraph does not apply to the sale of a boat or
111 aircraft by or through a registered dealer under this chapter to
112 a purchaser who, at the time of taking delivery, is a
113 nonresident of this state, does not make his or her permanent
114 place of abode in this state, and is not engaged in carrying on
115 in this state any employment, trade, business, or profession in
116 which the boat or aircraft will be used in this state, or is a

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117 corporation none of the officers or directors of which is a
 118 resident of, or makes his or her permanent place of abode in,
 119 this state, or is a noncorporate entity that has no individual
 120 vested with authority to participate in the management,
 121 direction, or control of the entity's affairs who is a resident
 122 of, or makes his or her permanent abode in, this state. For
 123 purposes of this exemption, either a registered dealer acting on
 124 his or her own behalf as seller, a registered dealer acting as
 125 broker on behalf of a seller, or a registered dealer acting as
 126 broker on behalf of the purchaser may be deemed to be the
 127 selling dealer. This exemption shall not be allowed unless:

128 a. The purchaser removes a qualifying boat, as described in
 129 sub-subparagraph f., from the state within 90 days after the
 130 date of purchase or extension, or the purchaser removes a
 131 nonqualifying boat or an aircraft from this state within 10 days
 132 after the date of purchase or, when the boat or aircraft is
 133 repaired or altered, within 20 days after completion of the
 134 repairs or alterations; or if the aircraft will be registered in
 135 a foreign jurisdiction and:

136 (I) Application for the aircraft's registration is properly
 137 filed with a civil airworthiness authority of a foreign
 138 jurisdiction within 10 days after the date of purchase;

139 (II) The purchaser removes the aircraft from the state to a
 140 foreign jurisdiction within 10 days after the date the aircraft
 141 is registered by the applicable foreign airworthiness authority;
 142 and

143 (III) The aircraft is operated in the state solely to
 144 remove it from the state to a foreign jurisdiction.

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146 For purposes of this sub-subparagraph, the term "foreign
 147 jurisdiction" means any jurisdiction outside of the United
 148 States or any of its territories;

149 b. The purchaser, within 90 days from the date of
 150 departure, provides the department with written proof that the
 151 purchaser licensed, registered, titled, or documented the boat
 152 or aircraft outside the state. If such written proof is
 153 unavailable, within 90 days the purchaser shall provide proof
 154 that the purchaser applied for such license, title,
 155 registration, or documentation. The purchaser shall forward to
 156 the department proof of title, license, registration, or
 157 documentation upon receipt;

158 c. The purchaser, within 30 days after removing the boat or
 159 aircraft from Florida, furnishes the department with proof of
 160 removal in the form of receipts for fuel, dockage, slippage,
 161 tie-down, or hangaring from outside of Florida. The information
 162 so provided must clearly and specifically identify the boat or
 163 aircraft;

164 d. The selling dealer, within 30 days after the date of
 165 sale, provides to the department a copy of the sales invoice,
 166 closing statement, bills of sale, and the original affidavit
 167 signed by the purchaser attesting that he or she has read the
 168 provisions of this section;

169 e. The seller makes a copy of the affidavit a part of his
 170 or her record for as long as required by s. 213.35; and

171 f. Unless the nonresident purchaser of a boat of 5 net tons
 172 of admeasurement or larger intends to remove the boat from this
 173 state within 10 days after the date of purchase or when the boat
 174 is repaired or altered, within 20 days after completion of the

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175 repairs or alterations, the nonresident purchaser applies to the
 176 selling dealer for a decal which authorizes 90 days after the
 177 date of purchase for removal of the boat. The nonresident
 178 purchaser of a qualifying boat may apply to the selling dealer
 179 within 60 days after the date of purchase for an extension decal
 180 that authorizes the boat to remain in this state for an
 181 additional 90 days, but not more than a total of 180 days,
 182 before the nonresident purchaser is required to pay the tax
 183 imposed by this chapter. The department is authorized to issue
 184 decals in advance to dealers. The number of decals issued in
 185 advance to a dealer shall be consistent with the volume of the
 186 dealer's past sales of boats which qualify under this sub-
 187 subparagraph. The selling dealer or his or her agent shall mark
 188 and affix the decals to qualifying boats in the manner
 189 prescribed by the department, before delivery of the boat.

190 (I) The department is hereby authorized to charge dealers a
 191 fee sufficient to recover the costs of decals issued, except the
 192 extension decal shall cost \$425.

193 (II) The proceeds from the sale of decals will be deposited
 194 into the administrative trust fund.

195 (III) Decals shall display information to identify the boat
 196 as a qualifying boat under this sub-subparagraph, including, but
 197 not limited to, the decal's date of expiration.

198 (IV) The department is authorized to require dealers who
 199 purchase decals to file reports with the department and may
 200 prescribe all necessary records by rule. All such records are
 201 subject to inspection by the department.

202 (V) Any dealer or his or her agent who issues a decal
 203 falsely, fails to affix a decal, mismarks the expiration date of

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204 a decal, or fails to properly account for decals will be
 205 considered prima facie to have committed a fraudulent act to
 206 evade the tax and will be liable for payment of the tax plus a
 207 mandatory penalty of 200 percent of the tax, and shall be liable
 208 for fine and punishment as provided by law for a conviction of a
 209 misdemeanor of the first degree, as provided in s. 775.082 or s.
 210 775.083.

211 (VI) Any nonresident purchaser of a boat who removes a
 212 decal before permanently removing the boat from the state, or
 213 defaces, changes, modifies, or alters a decal in a manner
 214 affecting its expiration date before its expiration, or who
 215 causes or allows the same to be done by another, will be
 216 considered prima facie to have committed a fraudulent act to
 217 evade the tax and will be liable for payment of the tax plus a
 218 mandatory penalty of 200 percent of the tax, and shall be liable
 219 for fine and punishment as provided by law for a conviction of a
 220 misdemeanor of the first degree, as provided in s. 775.082 or s.
 221 775.083.

222 (VII) The department is authorized to adopt rules necessary
 223 to administer and enforce this subparagraph and to publish the
 224 necessary forms and instructions.

225 (VIII) The department is hereby authorized to adopt
 226 emergency rules pursuant to s. 120.54(4) to administer and
 227 enforce the provisions of this subparagraph.

228
 229 If the purchaser fails to remove the qualifying boat from this
 230 state within the maximum 180 days after purchase or a
 231 nonqualifying boat or an aircraft from this state within 10 days
 232 after purchase or, when the boat or aircraft is repaired or

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233 altered, within 20 days after completion of such repairs or
 234 alterations, or permits the boat or aircraft to return to this
 235 state within 6 months from the date of departure, except as
 236 provided in s. 212.08(7) (fff), or if the purchaser fails to
 237 furnish the department with any of the documentation required by
 238 this subparagraph within the prescribed time period, the
 239 purchaser shall be liable for use tax on the cost price of the
 240 boat or aircraft and, in addition thereto, payment of a penalty
 241 to the Department of Revenue equal to the tax payable. This
 242 penalty shall be in lieu of the penalty imposed by s. 212.12(2).
 243 The maximum 180-day period following the sale of a qualifying
 244 boat tax-exempt to a nonresident may not be tolled for any
 245 reason.

246 (b) At the rate of 6 percent of the cost price of each item
 247 or article of tangible personal property when the same is not
 248 sold but is used, consumed, distributed, or stored for use or
 249 consumption in this state; however, for tangible property
 250 originally purchased exempt from tax for use exclusively for
 251 lease and which is converted to the owner's own use, tax may be
 252 paid on the fair market value of the property at the time of
 253 conversion. If the fair market value of the property cannot be
 254 determined, use tax at the time of conversion shall be based on
 255 the owner's acquisition cost. Under no circumstances may the
 256 aggregate amount of sales tax from leasing the property and use
 257 tax due at the time of conversion be less than the total sales
 258 tax that would have been due on the original acquisition cost
 259 paid by the owner.

260 (c) At the rate of 6 percent of the gross proceeds derived
 261 from the lease or rental of tangible personal property, as

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262 defined herein; however, the following special provisions apply
 263 to the lease or rental of motor vehicles:

264 1. When a motor vehicle is leased or rented for a period of
 265 less than 12 months:

266 a. If the motor vehicle is rented in Florida, the entire
 267 amount of such rental is taxable, even if the vehicle is dropped
 268 off in another state.

269 b. If the motor vehicle is rented in another state and
 270 dropped off in Florida, the rental is exempt from Florida tax.

271 2. Except as provided in subparagraph 3., for the lease or
 272 rental of a motor vehicle for a period of not less than 12
 273 months, sales tax is due on the lease or rental payments if the
 274 vehicle is registered in this state; provided, however, that no
 275 tax shall be due if the taxpayer documents use of the motor
 276 vehicle outside this state and tax is being paid on the lease or
 277 rental payments in another state.

278 3. The tax imposed by this chapter does not apply to the
 279 lease or rental of a commercial motor vehicle as defined in s.
 280 316.003(13) (a) to one lessee or rentee for a period of not less
 281 than 12 months when tax was paid on the purchase price of such
 282 vehicle by the lessor. To the extent tax was paid with respect
 283 to the purchase of such vehicle in another state, territory of
 284 the United States, or the District of Columbia, the Florida tax
 285 payable shall be reduced in accordance with the provisions of s.
 286 212.06(7). This subparagraph shall only be available when the
 287 lease or rental of such property is an established business or
 288 part of an established business or the same is incidental or
 289 germane to such business.

290 (d) At the rate of 6 percent of the lease or rental price

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291 paid by a lessee or rentee, or contracted or agreed to be paid
 292 by a lessee or rentee, to the owner of the tangible personal
 293 property.

294 (e)1. At the rate of 6 percent on charges for:

295 a. Prepaid calling arrangements. The tax on charges for
 296 prepaid calling arrangements shall be collected at the time of
 297 sale and remitted by the selling dealer.

298 (I) "Prepaid calling arrangement" has the same meaning as
 299 provided in s. 202.11.

300 (II) If the sale or recharge of the prepaid calling
 301 arrangement does not take place at the dealer's place of
 302 business, it shall be deemed to have taken place at the
 303 customer's shipping address or, if no item is shipped, at the
 304 customer's address or the location associated with the
 305 customer's mobile telephone number.

306 (III) The sale or recharge of a prepaid calling arrangement
 307 shall be treated as a sale of tangible personal property for
 308 purposes of this chapter, regardless of whether a tangible item
 309 evidencing such arrangement is furnished to the purchaser, and
 310 such sale within this state subjects the selling dealer to the
 311 jurisdiction of this state for purposes of this subsection.

312 (IV) No additional tax under this chapter or chapter 202 is
 313 due or payable if a purchaser of a prepaid calling arrangement
 314 who has paid tax under this chapter on the sale or recharge of
 315 such arrangement applies one or more units of the prepaid
 316 calling arrangement to obtain communications services as
 317 described in s. 202.11(9)(b)3., other services that are not
 318 communications services, or products.

319 b. The installation of telecommunication and telegraphic

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320 equipment.

321 c. Electrical power or energy, except that the tax rate for
 322 charges for electrical power or energy is 4.35 percent. Charges
 323 for electrical power and energy do not include taxes imposed
 324 under ss. 166.231 and 203.01(1)(a)3.

325 2. Section 212.17(3), regarding credit for tax paid on
 326 charges subsequently found to be worthless, is equally
 327 applicable to any tax paid under this section on charges for
 328 prepaid calling arrangements, telecommunication or telegraph
 329 services, or electric power subsequently found to be
 330 uncollectible. As used in this paragraph, the term "charges"
 331 does not include any excise or similar tax levied by the Federal
 332 Government, a political subdivision of this state, or a
 333 municipality upon the purchase, sale, or recharge of prepaid
 334 calling arrangements or upon the purchase or sale of
 335 telecommunication, television system program, or telegraph
 336 service or electric power, which tax is collected by the seller
 337 from the purchaser.

338 (f) At the rate of 6 percent on the sale, rental, use,
 339 consumption, or storage for use in this state of machines and
 340 equipment, and parts and accessories therefor, used in
 341 manufacturing, processing, compounding, producing, mining, or
 342 quarrying personal property for sale or to be used in furnishing
 343 communications, transportation, or public utility services.

344 (g)1. At the rate of 6 percent on the retail price of
 345 newspapers and magazines sold or used in Florida.

346 2. Notwithstanding other provisions of this chapter,
 347 inserts of printed materials which are distributed with a
 348 newspaper or magazine are a component part of the newspaper or

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349 magazine, and neither the sale nor use of such inserts is
350 subject to tax when:

351 a. Printed by a newspaper or magazine publisher or
352 commercial printer and distributed as a component part of a
353 newspaper or magazine, which means that the items after being
354 printed are delivered directly to a newspaper or magazine
355 publisher by the printer for inclusion in editions of the
356 distributed newspaper or magazine;

357 b. Such publications are labeled as part of the designated
358 newspaper or magazine publication into which they are to be
359 inserted; and

360 c. The purchaser of the insert presents a resale
361 certificate to the vendor stating that the inserts are to be
362 distributed as a component part of a newspaper or magazine.

363 (h)1. A tax is imposed at the rate of 4 percent on the
364 charges for the use of coin-operated amusement machines. The tax
365 shall be calculated by dividing the gross receipts from such
366 charges for the applicable reporting period by a divisor,
367 determined as provided in this subparagraph, to compute gross
368 taxable sales, and then subtracting gross taxable sales from
369 gross receipts to arrive at the amount of tax due. For counties
370 that do not impose a discretionary sales surtax, the divisor is
371 equal to 1.04; for counties that impose a 0.5 percent
372 discretionary sales surtax, the divisor is equal to 1.045; for
373 counties that impose a 1 percent discretionary sales surtax, the
374 divisor is equal to 1.050; and for counties that impose a 2
375 percent sales surtax, the divisor is equal to 1.060. If a county
376 imposes a discretionary sales surtax that is not listed in this
377 subparagraph, the department shall make the applicable divisor

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378 available in an electronic format or otherwise. Additional
379 divisors shall bear the same mathematical relationship to the
380 next higher and next lower divisors as the new surtax rate bears
381 to the next higher and next lower surtax rates for which
382 divisors have been established. When a machine is activated by a
383 slug, token, coupon, or any similar device which has been
384 purchased, the tax is on the price paid by the user of the
385 device for such device.

386 2. As used in this paragraph, the term "operator" means any
387 person who possesses a coin-operated amusement machine for the
388 purpose of generating sales through that machine and who is
389 responsible for removing the receipts from the machine.

390 a. If the owner of the machine is also the operator of it,
391 he or she shall be liable for payment of the tax without any
392 deduction for rent or a license fee paid to a location owner for
393 the use of any real property on which the machine is located.

394 b. If the owner or lessee of the machine is also its
395 operator, he or she shall be liable for payment of the tax on
396 the purchase or lease of the machine, as well as the tax on
397 sales generated through the machine.

398 c. If the proprietor of the business where the machine is
399 located does not own the machine, he or she shall be deemed to
400 be the lessee and operator of the machine and is responsible for
401 the payment of the tax on sales, unless such responsibility is
402 otherwise provided for in a written agreement between him or her
403 and the machine owner.

404 3.a. An operator of a coin-operated amusement machine may
405 not operate or cause to be operated in this state any such
406 machine until the operator has registered with the department

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407 and has conspicuously displayed an identifying certificate
 408 issued by the department. The identifying certificate shall be
 409 issued by the department upon application from the operator. The
 410 identifying certificate shall include a unique number, and the
 411 certificate shall be permanently marked with the operator's
 412 name, the operator's sales tax number, and the maximum number of
 413 machines to be operated under the certificate. An identifying
 414 certificate shall not be transferred from one operator to
 415 another. The identifying certificate must be conspicuously
 416 displayed on the premises where the coin-operated amusement
 417 machines are being operated.

418 b. The operator of the machine must obtain an identifying
 419 certificate before the machine is first operated in the state
 420 and by July 1 of each year thereafter. The annual fee for each
 421 certificate shall be based on the number of machines identified
 422 on the application times \$30 and is due and payable upon
 423 application for the identifying device. The application shall
 424 contain the operator's name, sales tax number, business address
 425 where the machines are being operated, and the number of
 426 machines in operation at that place of business by the operator.
 427 No operator may operate more machines than are listed on the
 428 certificate. A new certificate is required if more machines are
 429 being operated at that location than are listed on the
 430 certificate. The fee for the new certificate shall be based on
 431 the number of additional machines identified on the application
 432 form times \$30.

433 c. A penalty of \$250 per machine is imposed on the operator
 434 for failing to properly obtain and display the required
 435 identifying certificate. A penalty of \$250 is imposed on the

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436 lessee of any machine placed in a place of business without a
 437 proper current identifying certificate. Such penalties shall
 438 apply in addition to all other applicable taxes, interest, and
 439 penalties.

440 d. Operators of coin-operated amusement machines must
 441 obtain a separate sales and use tax certificate of registration
 442 for each county in which such machines are located. One sales
 443 and use tax certificate of registration is sufficient for all of
 444 the operator's machines within a single county.

445 4. The provisions of this paragraph do not apply to coin-
 446 operated amusement machines owned and operated by churches or
 447 synagogues.

448 5. In addition to any other penalties imposed by this
 449 chapter, a person who knowingly and willfully violates any
 450 provision of this paragraph commits a misdemeanor of the second
 451 degree, punishable as provided in s. 775.082 or s. 775.083.

452 6. The department may adopt rules necessary to administer
 453 the provisions of this paragraph.

454 (i)1. At the rate of 6 percent on charges for all:

455 a. Detective, burglar protection, and other protection
 456 services (NAICS National Numbers 561611, 561612, 561613, and
 457 561621). Fingerprint services required under s. 790.06 or s.
 458 790.062 are not subject to the tax. Any law enforcement officer,
 459 as defined in s. 943.10, who is performing approved duties as
 460 determined by his or her local law enforcement agency in his or
 461 her capacity as a law enforcement officer, and who is subject to
 462 the direct and immediate command of his or her law enforcement
 463 agency, and in the law enforcement officer's uniform as
 464 authorized by his or her law enforcement agency, is performing

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465 law enforcement and public safety services and is not performing
 466 detective, burglar protection, or other protective services, if
 467 the law enforcement officer is performing his or her approved
 468 duties in a geographical area in which the law enforcement
 469 officer has arrest jurisdiction. Such law enforcement and public
 470 safety services are not subject to tax irrespective of whether
 471 the duty is characterized as "extra duty," "off-duty," or
 472 "secondary employment," and irrespective of whether the officer
 473 is paid directly or through the officer's agency by an outside
 474 source. The term "law enforcement officer" includes full-time or
 475 part-time law enforcement officers, and any auxiliary law
 476 enforcement officer, when such auxiliary law enforcement officer
 477 is working under the direct supervision of a full-time or part-
 478 time law enforcement officer.

479 b. Nonresidential cleaning, excluding cleaning of the
 480 interiors of transportation equipment, and nonresidential
 481 building pest control services (NAICS National Numbers 561710
 482 and 561720).

483 2. As used in this paragraph, "NAICS" means those
 484 classifications contained in the North American Industry
 485 Classification System, as published in 2007 by the Office of
 486 Management and Budget, Executive Office of the President.

487 3. Charges for detective, burglar protection, and other
 488 protection security services performed in this state but used
 489 outside this state are exempt from taxation. Charges for
 490 detective, burglar protection, and other protection security
 491 services performed outside this state and used in this state are
 492 subject to tax.

493 4. If a transaction involves both the sale or use of a

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494 service taxable under this paragraph and the sale or use of a
 495 service or any other item not taxable under this chapter, the
 496 consideration paid must be separately identified and stated with
 497 respect to the taxable and exempt portions of the transaction or
 498 the entire transaction shall be presumed taxable. The burden
 499 shall be on the seller of the service or the purchaser of the
 500 service, whichever applicable, to overcome this presumption by
 501 providing documentary evidence as to which portion of the
 502 transaction is exempt from tax. The department is authorized to
 503 adjust the amount of consideration identified as the taxable and
 504 exempt portions of the transaction; however, a determination
 505 that the taxable and exempt portions are inaccurately stated and
 506 that the adjustment is applicable must be supported by
 507 substantial competent evidence.

508 5. Each seller of services subject to sales tax pursuant to
 509 this paragraph shall maintain a monthly log showing each
 510 transaction for which sales tax was not collected because the
 511 services meet the requirements of subparagraph 3. for out-of-
 512 state use. The log must identify the purchaser's name, location
 513 and mailing address, and federal employer identification number,
 514 if a business, or the social security number, if an individual,
 515 the service sold, the price of the service, the date of sale,
 516 the reason for the exemption, and the sales invoice number. The
 517 monthly log shall be maintained pursuant to the same
 518 requirements and subject to the same penalties imposed for the
 519 keeping of similar records pursuant to this chapter.

520 (j)1. Notwithstanding any other provision of this chapter,
 521 there is hereby levied a tax on the sale, use, consumption, or
 522 storage for use in this state of any coin or currency, whether

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523 in circulation or not, when such coin or currency:

524 a. Is not legal tender;

525 b. If legal tender, is sold, exchanged, or traded at a rate
526 in excess of its face value; or

527 c. Is sold, exchanged, or traded at a rate based on its
528 precious metal content.

529 2. Such tax shall be at a rate of 6 percent of the price at
530 which the coin or currency is sold, exchanged, or traded, except
531 that, with respect to a coin or currency which is legal tender
532 of the United States and which is sold, exchanged, or traded,
533 such tax shall not be levied.

534 3. There are exempt from this tax exchanges of coins or
535 currency which are in general circulation in, and legal tender
536 of, one nation for coins or currency which are in general
537 circulation in, and legal tender of, another nation when
538 exchanged solely for use as legal tender and at an exchange rate
539 based on the relative value of each as a medium of exchange.

540 4. With respect to any transaction that involves the sale
541 of coins or currency taxable under this paragraph in which the
542 taxable amount represented by the sale of such coins or currency
543 exceeds \$500, the entire amount represented by the sale of such
544 coins or currency is exempt from the tax imposed under this
545 paragraph. The dealer must maintain proper documentation, as
546 prescribed by rule of the department, to identify that portion
547 of a transaction which involves the sale of coins or currency
548 and is exempt under this subparagraph.

549 (k) At the rate of 6 percent of the sales price of each
550 gallon of diesel fuel not taxed under chapter 206 purchased for
551 use in a vessel, except dyed diesel fuel that is exempt pursuant

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552 to s. 212.08(4)(a)4.

553 (1) Florists located in this state are liable for sales tax
554 on sales to retail customers regardless of where or by whom the
555 items sold are to be delivered. Florists located in this state
556 are not liable for sales tax on payments received from other
557 florists for items delivered to customers in this state.

558 (m) Operators of game concessions or other concessionaires
559 who customarily award tangible personal property as prizes may,
560 in lieu of paying tax on the cost price of such property, pay
561 tax on 25 percent of the gross receipts from such concession
562 activity.

563 (2) The tax shall be collected by the dealer, as defined
564 herein, and remitted by the dealer to the state at the time and
565 in the manner as hereinafter provided.

566 (3) The tax so levied is in addition to all other taxes,
567 whether levied in the form of excise, license, or privilege
568 taxes, and in addition to all other fees and taxes levied.

569 (4) The tax imposed pursuant to this chapter shall be due
570 and payable according to the brackets set forth in s. 212.12.

571 (5) Notwithstanding any other provision of this chapter,
572 the maximum amount of tax imposed under this chapter and
573 collected on each sale or use of a boat in this state may not
574 exceed \$18,000 and on each repair of a boat in this state may
575 not exceed \$60,000.

576 Section 3. Section 212.0596, Florida Statutes, is amended
577 to read:

578 (Substantial rewording of section. See
579 s. 212.0596, F.S., for present text.)
580 212.0596 Taxation of remote sales.-

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581 (1) As used in this chapter, the term:

582 (a) "Remote sale" means a retail sale of tangible personal
 583 property ordered by mail, telephone, the Internet, or other
 584 means of communication from a person who receives the order
 585 outside of this state and transports the property or causes the
 586 property to be transported from any jurisdiction, including this
 587 state, to a location in this state. For purposes of this
 588 paragraph, tangible personal property delivered to a location
 589 within this state is presumed to be used, consumed, distributed,
 590 or stored to be used or consumed in this state.

591 (b) "Substantial number of remote sales" means any number
 592 of taxable remote sales in the previous calendar year in which
 593 the sum of the sales prices, as defined in s. 212.02(16),
 594 exceeded \$100,000.

595 (2) Every person making a substantial number of remote
 596 sales is a dealer for purposes of this chapter.

597 Section 4. Section 212.05965, Florida Statutes, is created
 598 to read:

599 212.05965 Taxation of marketplace sales.-

600 (1) As used in this chapter, the term:

601 (a) "Marketplace" means any physical place or electronic
 602 medium through which tangible personal property is offered for
 603 sale.

604 (b) "Marketplace provider" means a person who facilitates a
 605 retail sale by a marketplace seller by listing or advertising
 606 for sale by the marketplace seller tangible personal property in
 607 a marketplace, and who directly, or indirectly through
 608 agreements or arrangements with third parties, collects payment
 609 from the customer and transmits the payment to the marketplace

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610 seller, regardless of whether the marketplace provider receives
 611 compensation or other consideration in exchange for its
 612 services.

613 1. The term does not include a person who solely provides
 614 travel agency services. As used in this subparagraph, the term
 615 "travel agency services" means arranging, booking, or otherwise
 616 facilitating for a commission, fee, or other consideration
 617 vacation or travel packages, rental cars, or other travel
 618 reservations; tickets for domestic or foreign travel by air,
 619 rail, ship, bus, or other mode of transportation; or hotel or
 620 other lodging accommodations.

621 2. The term does not include a person who is a delivery
 622 network company unless the delivery network company is a
 623 registered dealer for purposes of this chapter and the delivery
 624 network company notifies all local merchants that sell through
 625 the delivery network company's website or mobile application
 626 that the delivery network company is subject to the requirements
 627 of a marketplace provider under this section. As used in this
 628 subparagraph, the term:

629 a. "Delivery network company" means a person who maintains
 630 a website or mobile application used to facilitate delivery
 631 services, the sale of local products, or both.

632 b. "Delivery network courier" means a person who provides
 633 delivery services through a delivery network company website or
 634 mobile application using a personal means of transportation,
 635 such as a motor vehicle as defined in s. 320.01(1), bicycle,
 636 scooter, or other similar means of transportation; using public
 637 transportation; or by walking.

638 c. "Delivery services" means the pickup and delivery by a

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639 delivery network courier of one or more local products from a
 640 local merchant to a customer, which may include the selection,
 641 collection, and purchase of the local product in connection with
 642 the delivery. The term does not include any delivery requiring
 643 more than 75 miles of travel from the local merchant to the
 644 customer.

645 d. "Local merchant" means a kitchen, restaurant, or a
 646 third-party merchant, including a grocery store, retail store,
 647 convenience store, or business of another type, which is not
 648 under common ownership or control of the delivery network
 649 company.

650 e. "Local product" means any tangible personal property,
 651 including food, but excluding freight, mail, or a package to
 652 which postage has been affixed.

653 3. The term does not include a payment processor business
 654 that is appointed to handle payment transactions from various
 655 channels, such as charge cards, credit cards, or debit cards,
 656 and whose sole activity with respect to marketplace sales is to
 657 handle payment transactions between two parties.

658 (c) "Marketplace seller" means a person who has an
 659 agreement with a marketplace provider and who makes retail sales
 660 of tangible personal property through a marketplace owned,
 661 operated, or controlled by the marketplace provider.

662 (2) A marketplace provider who has a physical presence in
 663 this state or who is making or facilitating through a
 664 marketplace a substantial number of remote sales as defined in
 665 s. 212.0596(1) is a dealer for purposes of this chapter.

666 (3) A marketplace provider shall certify to its marketplace
 667 sellers that it will collect and remit the tax imposed under

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668 this chapter on taxable retail sales made through the
 669 marketplace. Such certification may be included in the agreement
 670 between the marketplace provider and marketplace seller.

671 (4) (a) A marketplace seller may not collect and remit the
 672 tax under this chapter on a taxable retail sale when the sale is
 673 made through the marketplace and the marketplace provider
 674 certifies, as required under subsection (3), that it will
 675 collect and remit such tax. A marketplace seller shall exclude
 676 such sales made through the marketplace from the marketplace
 677 seller's tax return under s. 212.11.

678 (b)1. A marketplace seller who has a physical presence in
 679 this state shall register and shall collect and remit the tax
 680 imposed under this chapter on all taxable retail sales made
 681 outside of the marketplace.

682 2. A marketplace seller making a substantial number of
 683 remote sales as defined in s. 212.0596(1) shall register and
 684 shall collect and remit the tax imposed under this chapter on
 685 all taxable retail sales made outside of the marketplace. For
 686 the purposes of determining whether a marketplace seller made a
 687 substantial number of remote sales, the marketplace seller shall
 688 consider only those sales made outside of the marketplace.

689 (5) (a) A marketplace provider shall allow the department to
 690 examine and audit its books and records pursuant to s. 212.13.
 691 For retail sales facilitated through a marketplace, the
 692 department may not examine or audit the books and records of
 693 marketplace sellers, nor may the department assess marketplace
 694 sellers except to the extent that the marketplace provider seeks
 695 relief under paragraph (b). The department may examine, audit,
 696 and assess a marketplace seller for retail sales made outside of

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697 the marketplace under paragraph (4)(b).

698 (b) The marketplace provider is relieved of liability for
 699 the tax on the retail sale and the marketplace seller or
 700 customer is liable for the tax imposed under this chapter if the
 701 marketplace provider demonstrates to the department's
 702 satisfaction that the marketplace provider made a reasonable
 703 effort to obtain accurate information related to the retail
 704 sales facilitated through the marketplace from the marketplace
 705 seller, but that the failure to collect and pay the correct
 706 amount of tax imposed under this chapter was due to the
 707 provision of incorrect or incomplete information to the
 708 marketplace provider by the marketplace seller. This paragraph
 709 does not apply to a retail sale for which the marketplace
 710 provider is the seller if the marketplace provider and
 711 marketplace seller are related parties or if transactions
 712 between a marketplace seller and marketplace buyer are not
 713 conducted at arm's length.

714 (6) For purposes of registration pursuant to s. 212.18, a
 715 marketplace is deemed a separate place of business.

716 (7) A marketplace provider and marketplace seller may agree
 717 by contract or otherwise that if a marketplace provider pays the
 718 tax imposed under this chapter on a retail sale facilitated
 719 through a marketplace for a marketplace seller as a result of an
 720 audit or otherwise, the marketplace provider has the right to
 721 recover such tax and any associated interest and penalties from
 722 the marketplace seller.

723 (8) This section may not be construed to authorize the
 724 state to collect sales tax from both the marketplace provider
 725 and the marketplace seller on the same retail sale.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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726 (9) Chapter 213 applies to the administration of this
 727 section to the extent that chapter does not conflict with this
 728 section.

729 Section 5. Paragraph (c) of subsection (2) and paragraph
 730 (a) of subsection (5) of section 212.06, Florida Statutes, are
 731 amended to read:

732 212.06 Sales, storage, use tax; collectible from dealers;
 733 "dealer" defined; dealers to collect from purchasers;
 734 legislative intent as to scope of tax.—

735 (2)

736 (c) The term "dealer" is further defined to mean every
 737 person, as used in this chapter, who sells at retail or who
 738 offers for sale at retail, or who has in his or her possession
 739 for sale at retail; or for use, consumption, or distribution; or
 740 for storage to be used or consumed in this state, tangible
 741 personal property as defined herein, including a retailer who
 742 transacts a remote mail order sale or a person who is a
 743 marketplace provider as defined in s. 212.05965.

744 (5)(a)1. Except as provided in subparagraph 2., it is not
 745 the intention of this chapter to levy a tax upon tangible
 746 personal property imported, produced, or manufactured in this
 747 state for export, provided that tangible personal property may
 748 not be considered as being imported, produced, or manufactured
 749 for export unless the importer, producer, or manufacturer
 750 delivers the same to a licensed exporter for exporting or to a
 751 common carrier for shipment outside the state or mails the same
 752 by United States mail to a destination outside the state; or, in
 753 the case of aircraft being exported under their own power to a
 754 destination outside the continental limits of the United States,

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755 by submission to the department of a duly signed and validated
 756 United States customs declaration, showing the departure of the
 757 aircraft from the continental United States; and further with
 758 respect to aircraft, the canceled United States registry of said
 759 aircraft; or in the case of parts and equipment installed on
 760 aircraft of foreign registry, by submission to the department of
 761 documentation, the extent of which shall be provided by rule,
 762 showing the departure of the aircraft from the continental
 763 United States; nor is it the intention of this chapter to levy a
 764 tax on any sale which the state is prohibited from taxing under
 765 the Constitution or laws of the United States. Every retail sale
 766 made to a person physically present at the time of sale shall be
 767 presumed to have been delivered in this state.

768 2.a. Notwithstanding subparagraph 1., a tax is levied on
 769 each sale of tangible personal property to be transported to a
 770 cooperating state as defined in sub-subparagraph c., at the rate
 771 specified in sub-subparagraph d. However, a Florida dealer will
 772 be relieved from the requirements of collecting taxes pursuant
 773 to this subparagraph if the Florida dealer obtains from the
 774 purchaser an affidavit setting forth the purchaser's name,
 775 address, state taxpayer identification number, and a statement
 776 that the purchaser is aware of his or her state's use tax laws,
 777 is a registered dealer in Florida or another state, or is
 778 purchasing the tangible personal property for resale or is
 779 otherwise not required to pay the tax on the transaction. The
 780 department may, by rule, provide a form to be used for the
 781 purposes set forth herein.

782 b. For purposes of this subparagraph, "a cooperating state"
 783 is one determined by the executive director of the department to

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784 cooperate satisfactorily with this state in collecting taxes on
 785 ~~remote mail order~~ sales. No state shall be so determined unless
 786 it meets all the following minimum requirements:

787 (I) It levies and collects taxes on ~~remote mail order~~ sales
 788 of property transported from that state to persons in this
 789 state, as described in s. 212.0596, upon request of the
 790 department.

791 (II) The tax so collected shall be at the rate specified in
 792 s. 212.05, not including any local option or tourist or
 793 convention development taxes collected pursuant to s. 125.0104
 794 or this chapter.

795 (III) Such state agrees to remit to the department all
 796 taxes so collected no later than 30 days from the last day of
 797 the calendar quarter following their collection.

798 (IV) Such state authorizes the department to audit dealers
 799 within its jurisdiction who make ~~remote mail order~~ sales that
 800 are the subject of s. 212.0596, or makes arrangements deemed
 801 adequate by the department for auditing them with its own
 802 personnel.

803 (V) Such state agrees to provide to the department records
 804 obtained by it from retailers or dealers in such state showing
 805 delivery of tangible personal property into this state upon
 806 which no sales or use tax has been paid in a manner similar to
 807 that provided in sub-subparagraph g.

808 c. For purposes of this subparagraph, "sales of tangible
 809 personal property to be transported to a cooperating state"
 810 means ~~remote mail order~~ sales to a person who is in the
 811 cooperating state at the time the order is executed, from a
 812 dealer who receives that order in this state.

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813 d. The tax levied by sub-subparagraph a. shall be at the
814 rate at which such a sale would have been taxed pursuant to the
815 cooperating state's tax laws if consummated in the cooperating
816 state by a dealer and a purchaser, both of whom were physically
817 present in that state at the time of the sale.

818 e. The tax levied by sub-subparagraph a., when collected,
819 shall be held in the State Treasury in trust for the benefit of
820 the cooperating state and shall be paid to it at a time agreed
821 upon between the department, acting for this state, and the
822 cooperating state or the department or agency designated by it
823 to act for it; however, such payment shall in no event be made
824 later than 30 days from the last day of the calendar quarter
825 after the tax was collected. Funds held in trust for the benefit
826 of a cooperating state shall not be subject to the service
827 charges imposed by s. 215.20.

828 f. The department is authorized to perform such acts and to
829 provide such cooperation to a cooperating state with reference
830 to the tax levied by sub-subparagraph a. as is required of the
831 cooperating state by sub-subparagraph b.

832 g. In furtherance of this act, dealers selling tangible
833 personal property for delivery in another state shall make
834 available to the department, upon request of the department,
835 records of all tangible personal property so sold. Such records
836 shall include a description of the property, the name and
837 address of the purchaser, the name and address of the person to
838 whom the property was sent, the purchase price of the property,
839 information regarding whether sales tax was paid in this state
840 on the purchase price, and such other information as the
841 department may by rule prescribe.

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842 Section 6. Paragraph (a) of subsection (1) and paragraph
843 (a) of subsection (5) of section 212.12, Florida Statutes, are
844 amended to read:

845 212.12 Dealer's credit for collecting tax; penalties for
846 noncompliance; powers of Department of Revenue in dealing with
847 delinquents; brackets applicable to taxable transactions;
848 records required.—

849 (1) (a) ~~1-~~ Notwithstanding any other law and for the purpose
850 of compensating persons granting licenses for and the lessors of
851 real and personal property taxed hereunder, for the purpose of
852 compensating dealers in tangible personal property, for the
853 purpose of compensating dealers providing communication services
854 and taxable services, for the purpose of compensating owners of
855 places where admissions are collected, and for the purpose of
856 compensating remitters of any taxes or fees reported on the same
857 documents utilized for the sales and use tax, as compensation
858 for the keeping of prescribed records, filing timely tax
859 returns, and the proper accounting and remitting of taxes by
860 them, such seller, person, lessor, dealer, owner, and remitter
861 ~~(except dealers who make mail order sales)~~ who files the return
862 required pursuant to s. 212.11 only by electronic means and who
863 pays the amount due on such return only by electronic means
864 shall be allowed 2.5 percent of the amount of the tax due,
865 accounted for, and remitted to the department in the form of a
866 deduction. However, if the amount of the tax due and remitted to
867 the department by electronic means for the reporting period
868 exceeds \$1,200, an allowance is not allowed for all amounts in
869 excess of \$1,200. For purposes of this paragraph ~~subparagraph~~,
870 the term "electronic means" has the same meaning as provided in

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871 s. 213.755(2)(c).

872 ~~2. The executive director of the department is authorized~~
 873 ~~to negotiate a collection allowance, pursuant to rules~~
 874 ~~promulgated by the department, with a dealer who makes mail~~
 875 ~~order sales. The rules of the department shall provide~~
 876 ~~guidelines for establishing the collection allowance based upon~~
 877 ~~the dealer's estimated costs of collecting the tax, the volume~~
 878 ~~and value of the dealer's mail order sales to purchasers in this~~
 879 ~~state, and the administrative and legal costs and likelihood of~~
 880 ~~achieving collection of the tax absent the cooperation of the~~
 881 ~~dealer. However, in no event shall the collection allowance~~
 882 ~~negotiated by the executive director exceed 10 percent of the~~
 883 ~~tax remitted for a reporting period.~~

884 (5)(a) The department is authorized to audit or inspect the
 885 records and accounts of dealers defined herein, including audits
 886 or inspections of dealers who make remote mail order sales ~~to~~
 887 ~~the extent permitted by another state~~, and to correct by credit
 888 any overpayment of tax, and, in the event of a deficiency, an
 889 assessment shall be made and collected. No administrative
 890 finding of fact is necessary prior to the assessment of any tax
 891 deficiency.

892 Section 7. Paragraph (f) of subsection (3) of section
 893 212.18, Florida Statutes, is amended to read:

894 212.18 Administration of law; registration of dealers;
 895 rules.—

896 (3)

897 (f) As used in this paragraph, the term "exhibitor" means a
 898 person who enters into an agreement authorizing the display of
 899 tangible personal property or services at a convention or a

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900 trade show. The following provisions apply to the registration
 901 of exhibitors as dealers under this chapter:

902 1. An exhibitor whose agreement prohibits the sale of
 903 tangible personal property or services subject to the tax
 904 imposed in this chapter is not required to register as a dealer.

905 2. An exhibitor whose agreement provides for the sale at
 906 wholesale only of tangible personal property or services subject
 907 to the tax imposed by this chapter must obtain a resale
 908 certificate from the purchasing dealer but is not required to
 909 register as a dealer.

910 3. An exhibitor whose agreement authorizes the retail sale
 911 of tangible personal property or services subject to the tax
 912 imposed by this chapter must register as a dealer and collect
 913 the tax on such sales.

914 4. An exhibitor who makes a remote mail order sale pursuant
 915 to s. 212.0596 must register as a dealer.

916
 917 A person who conducts a convention or a trade show must make his
 918 or her exhibitor's agreements available to the department for
 919 inspection and copying.

920 Section 8. Subsection (4) of section 212.20, Florida
 921 Statutes, is amended to read:

922 212.20 Funds collected, disposition; additional powers of
 923 department; operational expense; refund of taxes adjudicated
 924 unconstitutionally collected.—

925 (4) When there has been a final adjudication that any tax
 926 pursuant to s. 212.0596 or s. 212.05965 was levied, collected,
 927 or both, contrary to the Constitution of the United States or
 928 the State Constitution, the department shall, in accordance with

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929 rules, determine, based upon claims for refund and other
 930 evidence and information, who paid such tax or taxes, and refund
 931 to each such person the amount of tax paid. For purposes of this
 932 subsection, a "final adjudication" is a decision of a court of
 933 competent jurisdiction from which no appeal can be taken or from
 934 which the official or officials of this state with authority to
 935 make such decisions has or have decided not to appeal.

936 Section 9. Subsection (5) of section 213.27, Florida
 937 Statutes, is amended to read:

938 213.27 Contracts with debt collection agencies and certain
 939 vendors.-

940 (5) The department may, for the purpose of ascertaining the
 941 amount of or collecting any taxes due from a person making or
 942 facilitating remote sales under s. 212.0596 or s. 212.05965
 943 doing mail order business in this state, contract with any
 944 auditing agency doing business within or without this state for
 945 the purpose of conducting an audit of such person mail order
 946 business; however, such audit agency may not conduct an audit on
 947 behalf of the department of any person domiciled in this state,
 948 person registered for sales and use tax purposes in this state,
 949 or corporation filing a Florida corporate tax return, if any
 950 such person or corporation objects to such audit in writing to
 951 the department and the auditing agency. The department shall
 952 notify the taxpayer by mail at least 30 days before the
 953 department assigns the collection of such taxes.

954 Section 10. This act first applies to remote sales made or
 955 facilitated on or after July 1, 2021, by a person who made or
 956 facilitated a substantial number of remote sales in calendar
 957 year 2020.

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958 Section 11. (1) The Department of Revenue is authorized,
 959 and all conditions are deemed met, to adopt emergency rules
 960 pursuant to s. 120.54(4), Florida Statutes, for the purpose of
 961 administering this act.

962 (2) Notwithstanding any other law, emergency rules adopted
 963 pursuant to subsection (1) are effective for 6 months after
 964 adoption and may be renewed during the pendency of procedures to
 965 adopt permanent rules addressing the subject of the emergency
 966 rules.

967 (3) This section shall take effect upon this act becoming a
 968 law and expires July 1, 2022.

969 Section 12. If any provision of this act or its application
 970 to any person or circumstance is held invalid, the invalidity
 971 does not affect other provisions or applications of the act
 972 which can be given effect without the invalid provision or
 973 application, and to this end the provisions of this act are
 974 severable.

975 Section 13. Except as otherwise expressly provided in this
 976 act and except for this section, which shall take effect upon
 977 this act becoming a law, this act shall take effect July 1,
 978 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/21

Meeting Date

50

Bill Number (if applicable)

Topic Sales and Use Tax

Amendment Barcode (if applicable)

Name French Brown

Job Title Lobbyist

Address 106 East College Ave., Suite 1200

Phone 850-459-0992

Street

Tallahassee

FL

32312

Email fbrown@deanmead.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2021

Meeting Date

50

Bill Number (if applicable)

Topic sales and use tax

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title executive director

Address 579 E. Call St.

Phone 850-321-9386

Street

Tallahassee

fl

32301

Email fcfep@yahoo.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

6/25

Meeting Date

SB 50

Bill Number (if applicable)

Topic Sales Tax

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 224-6926

Street

Tallahassee

City

State

32301

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 25 2021
Meeting Date

50
Bill Number (if applicable)

Topic Sales Tax and Use Tax

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP of Governmental Affairs

Address 227 S. Adams St.
Street

Phone 850 222 4082

Tallahassee FL 32301
City State Zip

Email grace@frf.org

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/21

Meeting Date

50

Bill Number (if applicable)

Topic Sales + Use Tax

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title Policy Director

Address 126 N. Mills

Phone 407 376 4801

Street

Orlando FL 32801

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/25/2021

Meeting Date

SB 50

Bill Number (if applicable)

Topic Sales and Use Tax

Amendment Barcode (if applicable)

Name Jessica Janasiewicz

Job Title Governmental Consultant

Address 119 South Monroe Street

Phone 850-681-6788

Street

Tallahassee

FL

32301

Email jessica@rutledge-ecenia.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Association of School Administrators

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2021

50

Meeting Date

Bill Number (if applicable)

Topic SALES AND USE TAX

Amendment Barcode (if applicable)

Name CAROL BRACY

Job Title CONSULTANT

Address 201 E PARK AVE, 5TH FLOOR

Phone 850.577.0444

Street

TALLAHASSEE

FL

32301

Email carol@ballardpartners.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AMAZON.COM

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/21

Meeting Date

50

Bill Number (if applicable)

Topic Sales and Use Tax

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Jan 25, 2021

50

Meeting Date

Bill Number (if applicable)

Topic Sales and Use Tax: Internet Sales Tax Collection

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address 1727 Highland Place

Phone 850-509-8022

Street

Tallahassee

FL

32308

Email greg@waypointstrat.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing International Council of Shopping Centers (ICSC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/25/2021

Meeting Date

SB 50

Bill Number (if applicable)

Topic Sales and Use Tax

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Senior Legislative Advocate

Address 301 S. Bronough Street #300

Phone 850-701-3621

Street

Tallahassee

FL

32302

Email ahughes@flcities.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2021

Meeting Date

SB 50

Bill Number (if applicable)

Topic Sales and Use Tax - Remote and Marketplace Sellers

Amendment Barcode (if applicable)

Name Bob McKee

Job Title Deputy Director of Public Policy

Address 100 S Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone (850) 922-9755

Email bmckee@fl-counties.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/21

Meeting Date

SB 50

Bill Number (if applicable)

Topic sales tax

Amendment Barcode (if applicable)

Name Jason Unger

Job Title attorney

Address 301 South Bronough, #600

Phone 850-577-9090

Street

Tallahassee

FL

32301

Email jason.unger@gray-robinson.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Target

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/25/2021

Meeting Date

SB 50

Bill Number (if applicable)

Topic Sales and Use tax

Amendment Barcode (if applicable)

Name Lawrence Clermont

Job Title Florida PTA Volunteer

Address 2841 Englewood Drive

Phone 7273869558

Street

Largo

Florida

33771

Email lclermont@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

JAN 25 2021
Meeting Date

SB 50
Bill Number (if applicable)

Topic Sales & Use Tax

Amendment Barcode (if applicable)

Name David Sendar

Job Title STATES MAN Senior Concerned Citizen

Address 16 Winters Road

Phone 352 056 597

Street Frontland Park Fl
City State Zip

Email golfsendar1955@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Citizens of Our State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Commerce and Tourism Committee

Judge:

Started: 1/25/2021 2:31:06 PM

Ends: 1/25/2021 3:18:17 PM

Length: 00:47:12

2:31:05 PM Meeting called to order by Chair Hooper
2:31:54 PM Roll call by Committee Administrative Asst (CAA) - Quorum is present
2:32:27 PM Comments by Chair Hooper
2:32:59 PM Committee Members introduce themselves
2:33:38 PM Senator Torres makes comments
2:34:11 PM Senator Gruters makes remarks
2:34:29 PM Senator Burgess makes comments
2:35:07 PM Senator Powell makes remarks
2:35:24 PM Senator Taddeo makes remarks
2:36:06 PM Senator Wright makes comments
2:36:39 PM Senator Hutson makes remarks
2:37:11 PM Senator Garcia makes comments
2:37:45 PM Senator Diaz makes remarks
2:38:10 PM Senator Pizzo makes comments
2:38:53 PM Chair Hooper introduces himself and makes remarks
2:39:18 PM Todd McKay, Staff Director, gives brief overview of the committee
2:41:06 PM Tab 1 - SB 228 on Notaries Public by Senator Bradley
2:41:49 PM Senator Bradley explains the bill
2:43:20 PM Amendment barcode 267620 by Senator Bradley
2:43:30 PM Senator Bradley explains the amendment
2:44:00 PM No questions on the ammendment ,no debate on the ammendment
2:44:33 PM Senator Bradley waves close
2:44:40 PM Ammendment is adopted
2:45:00 PM Back on bills ammended
2:47:50 PM Speakers Kari Hebrank and Warren Husband
2:49:00 PM Roll call on CS/SB 228
2:49:44 PM CS/SB 228 is reported favorably
2:50:12 PM Tab 2 - SB 50 on Sales and Use Tax by Senator Gruters
2:50:59 PM Explanation of bill by Senator Gruters
2:54:17 PM Question of the sponsor?
2:54:26 PM Senator Torres asks questions
2:54:36 PM Senator Gruters responds
2:55:43 PM Speaker Ida Eskamari, Policy Director of Florida Rising
2:56:43 PM Speaker Grace Lovett, V.P. of Governmental Affairs of the Florida Retail Federation
2:57:31 PM Speaker Karen Woodall, Exec Director of Florida Center for Fiscal & Economic Policy
3:01:59 PM Speaker French Brown, Florida Chamber of Commerce
3:03:58 PM Speaker Rich Templin, Florida AFL-CIO
3:07:04 PM Series of speakers waiving in support of the bill
3:11:22 PM Senator Pizzo asks question of a speaker
3:12:22 PM Karen Woodall responds to Senator Pizzo's question
3:13:41 PM Senator Pizzo asks additional question of Ms. Woodall
3:14:19 PM Karen Woodall responds to Senator Pizzo
3:14:30 PM Debate on SB 50
3:14:48 PM Senator Torres in debate
3:15:45 PM Senator Gruters closes on bill
3:16:25 PM Roll call on SB 50
3:17:22 PM SB 50 is reported favorably
3:17:51 PM With no further business, the meeting is adjourned