

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 54

INTRODUCER: Senator Book

SUBJECT: Tax Exemption for Diapers and Incontinence Products

DATE: February 10, 2020

REVISED: _____

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

I. Summary:

SB 54 exempts the sale of diapers, incontinence undergarments, incontinence pads, and incontinence liners from state sales and use tax.

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill, but determined that last year's bill with nearly identical language would reduce General Revenue Fund receipts by \$20 million in the first fiscal year, with a \$48.2 million recurring reduction.

The bill provides an effective date of January 1, 2021.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services.¹ In addition to the 6 percent sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.² Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale.

Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 270 different exemptions, exclusions, deductions, and credits from sales and use tax.³

¹ Chapter 212, F.S.

² Sections 212.054 and 212.055, F.S.

³ Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Feb. 10, 2020).

Medical products and supplies considered necessary to human health are among the items exempt from sales and use tax.⁴ Such products and supplies include ostomy pouches, catheters, and mastectomy pads. Common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease are also exempt from sales and use tax. Alcohol wipes, bandages, and gauze are examples of common household remedies. Certain products relating to infants are also exempt, including baby food, formulas, and teething lotion.⁵

Diapers are not currently exempt from sales and use tax in Florida.⁶

Other States

Currently, thirteen states do not collect sales tax on diapers or incontinence products, five states do not levy a state sales tax,⁷ and eight states specifically exempt the sale of diapers from sales tax.⁸ Two states provide a tax exemption for disposable pads used for incontinency, but not baby diapers.⁹

III. Effect of Proposed Changes:

The bill exempts from state sales tax the sale of the following items:

- Diapers;
- Incontinence undergarments;
- Incontinence pads; and
- Incontinence liners.

The bill provides an effective date of January 1, 2021.

⁴ See s. 212.08(2)(a), F.S.

⁵ The Department of Business and Professional Regulation is responsible for prescribing and approving a list of common household remedies, which is then certified by the Department of Revenue. See Department of Revenue, *Nontaxable Medical Items and General Grocery List*, available at https://floridarevenue.com/Forms_library/current/dr46nt.pdf (last visited Feb. 10, 2020).

⁶ However, diapers for children and adults, diaper bags, and diaper inserts have been temporarily exempt from sales tax during sales tax holidays, most recently in 2019. See Rule 12AER18-04, F.A.C.

⁷ Alaska, Delaware, Montana, New Hampshire, and Oregon do not levy a state sales tax. See Tax Foundation, *State and Local Sales Tax Rates Midyear 2018*, available at <https://taxfoundation.org/state-local-sales-tax-rates-midyear-2018/> (last visited Feb. 10, 2020).

⁸ The National Diaper Bank Association lists Connecticut, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont as having specifically exempted diapers and incontinence products from state sales taxation. See National Diaper Bank Network, *State Issues State Sales Tax*, available at <https://nationaldiaperbanknetwork.org/state-issues/> (last visited Feb. 10, 2020).

⁹ *Id.*

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

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or limits their ability to raise revenue or receive state tax revenue.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate.¹⁰ However, these requirements do not apply to laws that have an insignificant fiscal impact on local governments,¹¹ which for Fiscal Year 2020-2021, is approximately \$2.1 million.¹²

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill, but determined that last year's bill with nearly identical language would reduce local option surtax revenue by \$3.7 million in the first fiscal year, with an \$8.8 million recurring reduction. Therefore, the bill may have a significant impact on local governments and the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹⁰ See FLA. CONST. art. VII, s. 18(d).

¹¹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times ten cents. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 10, 2020).

¹² Based on the Florida Demographic Estimating Conference's July 8, 2019, population forecast for 2020 of 21,546,885. See Florida Demographic Estimating Conference, *Florida Resident Population*, (2019), available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf>.

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

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill, but determined that last year's bill with nearly identical language would reduce General Revenue Fund receipts by \$20 million in the first fiscal year, with a \$48.2 million recurring reduction.

B. Private Sector Impact:

Indeterminate, but positive. Individuals will see a reduction in the cost of purchasing diapers and incontinence products. Daycare providers, diaper service providers, hospitals, and other businesses will see a reduction in the cost of diapers and incontinence products.

C. Government Sector Impact:

The Department of Revenue estimates that they will incur a cost associated with printing and mailing a Tax Information Publication (TIP), which notifies businesses of the sales tax exemption. The estimated cost to print and mail the TIP is \$58,000.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 212.08(7)(ppp) 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ See Department of Revenue, *SB 54, 2020 Agency Legislative Bill Analysis*, p. 5 (Sep. 25, 2019) (on file with the Florida Senate Commerce and Tourism Committee).