

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 114

INTRODUCER: Senator Book and others

SUBJECT: Tax Exemption for Diapers and Incontinence Products

DATE: March 13, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 114 exempts from the sales and use tax the sale of diapers, incontinence undergarments, incontinence pads, and incontinence liners.

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$22.7 million beginning in Fiscal Year 2023-2024, with a recurring impact of \$54.5 million each year thereafter. The bill will reduce local government receipts by \$6.1 million in Fiscal Year 2023-2024, with a recurring impact of \$14.5 million each year thereafter.

The bill takes effect January 1, 2024.

**II. Present Situation:**

**Florida Sales Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services and 5.5 percent on the rental of commercial real estate.<sup>4</sup> In addition to the 6 percent sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.<sup>5</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.

Chapter 212, F.S., contains provisions authorizing 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

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<sup>1</sup> Section 212.05(1)(a)1.a, F.S.

<sup>2</sup> Section 212.04(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> Section 212.031, F.S.

<sup>5</sup> Section 212.055, F.S.

circumstances. There are currently more than 270 exemptions, exclusions, deductions, and credits from sales and use tax.<sup>6</sup>

### ***Exemptions for Diapers and Incontinence Products***

In the first year of a child's life, parents can expect to use approximately 3,000 diapers, or an average of eight diapers per day.<sup>7</sup> The average cost for a diaper is around \$0.30, but some brands are closer to \$0.75 per diaper.<sup>8</sup> The average state sales tax paid for disposable diapers for a single child over one year, based on those numbers, is anywhere from \$54 to \$135.

Some medical products are among the items exempt from sales and use tax.<sup>9</sup> Such products include ostomy pouches, catheters, and mastectomy pads.<sup>10</sup> Common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease, such as alcohol wipes, bandages, and gauze, are also exempt from sales and use tax.<sup>11</sup> Certain products relating to infants are exempt, including baby food, formulas, and teething lotion.<sup>12</sup>

Diapers and incontinence products are not statutorily exempt from sales and use tax in Florida. However, diapers for children and adults, diaper bags, and diaper inserts have been temporarily exempted from sales tax during certain sales tax holidays.<sup>13</sup> Additionally, Children's diapers including single-use diapers, reusable diapers, and reusable diaper inserts are currently exempt from sales tax until June 30, 2023.<sup>14</sup>

### ***Other States***

Of the 45 states that impose a sales tax,<sup>15</sup> California, Colorado, Connecticut, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia do not subject the sale of diapers to state sales tax.<sup>16</sup> North Dakota exempts diapers used for incontinence, but not baby diapers.<sup>17</sup>

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<sup>6</sup> Office of Economic and Demographic Research, *Florida Tax Handbook (2022)*, at 166-171, available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2022.pdf> (last visited Mar. 2, 2023).

<sup>7</sup> Buying Diapers, American Academy of Pediatrics healthychildren.org website, available at <https://www.healthychildren.org/English/ages-stages/baby/diapers-clothing/Pages/Buying-Diapers.aspx> (last visited Mar. 8, 2023)

<sup>8</sup> *Id.* In addition, a search of major retailers showed a significant variety in prices for name brand diapers.

<sup>9</sup> Section 212.08(2)(a), F.S.

<sup>10</sup> 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 Grocery List, 2*, available at [https://floridarevenue.com/Forms\\_library/current/dr46nt.pdf](https://floridarevenue.com/Forms_library/current/dr46nt.pdf) (last visited Mar. 8, 2023).

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> See, e.g., Department of Revenue, *2022 Back-to-School Sales Tax Holiday Tax Information Publication*, p.4, available at [https://floridarevenue.com/taxes/tips/Documents/TIP\\_22A01-08.pdf](https://floridarevenue.com/taxes/tips/Documents/TIP_22A01-08.pdf) (last visited Mar. 8, 2023).

<sup>14</sup> Ch. 2022-97, s. 50, Laws of Fla.

<sup>15</sup> Alaska, Delaware, Montana, New Hampshire, and Oregon do not levy a state sales tax. See Tax Foundation, *State and Local Sales Tax Rates (2020)*, available at <https://files.taxfoundation.org/20200115132659/State-and-Local-Sales-Tax-Rates-2020.pdf> (last visited Mar. 8, 2023).

<sup>16</sup> National Diaper Bank Network, *Sales Tax on Diaper Purchases by State*, available at <https://nationaldiaperbanknetwork.org/diaper-tax/> (last visited Mar. 8, 2023).

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

The bill amends s. 212.08, F.S., to exempt diapers, incontinence undergarments, incontinence pads, and incontinence liners from state sales and use tax.

The bill takes effect January 1, 2024.

### 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, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Article VII, s. 18(b) of the Florida Constitution provides that, except upon the approval of each house of the Legislature by a two-thirds vote of the 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, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>18,19</sup> which is \$2.3 million or less for Fiscal Year 2023-2024.<sup>20</sup>

The Revenue Estimating Conference determined that the bill will reduce the ability of local governments to raise revenue through local option surtaxes by \$3.1 million in Fiscal Year 2023-2024, and by a minimum of \$7.4 million each year thereafter. Therefore, the mandates provisions may apply.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

Not applicable. The bill does not create or increase state taxes or fees. Thus, Art. VII, s. 19 of the Florida Constitution does not apply.

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<sup>18</sup> FLA. CONST. art. VII, s. 18(d).

<sup>19</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flSenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 7, 2023).

<sup>20</sup> Based on the Demographic Estimating Conference's estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/220718demographic.pdf> (last visited March 7, 2023).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$22.7 million beginning in Fiscal Year 2023-2024, with a recurring impact of \$54.5 million each year thereafter. The bill will reduce local government receipts by \$6.1 million in Fiscal Year 2023-2024, with a recurring impact of \$14.5 million each year thereafter.

B. Private Sector Impact:

Individuals will see a reduction in the cost of purchasing diapers and incontinence products. Daycare providers, diaper service providers, hospitals, and other businesses will also 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) to businesses advising of the new sales tax exemption. The estimated cost to print and mail the TIP is \$77,220.<sup>21</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 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.

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<sup>21</sup> Department of Revenue, *SB 114, 2023 Agency Legislative Bill Analysis* (on file with the Committee on Finance and Tax).

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

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