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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Budget Subcommittee on Finance and Tax  
(Bogdanoff) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 230 - 404  
and insert:

Section 7. Section 213.758, Florida Statutes, is amended to  
read:

213.758 Transfer of tax liabilities.—

(1) As used in this section, the term:

(a) "Business" means any activity regularly engaged in by  
any person, or caused to be engaged in by any person, for the  
purpose of private or public gain, benefit, or advantage. The  
term does not include occasional or isolated sales or



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13 transactions involving property or services by a person who does  
14 not hold himself or herself out as engaged in business. A  
15 discrete division or portion of a business is not a separate  
16 business and must be aggregated with all other divisions or  
17 portions that constitute a business if the division or portion  
18 is not a separate legal entity.

19 (b) "Financial institution" means a financial institution  
20 as defined in s. 655.005 and any person who controls, is  
21 controlled by, or is under common control with a financial  
22 institution.

23 (c) "Insider" has the same meaning as defined in s.  
24 726.102(7). The term also includes:

25 1. A manager, a managing member, or a person in control of  
26 a limited liability company; or

27 2. A relative, as defined in s. 726.102(11), of any person  
28 described in subparagraph 1.

29 (d)(a) "Involuntary transfer" means a transfer of a  
30 business, assets of a business, or stock of goods of a business  
31 made without the consent of the transferor, including, but not  
32 limited to, a transfer:

33 1. That occurs due to the foreclosure of a security  
34 interest issued to a person who is not an insider ~~as defined in~~  
35 ~~s. 726.102;~~

36 2. That results from an eminent domain or condemnation  
37 action;

38 3. Pursuant to chapter 61, chapter 702, or the United  
39 States Bankruptcy Code;

40 4. To a financial institution, ~~as defined in s. 655.005,~~ if  
41 the transfer is made to satisfy the transferor's debt to the



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42 financial institution; or

43 5. To a third party to the extent that the proceeds are  
44 used to satisfy the transferor's indebtedness to a financial  
45 institution ~~as defined in s. 655.005~~. If the third party  
46 receives assets worth more than the indebtedness, the transfer  
47 of the excess may not be deemed an involuntary transfer.

48 (e) "Stock of goods" means the inventory of a business held  
49 for sale to customers in the ordinary course of business.

50 (f) "Tax" means any tax, interest, penalty, surcharge, or  
51 fee administered by the department pursuant to chapter 443 or  
52 any of the chapters specified in s. 213.05, excluding chapter  
53 220, the corporate income tax code.

54 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,  
55 with or without consideration, of disposing of or parting with a  
56 business, assets of the business, or stock of goods of the  
57 business, and includes, but is not limited to, assigning,  
58 conveying, demising, gifting, granting, or selling, other than  
59 to customers in the ordinary course of business, to a transferee  
60 or to a group of transferees who are acting in concert. A  
61 business is considered transferred when there is a transfer of  
62 more than 50 percent of:

- 63 1. The business;  
64 2. The assets of the business; or  
65 3. The stock of goods of the business.

66 (2) A taxpayer engaged in a business who is liable for any  
67 tax arising from the operation of that business, ~~interest,~~  
68 ~~penalty, surcharge, or fee administered by the department~~  
69 ~~pursuant to chapter 443 or described in s. 72.011(1), excluding~~  
70 ~~corporate income tax,~~ and who quits the a business without the



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71 benefit of a purchaser, successor, or assignee, or without  
72 transferring the business, assets of the business, or stock of  
73 goods of the business to a transferee, must file a final return  
74 for the business and make full payment of all taxes arising from  
75 the operation of that business within 15 days after quitting the  
76 business. ~~A taxpayer who fails to file a final return and make~~  
77 ~~payment may not engage in any business in this state until the~~  
78 ~~final return has been filed and all taxes, interest, or~~  
79 ~~penalties due have been paid.~~ The Department of Legal Affairs  
80 may seek an injunction at the request of the department to  
81 prevent further business activity of a taxpayer who fails to  
82 file a final return and make payment of the taxes associated  
83 with the operation of the business until such taxes tax,  
84 interest, or penalties are paid. A temporary injunction  
85 enjoining further business activity shall ~~may~~ be granted by a  
86 circuit court if the taxpayer fails to file the final return and  
87 make payment of any taxes owed and if the department provided at  
88 least 20 days' written notice to the taxpayer of its intention  
89 to seek an injunction without notice.

90 (3) A taxpayer who is liable for taxes with respect to a  
91 business and, ~~interest, or penalties levied under chapter 443 or~~  
92 ~~any of the chapters specified in s. 213.05, excluding corporate~~  
93 ~~income tax,~~ who transfers the ~~taxpayer's~~ business, assets of the  
94 business, or stock of goods of the business, must file a final  
95 return and make full payment within 15 days after the date of  
96 transfer.

97 (4) (a) A transferee, or a group of transferees acting in  
98 concert, of more than 50 percent of a business, assets of a  
99 business, or stock of goods of a business is liable for any



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100 unpaid tax, interest, or penalties owed by the transferor  
101 arising from the operation of that business unless:

102 1.a. The transferor provides a receipt or certificate of  
103 compliance from the department to the transferee showing that  
104 the transferor has not received a notice of audit and the  
105 transferor has filed all required tax returns and has paid all  
106 tax arising is not liable for taxes, interest, or penalties from  
107 the operation of the business identified on the returns filed;  
108 and

109 b. There were no insiders in common between the transferor  
110 and the transferee at the time of the transfer; or and

111 2. The department finds that the transferor is not liable  
112 for taxes, interest, or penalties after an audit of the  
113 transferor's books and records. The audit may be requested by  
114 the transferee or the transferor and, if not done pursuant to  
115 the certified audit program under s. 213.285, must be completed  
116 by the department within 90 days after the records are made  
117 available to the department. The department may charge a fee for  
118 the cost of the audit if it has not issued a notice of intent to  
119 audit by the time the request for the audit is received.

120 (b) A transferee may withhold a portion of the  
121 consideration for a business, assets of a business, or stock of  
122 goods of a business to pay the tax taxes, interest, or penalties  
123 owed to the state by the transferor taxpayer arising from the  
124 operation of the business. The transferee shall pay the withheld  
125 consideration to the state within 30 days after the date of the  
126 transfer. If the consideration withheld is less than the  
127 transferor's liability, the transferor remains liable for the  
128 deficiency.



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129           (c) ~~A transferee who acquires the business or stock of~~  
130 ~~goods and fails to pay the taxes, interest, or penalties due may~~  
131 ~~not engage in any business in the state until the taxes,~~  
132 ~~interest, or penalties are paid.~~ The Department of Legal Affairs  
133 may seek an injunction at the request of the department to  
134 prevent further business activity of a transferee who is liable  
135 for unpaid tax of a transferor and who fails to pay or cause to  
136 be paid the transferee's maximum liability for such tax due  
137 until such maximum liability for the tax is, ~~interest, or~~  
138 ~~penalties are paid.~~ A temporary injunction enjoining further  
139 business activity shall ~~may~~ be granted by a circuit court if:

140           1. The assessment against the transferee is final and:

141           a. The time for filing a contest under s. 72.011 has  
142 expired; or

143           b. Any contest filed pursuant to s. 72.011 resulted in a  
144 final and nonappealable judgment sustaining any part of the  
145 assessment; and

146           2. The department has provided at least 20 days' prior  
147 written notice to the transferee of its intention to seek an  
148 injunction ~~without notice.~~

149           (5) The transferee, or transferees acting in concert, of  
150 more than 50 percent of a business, assets of a business, or  
151 stock of goods of a business who are liable for any tax pursuant  
152 to this section are jointly and severally liable with the  
153 transferor for the payment of the tax ~~taxes, interest, or~~  
154 ~~penalties~~ owed to the state from the operation of the business  
155 by the transferor up to the transferee's or transferees' maximum  
156 liability for such tax due.

157           (6) The maximum liability of a transferee pursuant to this



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158 section is equal to the fair market value of the business,  
159 assets of the business, or stock of goods of the business  
160 property transferred to the transferee or the total purchase  
161 price paid by the transferee for the business, assets of the  
162 business, or stock of goods of the business, whichever is  
163 greater.

164 (a) The fair market value must be determined net of any  
165 liens or liabilities, with the exception of liens or liabilities  
166 owed to insiders.

167 (b) The total purchase price must be determined net of  
168 liens and liabilities against the assets, with the exception of:

169 1. Liens or liabilities owed to insiders.

170 2. Liens or liabilities assumed by the transferee which are  
171 not liens or liabilities owed to insiders.

172 (7) After notice by the department of transferee liability  
173 under this section, the transferee has 60 days within which to  
174 file an action as provided in chapter 72.

175 (8) This section does not impose liability on a transferee  
176 of a business, assets of a business, or stock of goods of a  
177 business pursuant to an involuntary transfer.

178 (9) The department may adopt rules necessary to administer  
179 and enforce this section.

180  
181 ===== T I T L E A M E N D M E N T =====

182 And the title is amended as follows:

183 Delete lines 27 - 46

184 and insert:

185 the terms "business," "financial institution,"

186 "insider," "stock of goods," and "tax"; redefining the



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187 terms "involuntary transfer" and "transfer" for  
188 purposes of provisions establishing tax liability  
189 following the disposition of a business; requiring  
190 that a taxpayer engaged in a business who is liable  
191 for any tax arising from the business and who quits  
192 the business file a final return with the department  
193 within a specified time; requiring a circuit court to  
194 grant a temporary injunction to prevent further  
195 business activity by a taxpayer who fails to file a  
196 final return and remit taxes; requiring the Department  
197 of Revenue to provide at least 20 days' notice before  
198 seeking an injunction; providing that a transferee of  
199 more than 50 percent of the assets of a business is  
200 liable for unpaid tax owed by the transferor; revising  
201 conditions under which a transferee is exempt from  
202 liability for taxes accrued by the transferor;  
203 revising the circumstances under which the Department  
204 of Revenue may seek an injunction against a transferee  
205 who fails to pay taxes accrued by the transferor;  
206 providing circumstances in which a circuit court is  
207 required to grant an injunction against a transferee;  
208 revising the methodology used to determine the maximum  
209 tax liability of a transferee; amending s. 322.142,  
210 F.S.; authorizing the