

FOR CONSIDERATION By the Committee on Budget Subcommittee on Finance and Tax

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1 A bill to be entitled
2 An act relating to tax administration; repealing ss.
3 202.31 and 212.10, F.S., relating to liability for
4 taxes following the sale of a business; amending s.
5 212.12, F.S.; clarifying provisions imposing certain
6 penalties for noncompliance with requirements for
7 reporting taxes; creating s. 212.131, F.S.;
8 authorizing the Department of Revenue to require that
9 sellers of alcoholic beverages or tobacco products
10 file information reports of sales of those products to
11 retailers in the state; defining terms; requiring that
12 the report be filed electronically; providing for
13 certain exceptions; specifying the period for
14 reporting information; providing a penalty for failure
15 of a seller to provide the information report when
16 due; amending s. 212.14, F.S.; authorizing the
17 department to adopt rules to administer provisions
18 requiring dealers to provide a cash deposit, bond, or
19 other security upon the request of the department;
20 defining the term "person" for purposes of such
21 requirement; authorizing the Department of Revenue to
22 adopt emergency rules; amending s. 213.053, F.S.;
23 authorizing the department to release unemployment tax
24 rate information to certain additional agents
25 providing payroll services for employers; conforming a
26 cross-reference; amending s. 213.758, F.S.; defining
27 the terms "business," "financial institution,"
28 "insider," "stock of goods, and "tax" and clarifying
29 the definition of the term "transfer" for purposes of

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30 provisions establishing tax liability following the
31 disposition of a business; requiring that a final
32 return be filed with the department within a specified
33 time; requiring that an audit be performed within a
34 specified period under certain circumstances;
35 prohibiting a transferee who is liable for unpaid tax
36 from continuing to engage in business; providing for
37 an exception following the posting of a bond or other
38 security; authorizing the Department of Legal Affairs
39 to seek an injunction following prior written notice
40 to the taxpayer; providing that under certain
41 circumstances the transferor and transferee are
42 jointly and severally liable for payment of the tax;
43 providing procedures for determining the maximum
44 liability of the transferee of a business; eliminating
45 provisions authorizing rulemaking by the Department of
46 Revenue; amending s. 322.142, F.S.; authorizing the
47 Department of Highway Safety and Motor Vehicles to
48 release photographs or digital images to the
49 Department of Revenue in order to identify individuals
50 for purposes of tax administration; amending s.
51 443.131, F.S.; providing for a reduction in the
52 standard rate of unemployment tax for an employer that
53 produces certain work records to the state agency
54 providing tax collection services; providing effective
55 dates.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Sections 202.31 and 212.10, Florida Statutes,
60 are repealed.

61 Section 2. Effective upon this act becoming a law,
62 paragraph (d) of subsection (2) of section 212.12, Florida
63 Statutes, is amended to read:

64 212.12 Dealer's credit for collecting tax; penalties for
65 noncompliance; powers of Department of Revenue in dealing with
66 delinquents; brackets applicable to taxable transactions;
67 records required.-

68 (2)

69 (d) Any person who makes a false or fraudulent return with
70 a willful intent to evade payment of any tax or fee imposed
71 under this chapter; any person who, after the department's
72 delivery of a written notice to the person's last known address
73 specifically alerting the person of the requirement to register
74 the person's business as a dealer, intentionally fails to
75 register the business; or ~~and~~ any person who, after the
76 department's delivery of a written notice to the person's last
77 known address specifically alerting the person of the
78 requirement to collect tax on specific transactions,
79 intentionally fails to collect such tax, shall, in addition to
80 the other penalties provided by law, be liable for a specific
81 penalty of 100 percent of any unreported or any uncollected tax
82 or fee and, upon conviction, for fine and punishment as provided
83 in s. 775.082, s. 775.083, or s. 775.084. Delivery of written
84 notice may be made by certified mail, or by the use of such
85 other method as is documented as being necessary and reasonable
86 under the circumstances. The civil and criminal penalties
87 imposed herein for failure to comply with a written notice

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88 alerting the person of the requirement to register the person's
89 business as a dealer or to collect tax on specific transactions
90 shall not apply if the person timely files a written challenge
91 to such notice in accordance with procedures established by the
92 department by rule or the notice fails to clearly advise that
93 failure to comply with or timely challenge the notice will
94 result in the imposition of the civil and criminal penalties
95 imposed herein.

96 1. If the total amount of unreported or uncollected taxes
97 or fees is less than \$300, the first offense resulting in
98 conviction is a misdemeanor of the second degree, the second
99 offense resulting in conviction is a misdemeanor of the first
100 degree, ~~and the third and all subsequent offenses resulting in~~
101 ~~conviction is a misdemeanor of the first degree,~~ and the third
102 and all subsequent offenses resulting in conviction are felonies
103 of the third degree.

104 2. If the total amount of unreported or uncollected taxes
105 or fees is \$300 or more but less than \$20,000, the offense is a
106 felony of the third degree.

107 3. If the total amount of unreported or uncollected taxes
108 or fees is \$20,000 or more but less than \$100,000, the offense
109 is a felony of the second degree.

110 4. If the total amount of unreported or uncollected taxes
111 or fees is \$100,000 or more, the offense is a felony of the
112 first degree.

113 Section 3. Section 212.131, Florida Statutes, is created to
114 read:

115 212.131 Information reports required for sales of alcoholic
116 beverages and tobacco products.-

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117 (1) (a) For purposes enforcing the collection of the tax
118 levied by this chapter, the department may require every seller
119 of alcoholic beverages or tobacco products to file an
120 information report of any sales of those products to any
121 retailer in this state.

122 (b) As used in this section, the term:

123 1. "Seller" means any manufacturer, wholesaler, or
124 distributor of alcoholic beverages or tobacco products.

125 2. "Retailer" means a person required to hold a license
126 pursuant to chapter 561 or a permit pursuant to chapter 569.

127 (2) (a) The information report must be filed electronically
128 through the department's specified data file format to ensure
129 that the information is kept confidential. The information
130 report must contain the seller's name and the following
131 information regarding sales to the retailers: the names,
132 addresses, and resale certificate numbers; the dates the
133 products were sold; the quantity of each type of product sold;
134 and the sales price of each type of product sold.

135 (b) The department may waive the requirement to submit the
136 information report through an electronic data interchange due to
137 problems arising from the seller's computer capabilities, data
138 system changes, or operating procedures. The request for waiver
139 must be in writing and the seller must demonstrate that such
140 circumstances exist. A waiver under this paragraph does not
141 operate to relieve the seller from the obligation to file an
142 information report.

143 (3) The information report must contain the required
144 information for the period from July 1 through June 30. The
145 information report is due annually on July 1 for the preceding

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146 reporting period and is delinquent if not received by the
147 department by September 30.

148 (4) Any seller who fails to provide the information report
149 when due is subject to a penalty of \$1,000 for every month, or
150 part thereof, the report is not provided, up to a maximum amount
151 of \$10,000.

152 Section 4. Subsection (4) of section 212.14, Florida
153 Statutes, is amended to read:

154 212.14 Departmental powers; hearings; distress warrants;
155 bonds; subpoenas and subpoenas duces tecum.—

156 (4) In all cases where it is necessary to ensure compliance
157 with the provisions of this chapter, the department shall
158 require a cash deposit, bond, or other security as a condition
159 to a person obtaining or retaining a dealer's certificate of
160 registration under this chapter. Such bond shall be in the form
161 and such amount as the department deems appropriate under the
162 particular circumstances. Every person failing to produce such
163 cash deposit, bond, or other security as provided for herein
164 shall not be entitled to obtain or retain a dealer's certificate
165 of registration under this chapter, and the Department of Legal
166 Affairs is hereby authorized to proceed by injunction, when so
167 requested by the Department of Revenue, to prevent such person
168 from doing business subject to the provisions of this chapter
169 until such cash deposit, bond, or other security is posted with
170 the department, and any temporary injunction for this purpose
171 may be granted by any judge or chancellor authorized by law to
172 grant injunctions. Any security required to be deposited may be
173 sold by the department at public sale if it becomes necessary so
174 to do in order to recover any tax, interest, or penalty due.

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175 Notice of such sale may be served personally or by mail upon the
176 person who deposited such security. If by mail, notice sent to
177 the last known address as the same appears on the records of the
178 department shall be sufficient for the purpose of this
179 requirement. Upon such sale, the surplus, if any, above the
180 amount due under this chapter shall be returned to the person
181 who deposited the security. The department may adopt rules
182 necessary to administer this subsection. For the purpose of the
183 cash deposit, bond, or other security required by this
184 subsection, the term "person" includes those entities defined in
185 s. 212.02(12), as well as:

186 (a) An individual or entity owning a controlling interest
187 in an entity;

188 (b) An individual or entity who has acquired an ownership
189 interest or a controlling interest in a business that would be
190 otherwise liable for posting a cash deposit, bond, or other
191 security, unless the department has determined that the
192 individual or entity is not liable for taxes, interest, or
193 penalties as set forth in s. 213.758; or

194 (c) An individual or entity seeking to obtain a dealer's
195 certificate of registration for a business that will be operated
196 at an identical location of a previous business that would
197 otherwise have been liable for posting a cash deposit, bond, or
198 other security, if such individual or entity fails to provide
199 evidence the business was acquired in an arms-length transaction
200 or for consideration.

201 Section 5. The Department of Revenue is authorized and all
202 conditions are deemed met, to adopt emergency rules pursuant to
203 ss. 120.536(1) and 120.54, Florida Statutes, to administer the

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204 provisions of sections 3 and 4 of this act. The emergency rules
205 shall remain in effect for 6 months after the rules are adopted
206 and the rules may be renewed during the pendency of procedures
207 to adopt permanent rules addressing the subject of the emergency
208 rules.

209 Section 6. Subsections (4) and (17) of section 213.053,
210 Florida Statutes, as amended by chapter 2010-280, Laws of
211 Florida, are amended to read:

212 213.053 Confidentiality and information sharing.—

213 (4) The department, while providing unemployment tax
214 collection services under contract with the Agency for Workforce
215 Innovation through an interagency agreement pursuant to s.
216 443.1316, may release unemployment tax rate information to the
217 agent of an employer, which agent provides payroll services for
218 more than 100 ~~500~~ employers, pursuant to the terms of a
219 memorandum of understanding. The memorandum of understanding
220 must state that the agent affirms, subject to the criminal
221 penalties contained in ss. 443.171 and 443.1715, that the agent
222 will retain the confidentiality of the information, that the
223 agent has in effect a power of attorney from the employer which
224 authorizes ~~permits~~ the agent to obtain unemployment tax rate
225 information, and that the agent shall provide the department
226 with a copy of the employer's power of attorney upon request.

227 (17) The department may provide to the person against whom
228 transferee liability is being asserted ~~pursuant to s. 212.10(1)~~
229 information relating to the basis of the claim.

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

232 213.758 Transfer of tax liabilities.—

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

234 (a) "Business" means any activity regularly engaged in by
235 any person, or caused to be engaged in by him or her, with the
236 object of private or public gain, benefit, or advantage, either
237 direct or indirect. The term does not include occasional or
238 isolated sales or transactions involving property or services by
239 a person who does not hold himself or herself out as engaged in
240 business. A discrete division or portion of a business is not
241 considered to be a separate business if it is not a separate
242 legal entity, but shall be aggregated with all divisions or
243 portions to constitute a single business.

244 (b) "Financial institution" means a financial institution
245 as defined in s. 655.005 and any person that controls, is
246 controlled by, or is under common control with a financial
247 institution as defined in s. 655.005.

248 (c) "Insider" means a person as defined in s. 726.102(7)
249 and a member, manager, or managing member of a limited liability
250 company.

251 (d) ~~(a)~~ "Involuntary transfer" means a transfer of a
252 business or stock of goods made without the consent of the
253 transferor, including, but not limited to, a transfer:

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

257 2. That results from an eminent domain or condemnation
258 action;

259 3. Pursuant to chapter 61, chapter 702, or the United
260 States Bankruptcy Code;

261 4. To a financial institution, ~~as defined in s. 655.005,~~ if

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262 the transfer is made to satisfy the transferor's debt to the
263 financial institution; or

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

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

271 (f) "Tax" means any tax, interest, penalty, surcharge, or
272 fee administered by the department pursuant to chapter 443 or
273 any of the chapters specified in s. 213.05, excluding corporate
274 income tax.

275 (g) ~~(b)~~ "Transfer" means every mode, direct or indirect,
276 with or without consideration, of disposing of or parting with a
277 business, assets of a business, or stock of goods, and includes,
278 but is not limited to, assigning, conveying, demising, gifting,
279 granting, or selling, other than to customers in the ordinary
280 course of business, to a transferee or to a group of transferees
281 who are acting in concert. A transfer of more than 50 percent of
282 all of:

- 283 1. The business;
- 284 2. The assets of the business; or
- 285 3. The stock of goods,

286
287 is a transfer of the business.

288 (2) A taxpayer in business who is liable for any tax
289 arising from the operation of that business, ~~interest, penalty,~~
290 ~~surcharge, or fee administered by the department pursuant to~~

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291 ~~chapter 443 or described in s. 72.011(1), excluding corporate~~
292 ~~income tax,~~ and who quits the a business without the benefit of
293 a purchaser, successor, or assignee, or without transferring the
294 business, assets of the business, or stock of goods to a
295 transferee, must file a final return for the business and make
296 full payment of all taxes arising from the operation of the
297 business within 15 days after quitting the business. A taxpayer
298 who fails to file a final return and make payment may not engage
299 in any business in this state until the final return has been
300 filed and all taxes, ~~interest, or penalties due~~ have been paid.
301 The Department of Legal Affairs may seek an injunction at the
302 request of the department to prevent further business activity
303 of a taxpayer who fails to file a final return and make payment
304 of the taxes associated with the operation of the business until
305 such taxes ~~tax, interest, or penalties~~ are paid. A temporary
306 injunction enjoining further business activity may be granted by
307 a circuit court having jurisdiction over the taxpayer upon
308 providing at least 20 days' prior written notice to the taxpayer
309 ~~without notice.~~ The written notice must be provided to the
310 taxpayer before the filing of the lawsuit seeking the
311 injunction.

312 (3) A taxpayer who is liable for any tax with respect to a
313 business and ~~taxes, interest, or penalties levied under chapter~~
314 ~~443 or any of the chapters specified in s. 213.05, excluding~~
315 ~~corporate income tax,~~ who transfers the taxpayer's business,
316 assets of the business, or stock of goods, must file a final
317 return and make full payment within 15 days after the date of
318 transfer.

319 (4) (a) A transferee, or a group of transferees acting in

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320 concert, of more than 50 percent of a business, assets of the
321 business, or stock of goods is liable for any unpaid tax,
322 ~~interest, or penalties~~ owed by the transferor arising from the
323 operation of that business unless:

324 1.a. There are no common insiders between the transferor
325 and the transferee at the time of the transfer; and

326 b. The transferor provides a receipt or certificate of
327 compliance from the department to the transferee showing that
328 the transferor has not received a notice of audit and that the
329 transferor has filed all required tax returns and has paid all
330 tax arising ~~is not liable for taxes, interest, or penalties~~ from
331 the operation of the business identified on the returns filed;
332 or and

333 2. The department finds that the transferor is not liable
334 for tax ~~taxes, interest, or penalties~~ after an audit of the
335 transferor's books and records. The audit may be requested by
336 the transferee or the transferor, and, if not done pursuant to
337 the certified audit program pursuant to s. 213.285, must be
338 completed by the department within 90 days after the records are
339 made available to the department. The department shall ~~may~~
340 charge a fee for the cost of the audit if it has not issued a
341 notice of intent to audit by the time the request for the audit
342 is received.

343 (b) A transferee may withhold a portion of the
344 consideration for a business, assets of the business, or stock
345 of goods to pay the tax ~~taxes, interest, or penalties~~ owed to
346 the state by the transferor taxpayer arising from the operation
347 of the business. The transferee shall pay the withheld
348 consideration to the state within 30 days after the date of the

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349 transfer. If the consideration withheld is less than the
350 transferor's liability, the transferor remains liable for the
351 deficiency.

352 (c) A transferee who is liable for unpaid tax of a
353 transferor and who fails to pay the taxes due within 60 days
354 after written notice from the department may not engage in any
355 business in the state until the taxes are paid unless an action
356 is filed pursuant to subsection (7). If an action is timely
357 filed, the transferee may continue to engage in business until a
358 final determination is entered against the transferee; however,
359 the court may, during the pendency of the action, require the
360 transferee to post a bond or other security if the department
361 establishes that the department is likely to prevail and the
362 collection of the unpaid tax would be jeopardized by delay. A
363 ~~transferee who acquires the business or stock of goods and fails~~
364 ~~to pay the taxes, interest, or penalties due may not engage in~~
365 ~~any business in the state until the taxes, interest, or~~
366 ~~penalties are paid.~~ The Department of Legal Affairs may seek an
367 injunction at the request of the department to prevent further
368 business activity of a transferee who is liable for unpaid tax
369 of a transferor and who fails to pay or cause to be paid the
370 transferee's maximum liability for such tax due until such
371 maximum liability for the tax is, ~~interest, or penalties are~~
372 paid. A temporary injunction enjoining further business activity
373 may be granted by a circuit court having jurisdiction over the
374 transferee upon providing at least 20 days' prior written notice
375 to the taxpayer ~~without notice.~~ The written notice must be
376 provided to the taxpayer before the filing of the lawsuit
377 seeking the injunction.

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378 (5) The transferee, or transferees acting in concert, of
379 more than 50 percent of a business, assets of the business, or
380 stock of goods who are liable for any tax pursuant to this
381 section are jointly and severally liable with the transferor for
382 the payment of the tax ~~taxes, interest, or penalties~~ owed to the
383 state from the operation of the business by the transferor up to
384 the transferee's maximum liability for such tax due.

385 (6) The maximum liability of a transferee pursuant to this
386 section is equal to the fair market value of the business,
387 assets of the business, or stock of goods ~~property~~ transferred
388 to the transferee, or the total purchase price paid by the
389 transferee for the business, assets of the business, or stock of
390 goods, whichever is greater. Fair market value shall be
391 determined net of any liens or liabilities, excepting any liens
392 or liabilities owed to insiders. The total purchase price shall
393 be determined net of liens and liabilities against the assets,
394 excepting any liens or liabilities owed to insiders, or which
395 are assumed by the transferee, excepting any liens or
396 liabilities owed to insiders.

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

400 (8) This section does not impose liability on a transferee
401 of a business or stock of goods pursuant to an involuntary
402 transfer.

403 ~~(9) The department may adopt rules necessary to administer~~
404 ~~and enforce this section.~~

405 Section 8. Subsection (4) of section 322.142, Florida
406 Statutes, is amended to read:

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407 322.142 Color photographic or digital imaged licenses.—

408 (4) The department may maintain a film negative or print
409 file. The department shall maintain a record of the digital
410 image and signature of the licensees, together with other data
411 required by the department for identification and retrieval.
412 Reproductions from the file or digital record are exempt from
413 the provisions of s. 119.07(1) and shall be made and issued only
414 for departmental administrative purposes; for the issuance of
415 duplicate licenses; in response to law enforcement agency
416 requests; to the Department of Business and Professional
417 Regulation pursuant to an interagency agreement for the purpose
418 of accessing digital images for reproduction of licenses issued
419 by the Department of Business and Professional Regulation; to
420 the Department of State pursuant to an interagency agreement to
421 facilitate determinations of eligibility of voter registration
422 applicants and registered voters in accordance with ss. 98.045
423 and 98.075; to the Department of Revenue pursuant to an
424 interagency agreement for use in establishing paternity and
425 establishing, modifying, or enforcing support obligations in
426 Title IV-D cases; and for use in establishing positive
427 identification for tax administration purposes; to the
428 Department of Children and Family Services pursuant to an
429 interagency agreement to conduct protective investigations under
430 part III of chapter 39 and chapter 415; to the Department of
431 Children and Family Services pursuant to an interagency
432 agreement specifying the number of employees in each of that
433 department's regions to be granted access to the records for use
434 as verification of identity to expedite the determination of
435 eligibility for public assistance and for use in public

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436 assistance fraud investigations; or to the Department of
437 Financial Services pursuant to an interagency agreement to
438 facilitate the location of owners of unclaimed property, the
439 validation of unclaimed property claims, and the identification
440 of fraudulent or false claims.

441 Section 9. Effective upon this act becoming a law,
442 paragraph (h) of subsection (3) of section 443.131, Florida
443 Statutes, is amended to read:

444 443.131 Contributions.—

445 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
446 EXPERIENCE.—

447 (h) *Additional conditions for variation from the standard*
448 *rate.*—An employer's contribution rate may not be reduced below
449 the standard rate under this section unless:

450 1. All contributions, reimbursements, interest, and
451 penalties incurred by the employer for wages paid by him or her
452 in all previous calendar quarters, except the 4 calendar
453 quarters immediately preceding the calendar quarter or calendar
454 year for which the benefit ratio is computed, are paid; ~~and~~

455 2. The employer has produced for inspection and copying all
456 work records in its possession, custody, or control which were
457 requested by the Agency for Workforce Innovation or the state
458 agency providing tax collection services pursuant to s.
459 443.171(5); and

460 ~~3.2.~~ The employer entitled to a rate reduction must have at
461 least one annual payroll as defined in subparagraph (b)1. unless
462 the employer is eligible for additional credit under the Federal
463 Unemployment Tax Act. If the Federal Unemployment Tax Act is
464 amended or repealed in a manner affecting credit under the

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465 federal act, this section applies only to the extent that
466 additional credit is allowed against the payment of the tax
467 imposed by the Federal Unemployment Tax Act.

468
469 The tax collection service provider shall assign an earned
470 contribution rate to an employer under subparagraph 1. the
471 quarter immediately after the quarter in which all
472 contributions, reimbursements, interest, and penalties are paid
473 in full and all work records requested pursuant to s. 443.171(5)
474 have been produced for inspection and copying to the Agency for
475 Workforce Innovation or the state agency providing tax
476 collection services.

477 Section 10. Except as otherwise expressly provided in this
478 act and except for this section, which shall take effect upon
479 this act becoming a law, this act shall take effect July 1,
480 2011.