

**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 Commerce and Tourism

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BILL: SB 60

INTRODUCER: Senators Book and Hutson

SUBJECT: Tax Exemption for Diapers and Incontinence Products

DATE: January 4, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 60 exempts the sale of diapers and certain incontinence products from state sales and use tax.

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

The bill provides an effective date of January 1, 2020.

**II. Present Situation:**

**Florida Sales and Use Tax**

Florida levies a six 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.<sup>1</sup> In addition to the six percent state sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.<sup>2</sup> 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 250 different exemptions, exclusions, deductions, and credits from sales and use tax.<sup>3</sup>

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<sup>1</sup> Chapter 212, F.S.

<sup>2</sup> Sections 212.054 and 212.055, F.S.

<sup>3</sup> Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited Jan. 3, 2019).

Medical products and supplies considered necessary to human health are among the items exempt from sales and use tax.<sup>4</sup> 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.<sup>5</sup>

Diapers are not currently exempt from sales and use tax in Florida.<sup>6</sup>

### **Other States**

Currently, twelve states and the District of Columbia<sup>7</sup> do not subject the sale of diapers to state sales tax.<sup>8</sup> Massachusetts,<sup>9</sup> Minnesota,<sup>10</sup> Pennsylvania,<sup>11</sup> New Jersey,<sup>12</sup> New York,<sup>13</sup> Rhode Island,<sup>14</sup> and Vermont<sup>15</sup> provide sales tax exemptions for diapers or incontinence products. Connecticut<sup>16</sup> and Maryland<sup>17</sup> provide a tax exemption for disposable pads used for incontinency, but not baby diapers.

### **III. Effect of Proposed Changes:**

The bill provides a state sales tax exemption for the sale of the following items:

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

The bill provides an effective date of January 1, 2020.

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<sup>4</sup> See s. 212.08(2)(a), F.S.

<sup>5</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, *available at* [http://floridarevenue.com/Forms\\_library/current/dr46nt.pdf](http://floridarevenue.com/Forms_library/current/dr46nt.pdf) (last visited Jan. 3, 2019).

<sup>6</sup> 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 2018. See Rule 12AER18-04, F.A.C.

<sup>7</sup> D.C. Code § 47-2005.

<sup>8</sup> Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales tax.

<sup>9</sup> Mass. Gen. Laws ch. 64H, § 6.

<sup>10</sup> Minn. Stat. § 297A.67.9.

<sup>11</sup> 72 Pa. Cons. Stat. § 7204.

<sup>12</sup> N.J. Stat. Ann. 54:32B-8.4

<sup>13</sup> N.Y. Tax Law § 1115.

<sup>14</sup> Code. R.I. S.U. 07-13.

<sup>15</sup> Minn. Stat. § 297A.67.9.

<sup>16</sup> Conn. Gen. Stat. § 12-412.

<sup>17</sup> Md. Tax-Gen. Code Ann., § 11-211.

**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 that limit 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.<sup>18</sup> However, these requirements do not apply to laws that have an insignificant fiscal impact on local governments, which for Fiscal Year 2017-2018, was approximately \$2.08 million or less.<sup>19</sup>

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

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

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

**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 also see a reduction in the cost of diapers and incontinence products.

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<sup>18</sup> See 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 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 Jan. 3, 2019).

C. Government Sector Impact:

The Department of Revenue may incur a cost associated with printing and mailing a Tax Information Publication (TIP), which notifies businesses of the sales tax exemption.

**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.