

**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 806

INTRODUCER: Senators Book and Stewart

SUBJECT: Tax Exemption for Diapers and Incontinence Products

DATE: March 8, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Favorable</b>
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 806 exempts the sale of diapers, incontinence undergarments, incontinence pads, and incontinence liners from state sales and use tax.

The bill takes effect January 1, 2022.

**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. In addition to the 6 percent sales tax, Florida law authorizes counties to levy discretionary sales surtaxes.<sup>4</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale. Sales tax receipts accounted for approximately 79 percent of the state's General Revenue in Fiscal Year 2019-2020.<sup>5</sup>

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

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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 212.055, F.S.

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 8, 2021).

<sup>6</sup> *Id.* at 166-171.

Medical products and supplies considered necessary to human health are among the items exempt from sales and use tax.<sup>7</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, such as alcohol wipes, bandages, and gauze, are also exempt from sales and use tax. Certain products relating to infants are also exempt, including baby food, formulas, and teething lotion.<sup>8</sup>

Diapers are not currently exempt from sales and use tax in Florida. 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 2020.<sup>9</sup>

### *Other States*

Of the 45 states that impose a sales tax,<sup>10</sup> California, Connecticut, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia do not subject the sale of diapers to state sales tax.<sup>11</sup> Maryland and North Dakota exempt diapers used for incontinence, but not baby diapers.<sup>12</sup>

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

The bill creates s. 212.08(7)(ppp), F.S., to exempt diapers, incontinence undergarments, incontinence pads, and incontinence liners from state sales and use tax.

The bill takes effect January 1, 2022.

### **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.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the

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<sup>7</sup> Section 212.08(2)(a), F.S.

<sup>8</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*, available at [https://floridarevenue.com/Forms\\_library/current/dr46nt.pdf](https://floridarevenue.com/Forms_library/current/dr46nt.pdf) (last visited Mar. 8, 2021).

<sup>9</sup> Department of Revenue, *2020 Back-to-School Sales Tax Holiday Tax Information Publication*, available at [https://revenue.law.floridarevenue.com/LawLibraryDocuments/2020/06/TIP-123084\\_TIP\\_20A01-04\\_FINAL\\_RLL.pdf](https://revenue.law.floridarevenue.com/LawLibraryDocuments/2020/06/TIP-123084_TIP_20A01-04_FINAL_RLL.pdf) (last visited Mar. 8, 2021).

<sup>10</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, 2021).

<sup>11</sup> National Diaper Bank Network, *Sales Tax on Diaper Purchases by State*, available at <https://nationaldiaperbanknetwork.org/state-issues/> (last visited Mar. 8, 2021).

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

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>13, 14</sup> which is \$2.1 million or less for Fiscal Year 2020-2021.<sup>15</sup>

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill, but determined that a previous year's bill with identical language would reduce local option surtax revenue by \$3.7 million in the first fiscal year after adoption, with an \$8.8 million recurring reduction.<sup>16</sup> Therefore, the bill may have a significant impact on local governments and the mandate provisions 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.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill, but determined that a previous year's bill with identical language would reduce General Revenue Fund receipts by \$20 million in the first fiscal year after adoption, with a \$48.2 million recurring reduction.<sup>17</sup>

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<sup>13</sup> FLA. CONST. art. VII, s. 18(d).

<sup>14</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 Mar. 8, 2021).

<sup>15</sup> Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 8, 2021).

<sup>16</sup> Office of Economic and Demographic Research, *Revenue Estimating Conference Report: Sales Tax Exemption for Diapers and Incontinence Products* (2019), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/\\_pdf/page11-13.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/page11-13.pdf) (last visited Mar. 8, 2021).

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

**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 \$54,000.<sup>18</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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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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<sup>18</sup> Department of Revenue, *SB 806, 2021 Agency Legislative Bill Analysis* (on file with the Committee on Commerce and Tourism).