

By Senator Gruters

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1 A bill to be entitled
2 An act relating to the sales and use tax; amending s.
3 212.02, F.S.; expanding the definition of the term
4 "retail sale" to include sales facilitated through a
5 marketplace; conforming a provision to changes made by
6 the act; amending s. 212.05, F.S.; conforming a
7 provision to changes made by the act; amending s.
8 212.0596, F.S.; replacing provisions relating to the
9 taxation of mail order sales with provisions relating
10 to the taxation of remote sales; defining the terms
11 "remote sale" and "substantial number of remote
12 sales"; providing that every person making a
13 substantial number of remote sales is a dealer for
14 purposes of the sales and use tax; creating s.
15 212.05965, F.S.; defining terms; providing that
16 certain marketplace providers are dealers for purposes
17 of the sales and use tax; requiring marketplace
18 providers to provide a certain certification to their
19 marketplace sellers; specifying requirements for
20 marketplace sellers; requiring marketplace providers
21 to allow the Department of Revenue to examine and
22 audit their books and records; specifying the
23 examination and audit authority of the department;
24 providing that a marketplace seller, rather than the
25 marketplace provider, is liable for sales tax
26 collection and remittance under certain circumstances;
27 authorizing marketplace providers and marketplace
28 sellers to enter into agreements for the recovery of
29 certain taxes, interest, and penalties; providing

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30 construction and applicability; amending s. 212.06,
31 F.S.; revising the definition of the term "dealer";
32 conforming provisions to changes made by the act;
33 amending s. 212.12, F.S.; deleting the authority of
34 the department's executive director to negotiate a
35 collection allowance with certain dealers; conforming
36 provisions to changes made by the act; amending s.
37 212.18, F.S.; conforming a provision to changes made
38 by the act; amending s. 212.20, F.S.; providing
39 applicability of requirements for refund of taxes
40 adjudicated unconstitutionally collected to taxes
41 levied or collected pursuant to marketplace
42 provisions; amending s. 213.27, F.S.; conforming
43 provisions to changes made by the act; providing
44 applicability; authorizing the department to adopt
45 emergency rules; providing for expiration of that
46 authority; providing for severability; providing
47 effective dates.

48

49 Be It Enacted by the Legislature of the State of Florida:

50

51 Section 1. Paragraph (e) of subsection (14) of section
52 212.02, Florida Statutes, is amended, and paragraph (f) is added
53 to that subsection, to read:

54 212.02 Definitions.—The following terms and phrases when
55 used in this chapter have the meanings ascribed to them in this
56 section, except where the context clearly indicates a different
57 meaning:

58 (14)

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59 (e) The term "retail sale" includes a remote ~~mail order~~
60 sale, as defined in s. 212.0596(1).

61 (f) The term "retail sale" includes a sale facilitated
62 through a marketplace as defined in s. 212.05965(1).

63 Section 2. Section 212.05, Florida Statutes, is amended to
64 read:

65 212.05 Sales, storage, use tax.—It is hereby declared to be
66 the legislative intent that every person is exercising a taxable
67 privilege who engages in the business of selling tangible
68 personal property at retail in this state, including the
69 business of making or facilitating remote ~~mail order~~ sales; ~~or~~
70 who rents or furnishes any of the things or services taxable
71 under this chapter; ~~or~~ or who stores for use or consumption in
72 this state any item or article of tangible personal property as
73 defined herein and who leases or rents such property within the
74 state.

75 (1) For the exercise of such privilege, a tax is levied on
76 each taxable transaction or incident, which tax is due and
77 payable as follows:

78 (a)1.a. At the rate of 6 percent of the sales price of each
79 item or article of tangible personal property when sold at
80 retail in this state, computed on each taxable sale for the
81 purpose of remitting the amount of tax due the state, and
82 including each and every retail sale.

83 b. Each occasional or isolated sale of an aircraft, boat,
84 mobile home, or motor vehicle of a class or type which is
85 required to be registered, licensed, titled, or documented in
86 this state or by the United States Government shall be subject
87 to tax at the rate provided in this paragraph. The department

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88 shall by rule adopt any nationally recognized publication for
89 valuation of used motor vehicles as the reference price list for
90 any used motor vehicle which is required to be licensed pursuant
91 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
92 party to an occasional or isolated sale of such a vehicle
93 reports to the tax collector a sales price which is less than 80
94 percent of the average loan price for the specified model and
95 year of such vehicle as listed in the most recent reference
96 price list, the tax levied under this paragraph shall be
97 computed by the department on such average loan price unless the
98 parties to the sale have provided to the tax collector an
99 affidavit signed by each party, or other substantial proof,
100 stating the actual sales price. Any party to such sale who
101 reports a sales price less than the actual sales price is guilty
102 of a misdemeanor of the first degree, punishable as provided in
103 s. 775.082 or s. 775.083. The department shall collect or
104 attempt to collect from such party any delinquent sales taxes.
105 In addition, such party shall pay any tax due and any penalty
106 and interest assessed plus a penalty equal to twice the amount
107 of the additional tax owed. Notwithstanding any other provision
108 of law, the Department of Revenue may waive or compromise any
109 penalty imposed pursuant to this subparagraph.

110 2. This paragraph does not apply to the sale of a boat or
111 aircraft by or through a registered dealer under this chapter to
112 a purchaser who, at the time of taking delivery, is a
113 nonresident of this state, does not make his or her permanent
114 place of abode in this state, and is not engaged in carrying on
115 in this state any employment, trade, business, or profession in
116 which the boat or aircraft will be used in this state, or is a

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117 corporation none of the officers or directors of which is a
118 resident of, or makes his or her permanent place of abode in,
119 this state, or is a noncorporate entity that has no individual
120 vested with authority to participate in the management,
121 direction, or control of the entity's affairs who is a resident
122 of, or makes his or her permanent abode in, this state. For
123 purposes of this exemption, either a registered dealer acting on
124 his or her own behalf as seller, a registered dealer acting as
125 broker on behalf of a seller, or a registered dealer acting as
126 broker on behalf of the purchaser may be deemed to be the
127 selling dealer. This exemption shall not be allowed unless:

128 a. The purchaser removes a qualifying boat, as described in
129 sub-subparagraph f., from the state within 90 days after the
130 date of purchase or extension, or the purchaser removes a
131 nonqualifying boat or an aircraft from this state within 10 days
132 after the date of purchase or, when the boat or aircraft is
133 repaired or altered, within 20 days after completion of the
134 repairs or alterations; or if the aircraft will be registered in
135 a foreign jurisdiction and:

136 (I) Application for the aircraft's registration is properly
137 filed with a civil airworthiness authority of a foreign
138 jurisdiction within 10 days after the date of purchase;

139 (II) The purchaser removes the aircraft from the state to a
140 foreign jurisdiction within 10 days after the date the aircraft
141 is registered by the applicable foreign airworthiness authority;
142 and

143 (III) The aircraft is operated in the state solely to
144 remove it from the state to a foreign jurisdiction.
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146 For purposes of this sub-subparagraph, the term "foreign
147 jurisdiction" means any jurisdiction outside of the United
148 States or any of its territories;

149 b. The purchaser, within 90 days from the date of
150 departure, provides the department with written proof that the
151 purchaser licensed, registered, titled, or documented the boat
152 or aircraft outside the state. If such written proof is
153 unavailable, within 90 days the purchaser shall provide proof
154 that the purchaser applied for such license, title,
155 registration, or documentation. The purchaser shall forward to
156 the department proof of title, license, registration, or
157 documentation upon receipt;

158 c. The purchaser, within 30 days after removing the boat or
159 aircraft from Florida, furnishes the department with proof of
160 removal in the form of receipts for fuel, dockage, slippage,
161 tie-down, or hangaring from outside of Florida. The information
162 so provided must clearly and specifically identify the boat or
163 aircraft;

164 d. The selling dealer, within 30 days after the date of
165 sale, provides to the department a copy of the sales invoice,
166 closing statement, bills of sale, and the original affidavit
167 signed by the purchaser attesting that he or she has read the
168 provisions of this section;

169 e. The seller makes a copy of the affidavit a part of his
170 or her record for as long as required by s. 213.35; and

171 f. Unless the nonresident purchaser of a boat of 5 net tons
172 of admeasurement or larger intends to remove the boat from this
173 state within 10 days after the date of purchase or when the boat
174 is repaired or altered, within 20 days after completion of the

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175 repairs or alterations, the nonresident purchaser applies to the
176 selling dealer for a decal which authorizes 90 days after the
177 date of purchase for removal of the boat. The nonresident
178 purchaser of a qualifying boat may apply to the selling dealer
179 within 60 days after the date of purchase for an extension decal
180 that authorizes the boat to remain in this state for an
181 additional 90 days, but not more than a total of 180 days,
182 before the nonresident purchaser is required to pay the tax
183 imposed by this chapter. The department is authorized to issue
184 decals in advance to dealers. The number of decals issued in
185 advance to a dealer shall be consistent with the volume of the
186 dealer's past sales of boats which qualify under this sub-
187 subparagraph. The selling dealer or his or her agent shall mark
188 and affix the decals to qualifying boats in the manner
189 prescribed by the department, before delivery of the boat.

190 (I) The department is hereby authorized to charge dealers a
191 fee sufficient to recover the costs of decals issued, except the
192 extension decal shall cost \$425.

193 (II) The proceeds from the sale of decals will be deposited
194 into the administrative trust fund.

195 (III) Decals shall display information to identify the boat
196 as a qualifying boat under this sub-subparagraph, including, but
197 not limited to, the decal's date of expiration.

198 (IV) The department is authorized to require dealers who
199 purchase decals to file reports with the department and may
200 prescribe all necessary records by rule. All such records are
201 subject to inspection by the department.

202 (V) Any dealer or his or her agent who issues a decal
203 falsely, fails to affix a decal, mismarks the expiration date of

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204 a decal, or fails to properly account for decals will be
205 considered prima facie to have committed a fraudulent act to
206 evade the tax and will be liable for payment of the tax plus a
207 mandatory penalty of 200 percent of the tax, and shall be liable
208 for fine and punishment as provided by law for a conviction of a
209 misdemeanor of the first degree, as provided in s. 775.082 or s.
210 775.083.

211 (VI) Any nonresident purchaser of a boat who removes a
212 decal before permanently removing the boat from the state, or
213 defaces, changes, modifies, or alters a decal in a manner
214 affecting its expiration date before its expiration, or who
215 causes or allows the same to be done by another, will be
216 considered prima facie to have committed a fraudulent act to
217 evade the tax and will be liable for payment of the tax plus a
218 mandatory penalty of 200 percent of the tax, and shall be liable
219 for fine and punishment as provided by law for a conviction of a
220 misdemeanor of the first degree, as provided in s. 775.082 or s.
221 775.083.

222 (VII) The department is authorized to adopt rules necessary
223 to administer and enforce this subparagraph and to publish the
224 necessary forms and instructions.

225 (VIII) The department is hereby authorized to adopt
226 emergency rules pursuant to s. 120.54(4) to administer and
227 enforce the provisions of this subparagraph.

228
229 If the purchaser fails to remove the qualifying boat from this
230 state within the maximum 180 days after purchase or a
231 nonqualifying boat or an aircraft from this state within 10 days
232 after purchase or, when the boat or aircraft is repaired or

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233 altered, within 20 days after completion of such repairs or
234 alterations, or permits the boat or aircraft to return to this
235 state within 6 months from the date of departure, except as
236 provided in s. 212.08(7) (fff), or if the purchaser fails to
237 furnish the department with any of the documentation required by
238 this subparagraph within the prescribed time period, the
239 purchaser shall be liable for use tax on the cost price of the
240 boat or aircraft and, in addition thereto, payment of a penalty
241 to the Department of Revenue equal to the tax payable. This
242 penalty shall be in lieu of the penalty imposed by s. 212.12(2).
243 The maximum 180-day period following the sale of a qualifying
244 boat tax-exempt to a nonresident may not be tolled for any
245 reason.

246 (b) At the rate of 6 percent of the cost price of each item
247 or article of tangible personal property when the same is not
248 sold but is used, consumed, distributed, or stored for use or
249 consumption in this state; however, for tangible property
250 originally purchased exempt from tax for use exclusively for
251 lease and which is converted to the owner's own use, tax may be
252 paid on the fair market value of the property at the time of
253 conversion. If the fair market value of the property cannot be
254 determined, use tax at the time of conversion shall be based on
255 the owner's acquisition cost. Under no circumstances may the
256 aggregate amount of sales tax from leasing the property and use
257 tax due at the time of conversion be less than the total sales
258 tax that would have been due on the original acquisition cost
259 paid by the owner.

260 (c) At the rate of 6 percent of the gross proceeds derived
261 from the lease or rental of tangible personal property, as

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262 defined herein; however, the following special provisions apply
263 to the lease or rental of motor vehicles:

264 1. When a motor vehicle is leased or rented for a period of
265 less than 12 months:

266 a. If the motor vehicle is rented in Florida, the entire
267 amount of such rental is taxable, even if the vehicle is dropped
268 off in another state.

269 b. If the motor vehicle is rented in another state and
270 dropped off in Florida, the rental is exempt from Florida tax.

271 2. Except as provided in subparagraph 3., for the lease or
272 rental of a motor vehicle for a period of not less than 12
273 months, sales tax is due on the lease or rental payments if the
274 vehicle is registered in this state; provided, however, that no
275 tax shall be due if the taxpayer documents use of the motor
276 vehicle outside this state and tax is being paid on the lease or
277 rental payments in another state.

278 3. The tax imposed by this chapter does not apply to the
279 lease or rental of a commercial motor vehicle as defined in s.
280 316.003(13)(a) to one lessee or rentee for a period of not less
281 than 12 months when tax was paid on the purchase price of such
282 vehicle by the lessor. To the extent tax was paid with respect
283 to the purchase of such vehicle in another state, territory of
284 the United States, or the District of Columbia, the Florida tax
285 payable shall be reduced in accordance with the provisions of s.
286 212.06(7). This subparagraph shall only be available when the
287 lease or rental of such property is an established business or
288 part of an established business or the same is incidental or
289 germane to such business.

290 (d) At the rate of 6 percent of the lease or rental price

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291 paid by a lessee or rentee, or contracted or agreed to be paid
292 by a lessee or rentee, to the owner of the tangible personal
293 property.

294 (e)1. At the rate of 6 percent on charges for:

295 a. Prepaid calling arrangements. The tax on charges for
296 prepaid calling arrangements shall be collected at the time of
297 sale and remitted by the selling dealer.

298 (I) "Prepaid calling arrangement" has the same meaning as
299 provided in s. 202.11.

300 (II) If the sale or recharge of the prepaid calling
301 arrangement does not take place at the dealer's place of
302 business, it shall be deemed to have taken place at the
303 customer's shipping address or, if no item is shipped, at the
304 customer's address or the location associated with the
305 customer's mobile telephone number.

306 (III) The sale or recharge of a prepaid calling arrangement
307 shall be treated as a sale of tangible personal property for
308 purposes of this chapter, regardless of whether a tangible item
309 evidencing such arrangement is furnished to the purchaser, and
310 such sale within this state subjects the selling dealer to the
311 jurisdiction of this state for purposes of this subsection.

312 (IV) No additional tax under this chapter or chapter 202 is
313 due or payable if a purchaser of a prepaid calling arrangement
314 who has paid tax under this chapter on the sale or recharge of
315 such arrangement applies one or more units of the prepaid
316 calling arrangement to obtain communications services as
317 described in s. 202.11(9)(b)3., other services that are not
318 communications services, or products.

319 b. The installation of telecommunication and telegraphic

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320 equipment.

321 c. Electrical power or energy, except that the tax rate for
322 charges for electrical power or energy is 4.35 percent. Charges
323 for electrical power and energy do not include taxes imposed
324 under ss. 166.231 and 203.01(1)(a)3.

325 2. Section 212.17(3), regarding credit for tax paid on
326 charges subsequently found to be worthless, is equally
327 applicable to any tax paid under this section on charges for
328 prepaid calling arrangements, telecommunication or telegraph
329 services, or electric power subsequently found to be
330 uncollectible. As used in this paragraph, the term "charges"
331 does not include any excise or similar tax levied by the Federal
332 Government, a political subdivision of this state, or a
333 municipality upon the purchase, sale, or recharge of prepaid
334 calling arrangements or upon the purchase or sale of
335 telecommunication, television system program, or telegraph
336 service or electric power, which tax is collected by the seller
337 from the purchaser.

338 (f) At the rate of 6 percent on the sale, rental, use,
339 consumption, or storage for use in this state of machines and
340 equipment, and parts and accessories therefor, used in
341 manufacturing, processing, compounding, producing, mining, or
342 quarrying personal property for sale or to be used in furnishing
343 communications, transportation, or public utility services.

344 (g)1. At the rate of 6 percent on the retail price of
345 newspapers and magazines sold or used in Florida.

346 2. Notwithstanding other provisions of this chapter,
347 inserts of printed materials which are distributed with a
348 newspaper or magazine are a component part of the newspaper or

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349 magazine, and neither the sale nor use of such inserts is
350 subject to tax when:

351 a. Printed by a newspaper or magazine publisher or
352 commercial printer and distributed as a component part of a
353 newspaper or magazine, which means that the items after being
354 printed are delivered directly to a newspaper or magazine
355 publisher by the printer for inclusion in editions of the
356 distributed newspaper or magazine;

357 b. Such publications are labeled as part of the designated
358 newspaper or magazine publication into which they are to be
359 inserted; and

360 c. The purchaser of the insert presents a resale
361 certificate to the vendor stating that the inserts are to be
362 distributed as a component part of a newspaper or magazine.

363 (h)1. A tax is imposed at the rate of 4 percent on the
364 charges for the use of coin-operated amusement machines. The tax
365 shall be calculated by dividing the gross receipts from such
366 charges for the applicable reporting period by a divisor,
367 determined as provided in this subparagraph, to compute gross
368 taxable sales, and then subtracting gross taxable sales from
369 gross receipts to arrive at the amount of tax due. For counties
370 that do not impose a discretionary sales surtax, the divisor is
371 equal to 1.04; for counties that impose a 0.5 percent
372 discretionary sales surtax, the divisor is equal to 1.045; for
373 counties that impose a 1 percent discretionary sales surtax, the
374 divisor is equal to 1.050; and for counties that impose a 2
375 percent sales surtax, the divisor is equal to 1.060. If a county
376 imposes a discretionary sales surtax that is not listed in this
377 subparagraph, the department shall make the applicable divisor

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378 available in an electronic format or otherwise. Additional
379 divisors shall bear the same mathematical relationship to the
380 next higher and next lower divisors as the new surtax rate bears
381 to the next higher and next lower surtax rates for which
382 divisors have been established. When a machine is activated by a
383 slug, token, coupon, or any similar device which has been
384 purchased, the tax is on the price paid by the user of the
385 device for such device.

386 2. As used in this paragraph, the term "operator" means any
387 person who possesses a coin-operated amusement machine for the
388 purpose of generating sales through that machine and who is
389 responsible for removing the receipts from the machine.

390 a. If the owner of the machine is also the operator of it,
391 he or she shall be liable for payment of the tax without any
392 deduction for rent or a license fee paid to a location owner for
393 the use of any real property on which the machine is located.

394 b. If the owner or lessee of the machine is also its
395 operator, he or she shall be liable for payment of the tax on
396 the purchase or lease of the machine, as well as the tax on
397 sales generated through the machine.

398 c. If the proprietor of the business where the machine is
399 located does not own the machine, he or she shall be deemed to
400 be the lessee and operator of the machine and is responsible for
401 the payment of the tax on sales, unless such responsibility is
402 otherwise provided for in a written agreement between him or her
403 and the machine owner.

404 3.a. An operator of a coin-operated amusement machine may
405 not operate or cause to be operated in this state any such
406 machine until the operator has registered with the department

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407 and has conspicuously displayed an identifying certificate
408 issued by the department. The identifying certificate shall be
409 issued by the department upon application from the operator. The
410 identifying certificate shall include a unique number, and the
411 certificate shall be permanently marked with the operator's
412 name, the operator's sales tax number, and the maximum number of
413 machines to be operated under the certificate. An identifying
414 certificate shall not be transferred from one operator to
415 another. The identifying certificate must be conspicuously
416 displayed on the premises where the coin-operated amusement
417 machines are being operated.

418 b. The operator of the machine must obtain an identifying
419 certificate before the machine is first operated in the state
420 and by July 1 of each year thereafter. The annual fee for each
421 certificate shall be based on the number of machines identified
422 on the application times \$30 and is due and payable upon
423 application for the identifying device. The application shall
424 contain the operator's name, sales tax number, business address
425 where the machines are being operated, and the number of
426 machines in operation at that place of business by the operator.
427 No operator may operate more machines than are listed on the
428 certificate. A new certificate is required if more machines are
429 being operated at that location than are listed on the
430 certificate. The fee for the new certificate shall be based on
431 the number of additional machines identified on the application
432 form times \$30.

433 c. A penalty of \$250 per machine is imposed on the operator
434 for failing to properly obtain and display the required
435 identifying certificate. A penalty of \$250 is imposed on the

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436 lessee of any machine placed in a place of business without a
437 proper current identifying certificate. Such penalties shall
438 apply in addition to all other applicable taxes, interest, and
439 penalties.

440 d. Operators of coin-operated amusement machines must
441 obtain a separate sales and use tax certificate of registration
442 for each county in which such machines are located. One sales
443 and use tax certificate of registration is sufficient for all of
444 the operator's machines within a single county.

445 4. The provisions of this paragraph do not apply to coin-
446 operated amusement machines owned and operated by churches or
447 synagogues.

448 5. In addition to any other penalties imposed by this
449 chapter, a person who knowingly and willfully violates any
450 provision of this paragraph commits a misdemeanor of the second
451 degree, punishable as provided in s. 775.082 or s. 775.083.

452 6. The department may adopt rules necessary to administer
453 the provisions of this paragraph.

454 (i)1. At the rate of 6 percent on charges for all:

455 a. Detective, burglar protection, and other protection
456 services (NAICS National Numbers 561611, 561612, 561613, and
457 561621). Fingerprint services required under s. 790.06 or s.
458 790.062 are not subject to the tax. Any law enforcement officer,
459 as defined in s. 943.10, who is performing approved duties as
460 determined by his or her local law enforcement agency in his or
461 her capacity as a law enforcement officer, and who is subject to
462 the direct and immediate command of his or her law enforcement
463 agency, and in the law enforcement officer's uniform as
464 authorized by his or her law enforcement agency, is performing

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465 law enforcement and public safety services and is not performing
466 detective, burglar protection, or other protective services, if
467 the law enforcement officer is performing his or her approved
468 duties in a geographical area in which the law enforcement
469 officer has arrest jurisdiction. Such law enforcement and public
470 safety services are not subject to tax irrespective of whether
471 the duty is characterized as "extra duty," "off-duty," or
472 "secondary employment," and irrespective of whether the officer
473 is paid directly or through the officer's agency by an outside
474 source. The term "law enforcement officer" includes full-time or
475 part-time law enforcement officers, and any auxiliary law
476 enforcement officer, when such auxiliary law enforcement officer
477 is working under the direct supervision of a full-time or part-
478 time law enforcement officer.

479 b. Nonresidential cleaning, excluding cleaning of the
480 interiors of transportation equipment, and nonresidential
481 building pest control services (NAICS National Numbers 561710
482 and 561720).

483 2. As used in this paragraph, "NAICS" means those
484 classifications contained in the North American Industry
485 Classification System, as published in 2007 by the Office of
486 Management and Budget, Executive Office of the President.

487 3. Charges for detective, burglar protection, and other
488 protection security services performed in this state but used
489 outside this state are exempt from taxation. Charges for
490 detective, burglar protection, and other protection security
491 services performed outside this state and used in this state are
492 subject to tax.

493 4. If a transaction involves both the sale or use of a

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494 service taxable under this paragraph and the sale or use of a
495 service or any other item not taxable under this chapter, the
496 consideration paid must be separately identified and stated with
497 respect to the taxable and exempt portions of the transaction or
498 the entire transaction shall be presumed taxable. The burden
499 shall be on the seller of the service or the purchaser of the
500 service, whichever applicable, to overcome this presumption by
501 providing documentary evidence as to which portion of the
502 transaction is exempt from tax. The department is authorized to
503 adjust the amount of consideration identified as the taxable and
504 exempt portions of the transaction; however, a determination
505 that the taxable and exempt portions are inaccurately stated and
506 that the adjustment is applicable must be supported by
507 substantial competent evidence.

508 5. Each seller of services subject to sales tax pursuant to
509 this paragraph shall maintain a monthly log showing each
510 transaction for which sales tax was not collected because the
511 services meet the requirements of subparagraph 3. for out-of-
512 state use. The log must identify the purchaser's name, location
513 and mailing address, and federal employer identification number,
514 if a business, or the social security number, if an individual,
515 the service sold, the price of the service, the date of sale,
516 the reason for the exemption, and the sales invoice number. The
517 monthly log shall be maintained pursuant to the same
518 requirements and subject to the same penalties imposed for the
519 keeping of similar records pursuant to this chapter.

520 (j)1. Notwithstanding any other provision of this chapter,
521 there is hereby levied a tax on the sale, use, consumption, or
522 storage for use in this state of any coin or currency, whether

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523 in circulation or not, when such coin or currency:

524 a. Is not legal tender;

525 b. If legal tender, is sold, exchanged, or traded at a rate
526 in excess of its face value; or

527 c. Is sold, exchanged, or traded at a rate based on its
528 precious metal content.

529 2. Such tax shall be at a rate of 6 percent of the price at
530 which the coin or currency is sold, exchanged, or traded, except
531 that, with respect to a coin or currency which is legal tender
532 of the United States and which is sold, exchanged, or traded,
533 such tax shall not be levied.

534 3. There are exempt from this tax exchanges of coins or
535 currency which are in general circulation in, and legal tender
536 of, one nation for coins or currency which are in general
537 circulation in, and legal tender of, another nation when
538 exchanged solely for use as legal tender and at an exchange rate
539 based on the relative value of each as a medium of exchange.

540 4. With respect to any transaction that involves the sale
541 of coins or currency taxable under this paragraph in which the
542 taxable amount represented by the sale of such coins or currency
543 exceeds \$500, the entire amount represented by the sale of such
544 coins or currency is exempt from the tax imposed under this
545 paragraph. The dealer must maintain proper documentation, as
546 prescribed by rule of the department, to identify that portion
547 of a transaction which involves the sale of coins or currency
548 and is exempt under this subparagraph.

549 (k) At the rate of 6 percent of the sales price of each
550 gallon of diesel fuel not taxed under chapter 206 purchased for
551 use in a vessel, except dyed diesel fuel that is exempt pursuant

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552 to s. 212.08(4)(a)4.

553 (1) Florists located in this state are liable for sales tax
554 on sales to retail customers regardless of where or by whom the
555 items sold are to be delivered. Florists located in this state
556 are not liable for sales tax on payments received from other
557 florists for items delivered to customers in this state.

558 (m) Operators of game concessions or other concessionaires
559 who customarily award tangible personal property as prizes may,
560 in lieu of paying tax on the cost price of such property, pay
561 tax on 25 percent of the gross receipts from such concession
562 activity.

563 (2) The tax shall be collected by the dealer, as defined
564 herein, and remitted by the dealer to the state at the time and
565 in the manner as hereinafter provided.

566 (3) The tax so levied is in addition to all other taxes,
567 whether levied in the form of excise, license, or privilege
568 taxes, and in addition to all other fees and taxes levied.

569 (4) The tax imposed pursuant to this chapter shall be due
570 and payable according to the brackets set forth in s. 212.12.

571 (5) Notwithstanding any other provision of this chapter,
572 the maximum amount of tax imposed under this chapter and
573 collected on each sale or use of a boat in this state may not
574 exceed \$18,000 and on each repair of a boat in this state may
575 not exceed \$60,000.

576 Section 3. Section 212.0596, Florida Statutes, is amended
577 to read:

578 (Substantial rewording of section. See
579 s. 212.0596, F.S., for present text.)
580 212.0596 Taxation of remote sales.-

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581 (1) As used in this chapter, the term:

582 (a) "Remote sale" means a retail sale of tangible personal
583 property ordered by mail, telephone, the Internet, or other
584 means of communication from a person who receives the order
585 outside of this state and transports the property or causes the
586 property to be transported from any jurisdiction, including this
587 state, to a location in this state. For purposes of this
588 paragraph, tangible personal property delivered to a location
589 within this state is presumed to be used, consumed, distributed,
590 or stored to be used or consumed in this state.

591 (b) "Substantial number of remote sales" means any number
592 of taxable remote sales in the previous calendar year in which
593 the sum of the sales prices, as defined in s. 212.02(16),
594 exceeded \$100,000.

595 (2) Every person making a substantial number of remote
596 sales is a dealer for purposes of this chapter.

597 Section 4. Section 212.05965, Florida Statutes, is created
598 to read:

599 212.05965 Taxation of marketplace sales.-

600 (1) As used in this chapter, the term:

601 (a) "Marketplace" means any physical place or electronic
602 medium through which tangible personal property is offered for
603 sale.

604 (b) "Marketplace provider" means a person who facilitates a
605 retail sale by a marketplace seller by listing or advertising
606 for sale by the marketplace seller tangible personal property in
607 a marketplace, and who directly, or indirectly through
608 agreements or arrangements with third parties, collects payment
609 from the customer and transmits the payment to the marketplace

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610 seller, regardless of whether the marketplace provider receives
611 compensation or other consideration in exchange for its
612 services.

613 1. The term does not include a person who solely provides
614 travel agency services. As used in this subparagraph, the term
615 "travel agency services" means arranging, booking, or otherwise
616 facilitating for a commission, fee, or other consideration
617 vacation or travel packages, rental cars, or other travel
618 reservations; tickets for domestic or foreign travel by air,
619 rail, ship, bus, or other mode of transportation; or hotel or
620 other lodging accommodations.

621 2. The term does not include a person who is a delivery
622 network company unless the delivery network company is a
623 registered dealer for purposes of this chapter and the delivery
624 network company notifies all local merchants that sell through
625 the delivery network company's website or mobile application
626 that the delivery network company is subject to the requirements
627 of a marketplace provider under this section. As used in this
628 subparagraph, the term:

629 a. "Delivery network company" means a person who maintains
630 a website or mobile application used to facilitate delivery
631 services, the sale of local products, or both.

632 b. "Delivery network courier" means a person who provides
633 delivery services through a delivery network company website or
634 mobile application using a personal means of transportation,
635 such as a motor vehicle as defined in s. 320.01(1), bicycle,
636 scooter, or other similar means of transportation; using public
637 transportation; or by walking.

638 c. "Delivery services" means the pickup and delivery by a

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639 delivery network courier of one or more local products from a
640 local merchant to a customer, which may include the selection,
641 collection, and purchase of the local product in connection with
642 the delivery. The term does not include any delivery requiring
643 more than 75 miles of travel from the local merchant to the
644 customer.

645 d. "Local merchant" means a kitchen, restaurant, or a
646 third-party merchant, including a grocery store, retail store,
647 convenience store, or business of another type, which is not
648 under common ownership or control of the delivery network
649 company.

650 e. "Local product" means any tangible personal property,
651 including food, but excluding freight, mail, or a package to
652 which postage has been affixed.

653 3. The term does not include a payment processor business
654 that is appointed to handle payment transactions from various
655 channels, such as charge cards, credit cards, or debit cards,
656 and whose sole activity with respect to marketplace sales is to
657 handle payment transactions between two parties.

658 (c) "Marketplace seller" means a person who has an
659 agreement with a marketplace provider and who makes retail sales
660 of tangible personal property through a marketplace owned,
661 operated, or controlled by the marketplace provider.

662 (2) A marketplace provider who has a physical presence in
663 this state or who is making or facilitating through a
664 marketplace a substantial number of remote sales as defined in
665 s. 212.0596(1) is a dealer for purposes of this chapter.

666 (3) A marketplace provider shall certify to its marketplace
667 sellers that it will collect and remit the tax imposed under

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668 this chapter on taxable retail sales made through the
669 marketplace. Such certification may be included in the agreement
670 between the marketplace provider and marketplace seller.

671 (4) (a) A marketplace seller may not collect and remit the
672 tax under this chapter on a taxable retail sale when the sale is
673 made through the marketplace and the marketplace provider
674 certifies, as required under subsection (3), that it will
675 collect and remit such tax. A marketplace seller shall exclude
676 such sales made through the marketplace from the marketplace
677 seller's tax return under s. 212.11.

678 (b)1. A marketplace seller who has a physical presence in
679 this state shall register and shall collect and remit the tax
680 imposed under this chapter on all taxable retail sales made
681 outside of the marketplace.

682 2. A marketplace seller making a substantial number of
683 remote sales as defined in s. 212.0596(1) shall register and
684 shall collect and remit the tax imposed under this chapter on
685 all taxable retail sales made outside of the marketplace. For
686 the purposes of determining whether a marketplace seller made a
687 substantial number of remote sales, the marketplace seller shall
688 consider only those sales made outside of the marketplace.

689 (5) (a) A marketplace provider shall allow the department to
690 examine and audit its books and records pursuant to s. 212.13.
691 For retail sales facilitated through a marketplace, the
692 department may not examine or audit the books and records of
693 marketplace sellers, nor may the department assess marketplace
694 sellers except to the extent that the marketplace provider seeks
695 relief under paragraph (b). The department may examine, audit,
696 and assess a marketplace seller for retail sales made outside of

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697 the marketplace under paragraph (4) (b) .

698 (b) The marketplace provider is relieved of liability for
699 the tax on the retail sale and the marketplace seller or
700 customer is liable for the tax imposed under this chapter if the
701 marketplace provider demonstrates to the department's
702 satisfaction that the marketplace provider made a reasonable
703 effort to obtain accurate information related to the retail
704 sales facilitated through the marketplace from the marketplace
705 seller, but that the failure to collect and pay the correct
706 amount of tax imposed under this chapter was due to the
707 provision of incorrect or incomplete information to the
708 marketplace provider by the marketplace seller. This paragraph
709 does not apply to a retail sale for which the marketplace
710 provider is the seller if the marketplace provider and
711 marketplace seller are related parties or if transactions
712 between a marketplace seller and marketplace buyer are not
713 conducted at arm's length.

714 (6) For purposes of registration pursuant to s. 212.18, a
715 marketplace is deemed a separate place of business.

716 (7) A marketplace provider and marketplace seller may agree
717 by contract or otherwise that if a marketplace provider pays the
718 tax imposed under this chapter on a retail sale facilitated
719 through a marketplace for a marketplace seller as a result of an
720 audit or otherwise, the marketplace provider has the right to
721 recover such tax and any associated interest and penalties from
722 the marketplace seller.

723 (8) This section may not be construed to authorize the
724 state to collect sales tax from both the marketplace provider
725 and the marketplace seller on the same retail sale.

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726 (9) Chapter 213 applies to the administration of this
727 section to the extent that chapter does not conflict with this
728 section.

729 Section 5. Paragraph (c) of subsection (2) and paragraph
730 (a) of subsection (5) of section 212.06, Florida Statutes, are
731 amended to read:

732 212.06 Sales, storage, use tax; collectible from dealers;
733 "dealer" defined; dealers to collect from purchasers;
734 legislative intent as to scope of tax.-

735 (2)

736 (c) The term "dealer" is further defined to mean every
737 person, as used in this chapter, who sells at retail or who
738 offers for sale at retail, or who has in his or her possession
739 for sale at retail; or for use, consumption, or distribution; or
740 for storage to be used or consumed in this state, tangible
741 personal property as defined herein, including a retailer who
742 transacts a remote ~~mail-order~~ sale or a person who is a
743 marketplace provider as defined in s. 212.05965.

744 (5) (a) 1. Except as provided in subparagraph 2., it is not
745 the intention of this chapter to levy a tax upon tangible
746 personal property imported, produced, or manufactured in this
747 state for export, provided that tangible personal property may
748 not be considered as being imported, produced, or manufactured
749 for export unless the importer, producer, or manufacturer
750 delivers the same to a licensed exporter for exporting or to a
751 common carrier for shipment outside the state or mails the same
752 by United States mail to a destination outside the state; or, in
753 the case of aircraft being exported under their own power to a
754 destination outside the continental limits of the United States,

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755 by submission to the department of a duly signed and validated
756 United States customs declaration, showing the departure of the
757 aircraft from the continental United States; and further with
758 respect to aircraft, the canceled United States registry of said
759 aircraft; or in the case of parts and equipment installed on
760 aircraft of foreign registry, by submission to the department of
761 documentation, the extent of which shall be provided by rule,
762 showing the departure of the aircraft from the continental
763 United States; nor is it the intention of this chapter to levy a
764 tax on any sale which the state is prohibited from taxing under
765 the Constitution or laws of the United States. Every retail sale
766 made to a person physically present at the time of sale shall be
767 presumed to have been delivered in this state.

768 2.a. Notwithstanding subparagraph 1., a tax is levied on
769 each sale of tangible personal property to be transported to a
770 cooperating state as defined in sub-subparagraph c., at the rate
771 specified in sub-subparagraph d. However, a Florida dealer will
772 be relieved from the requirements of collecting taxes pursuant
773 to this subparagraph if the Florida dealer obtains from the
774 purchaser an affidavit setting forth the purchaser's name,
775 address, state taxpayer identification number, and a statement
776 that the purchaser is aware of his or her state's use tax laws,
777 is a registered dealer in Florida or another state, or is
778 purchasing the tangible personal property for resale or is
779 otherwise not required to pay the tax on the transaction. The
780 department may, by rule, provide a form to be used for the
781 purposes set forth herein.

782 b. For purposes of this subparagraph, "a cooperating state"
783 is one determined by the executive director of the department to

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784 cooperate satisfactorily with this state in collecting taxes on
785 remote ~~mail-order~~ sales. No state shall be so determined unless
786 it meets all the following minimum requirements:

787 (I) It levies and collects taxes on remote ~~mail-order~~ sales
788 of property transported from that state to persons in this
789 state, as described in s. 212.0596, upon request of the
790 department.

791 (II) The tax so collected shall be at the rate specified in
792 s. 212.05, not including any local option or tourist or
793 convention development taxes collected pursuant to s. 125.0104
794 or this chapter.

795 (III) Such state agrees to remit to the department all
796 taxes so collected no later than 30 days from the last day of
797 the calendar quarter following their collection.

798 (IV) Such state authorizes the department to audit dealers
799 within its jurisdiction who make remote ~~mail-order~~ sales that
800 are the subject of s. 212.0596, or makes arrangements deemed
801 adequate by the department for auditing them with its own
802 personnel.

803 (V) Such state agrees to provide to the department records
804 obtained by it from retailers or dealers in such state showing
805 delivery of tangible personal property into this state upon
806 which no sales or use tax has been paid in a manner similar to
807 that provided in sub-subparagraph g.

808 c. For purposes of this subparagraph, "sales of tangible
809 personal property to be transported to a cooperating state"
810 means remote ~~mail-order~~ sales to a person who is in the
811 cooperating state at the time the order is executed, from a
812 dealer who receives that order in this state.

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813 d. The tax levied by sub-subparagraph a. shall be at the
814 rate at which such a sale would have been taxed pursuant to the
815 cooperating state's tax laws if consummated in the cooperating
816 state by a dealer and a purchaser, both of whom were physically
817 present in that state at the time of the sale.

818 e. The tax levied by sub-subparagraph a., when collected,
819 shall be held in the State Treasury in trust for the benefit of
820 the cooperating state and shall be paid to it at a time agreed
821 upon between the department, acting for this state, and the
822 cooperating state or the department or agency designated by it
823 to act for it; however, such payment shall in no event be made
824 later than 30 days from the last day of the calendar quarter
825 after the tax was collected. Funds held in trust for the benefit
826 of a cooperating state shall not be subject to the service
827 charges imposed by s. 215.20.

828 f. The department is authorized to perform such acts and to
829 provide such cooperation to a cooperating state with reference
830 to the tax levied by sub-subparagraph a. as is required of the
831 cooperating state by sub-subparagraph b.

832 g. In furtherance of this act, dealers selling tangible
833 personal property for delivery in another state shall make
834 available to the department, upon request of the department,
835 records of all tangible personal property so sold. Such records
836 shall include a description of the property, the name and
837 address of the purchaser, the name and address of the person to
838 whom the property was sent, the purchase price of the property,
839 information regarding whether sales tax was paid in this state
840 on the purchase price, and such other information as the
841 department may by rule prescribe.

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842 Section 6. Paragraph (a) of subsection (1) and paragraph
843 (a) of subsection (5) of section 212.12, Florida Statutes, are
844 amended to read:

845 212.12 Dealer's credit for collecting tax; penalties for
846 noncompliance; powers of Department of Revenue in dealing with
847 delinquents; brackets applicable to taxable transactions;
848 records required.-

849 (1) (a) ~~1-~~ Notwithstanding any other law and for the purpose
850 of compensating persons granting licenses for and the lessors of
851 real and personal property taxed hereunder, for the purpose of
852 compensating dealers in tangible personal property, for the
853 purpose of compensating dealers providing communication services
854 and taxable services, for the purpose of compensating owners of
855 places where admissions are collected, and for the purpose of
856 compensating remitters of any taxes or fees reported on the same
857 documents utilized for the sales and use tax, as compensation
858 for the keeping of prescribed records, filing timely tax
859 returns, and the proper accounting and remitting of taxes by
860 them, such seller, person, lessor, dealer, owner, and remitter
861 ~~(except dealers who make mail order sales)~~ who files the return
862 required pursuant to s. 212.11 only by electronic means and who
863 pays the amount due on such return only by electronic means
864 shall be allowed 2.5 percent of the amount of the tax due,
865 accounted for, and remitted to the department in the form of a
866 deduction. However, if the amount of the tax due and remitted to
867 the department by electronic means for the reporting period
868 exceeds \$1,200, an allowance is not allowed for all amounts in
869 excess of \$1,200. For purposes of this paragraph ~~subparagraph~~,
870 the term "electronic means" has the same meaning as provided in

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871 s. 213.755(2)(c).

872 ~~2. The executive director of the department is authorized~~
873 ~~to negotiate a collection allowance, pursuant to rules~~
874 ~~promulgated by the department, with a dealer who makes mail~~
875 ~~order sales. The rules of the department shall provide~~
876 ~~guidelines for establishing the collection allowance based upon~~
877 ~~the dealer's estimated costs of collecting the tax, the volume~~
878 ~~and value of the dealer's mail order sales to purchasers in this~~
879 ~~state, and the administrative and legal costs and likelihood of~~
880 ~~achieving collection of the tax absent the cooperation of the~~
881 ~~dealer. However, in no event shall the collection allowance~~
882 ~~negotiated by the executive director exceed 10 percent of the~~
883 ~~tax remitted for a reporting period.~~

884 (5)(a) The department is authorized to audit or inspect the
885 records and accounts of dealers defined herein, including audits
886 or inspections of dealers who make remote ~~mail order~~ sales ~~to~~
887 ~~the extent permitted by another state~~, and to correct by credit
888 any overpayment of tax, and, in the event of a deficiency, an
889 assessment shall be made and collected. No administrative
890 finding of fact is necessary prior to the assessment of any tax
891 deficiency.

892 Section 7. Paragraph (f) of subsection (3) of section
893 212.18, Florida Statutes, is amended to read:

894 212.18 Administration of law; registration of dealers;
895 rules.—

896 (3)

897 (f) As used in this paragraph, the term "exhibitor" means a
898 person who enters into an agreement authorizing the display of
899 tangible personal property or services at a convention or a

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900 trade show. The following provisions apply to the registration
901 of exhibitors as dealers under this chapter:

902 1. An exhibitor whose agreement prohibits the sale of
903 tangible personal property or services subject to the tax
904 imposed in this chapter is not required to register as a dealer.

905 2. An exhibitor whose agreement provides for the sale at
906 wholesale only of tangible personal property or services subject
907 to the tax imposed by this chapter must obtain a resale
908 certificate from the purchasing dealer but is not required to
909 register as a dealer.

910 3. An exhibitor whose agreement authorizes the retail sale
911 of tangible personal property or services subject to the tax
912 imposed by this chapter must register as a dealer and collect
913 the tax on such sales.

914 4. An exhibitor who makes a remote ~~mail order~~ sale pursuant
915 to s. 212.0596 must register as a dealer.

916

917 A person who conducts a convention or a trade show must make his
918 or her exhibitor's agreements available to the department for
919 inspection and copying.

920 Section 8. Subsection (4) of section 212.20, Florida
921 Statutes, is amended to read:

922 212.20 Funds collected, disposition; additional powers of
923 department; operational expense; refund of taxes adjudicated
924 unconstitutionally collected.—

925 (4) When there has been a final adjudication that any tax
926 pursuant to s. 212.0596 or s. 212.05965 was levied, collected,
927 or both, contrary to the Constitution of the United States or
928 the State Constitution, the department shall, in accordance with

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929 rules, determine, based upon claims for refund and other
930 evidence and information, who paid such tax or taxes, and refund
931 to each such person the amount of tax paid. For purposes of this
932 subsection, a "final adjudication" is a decision of a court of
933 competent jurisdiction from which no appeal can be taken or from
934 which the official or officials of this state with authority to
935 make such decisions has or have decided not to appeal.

936 Section 9. Subsection (5) of section 213.27, Florida
937 Statutes, is amended to read:

938 213.27 Contracts with debt collection agencies and certain
939 vendors.—

940 (5) The department may, for the purpose of ascertaining the
941 amount of or collecting any taxes due from a person making or
942 facilitating remote sales under s. 212.0596 or s. 212.05965
943 ~~doing mail order business~~ in this state, contract with any
944 auditing agency doing business within or without this state for
945 the purpose of conducting an audit of such person ~~mail order~~
946 ~~business~~; however, such audit agency may not conduct an audit on
947 behalf of the department of any person domiciled in this state,
948 person registered for sales and use tax purposes in this state,
949 or corporation filing a Florida corporate tax return, if any
950 such person or corporation objects to such audit in writing to
951 the department and the auditing agency. The department shall
952 notify the taxpayer by mail at least 30 days before the
953 department assigns the collection of such taxes.

954 Section 10. This act first applies to remote sales made or
955 facilitated on or after July 1, 2021, by a person who made or
956 facilitated a substantial number of remote sales in calendar
957 year 2020.

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958 Section 11. (1) The Department of Revenue is authorized,
959 and all conditions are deemed met, to adopt emergency rules
960 pursuant to s. 120.54(4), Florida Statutes, for the purpose of
961 administering this act.

962 (2) Notwithstanding any other law, emergency rules adopted
963 pursuant to subsection (1) are effective for 6 months after
964 adoption and may be renewed during the pendency of procedures to
965 adopt permanent rules addressing the subject of the emergency
966 rules.

967 (3) This section shall take effect upon this act becoming a
968 law and expires July 1, 2022.

969 Section 12. If any provision of this act or its application
970 to any person or circumstance is held invalid, the invalidity
971 does not affect other provisions or applications of the act
972 which can be given effect without the invalid provision or
973 application, and to this end the provisions of this act are
974 severable.

975 Section 13. Except as otherwise expressly provided in this
976 act and except for this section, which shall take effect upon
977 this act becoming a law, this act shall take effect July 1,
978 2021.