

1 A bill to be entitled
 2 An act relating to criminal penalties for violations of
 3 tax statutes; amending s. 212.07, F.S.; conforming a
 4 cross-reference; imposing criminal penalties on a dealer
 5 who willfully fails to collect certain taxes or fees after
 6 notice of a duty to collect the taxes or fees by the
 7 Department of Revenue; defining the term "willful";
 8 specifying authorized means of notice; amending s. 212.12,
 9 F.S.; revising provisions imposing criminal penalties on a
 10 person who makes a false or fraudulent return with a
 11 willful intent to evade payment of taxes or fees; deleting
 12 provisions relating to criminal penalties for failing to
 13 register as a dealer or to collect tax after notice from
 14 the Department of Revenue; amending s. 212.18, F.S.;
 15 providing criminal penalties for willfully failing to
 16 register as a dealer after notice from the Department of
 17 Revenue; defining the term "willful"; requiring the
 18 department to send written notice of the duty to register
 19 by certain specified means; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsections (1) and (3) of section 212.07,
 24 Florida Statutes, are amended to read:

25 212.07 Sales, storage, use tax; tax added to purchase
 26 price; dealer not to absorb; liability of purchasers who cannot
 27 prove payment of the tax; penalties; general exemptions.—

28 (1) (a) The privilege tax herein levied measured by retail

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29 sales shall be collected by the dealers from the purchaser or
30 consumer.

31 (b) A resale must be in strict compliance with s. 212.18
32 and the rules and regulations, and any dealer who makes a sale
33 for resale which is not in strict compliance with s. 212.18 and
34 the rules and regulations shall himself or herself be liable for
35 and pay the tax. Any dealer who makes a sale for resale shall
36 document the exempt nature of the transaction, as established by
37 rules promulgated by the department, by retaining a copy of the
38 purchaser's resale certificate. In lieu of maintaining a copy of
39 the certificate, a dealer may document, prior to the time of
40 sale, an authorization number provided telephonically or
41 electronically by the department, or by such other means
42 established by rule of the department. The dealer may rely on a
43 resale certificate issued pursuant to s. 212.18(3)(d) ~~s.~~
44 ~~212.18(3)(e)~~, valid at the time of receipt from the purchaser,
45 without seeking annual verification of the resale certificate if
46 the dealer makes recurring sales to a purchaser in the normal
47 course of business on a continual basis. For purposes of this
48 paragraph, "recurring sales to a purchaser in the normal course
49 of business" refers to a sale in which the dealer extends credit
50 to the purchaser and records the debt as an account receivable,
51 or in which the dealer sells to a purchaser who has an
52 established cash or C.O.D. account, similar to an open credit
53 account. For purposes of this paragraph, purchases are made from
54 a selling dealer on a continual basis if the selling dealer
55 makes, in the normal course of business, sales to the purchaser
56 no less frequently than once in every 12-month period. A dealer

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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57 | may, through the informal protest provided for in s. 213.21 and
 58 | the rules of the Department of Revenue, provide the department
 59 | with evidence of the exempt status of a sale. Consumer
 60 | certificates of exemption executed by those exempt entities that
 61 | were registered with the department at the time of sale, resale
 62 | certificates provided by purchasers who were active dealers at
 63 | the time of sale, and verification by the department of a
 64 | purchaser's active dealer status at the time of sale in lieu of
 65 | a resale certificate shall be accepted by the department when
 66 | submitted during the protest period, but may not be accepted in
 67 | any proceeding under chapter 120 or any circuit court action
 68 | instituted under chapter 72.

69 | (c) Unless the purchaser of tangible personal property
 70 | that is incorporated into tangible personal property
 71 | manufactured, produced, compounded, processed, or fabricated for
 72 | one's own use and subject to the tax imposed under s.
 73 | 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1.
 74 | extends a certificate in compliance with the rules of the
 75 | department, the dealer shall himself or herself be liable for
 76 | and pay the tax.

77 | (3) (a) ~~A Any~~ dealer who fails, neglects, or refuses to
 78 | collect the tax or fees imposed under this chapter herein
 79 | ~~provided, either~~ by himself or herself or through the dealer's
 80 | agents or employees, ~~is,~~ in addition to ~~the penalty of~~ being
 81 | liable for and paying the tax ~~himself or herself,~~ commits guilty
 82 | ~~of~~ a misdemeanor of the first degree, punishable as provided in
 83 | s. 775.082 or s. 775.083.

84 | (b) A dealer who willfully fails to collect a tax or fee

85 after the department provides notice of the duty to collect the
 86 tax or fee is liable for a specific penalty of 100 percent of
 87 the uncollected tax or fee. This penalty is in addition to any
 88 other penalty that may be imposed by law. A dealer who willfully
 89 fails to collect taxes or fees totaling:

90 1. Less than \$300:

91 a. For a first offense, commits a misdemeanor of the
 92 second degree, punishable as provided in s. 775.082 or s.
 93 775.083.

94 b. For a second offense, commits a misdemeanor of the
 95 first degree, punishable as provided in s. 775.082 or s.
 96 775.083.

97 c. For a third or subsequent offense, commits a felony of
 98 the third degree, punishable as provided in s. 775.082, s.
 99 775.083, or s. 775.084.

100 2. Three hundred dollars or more, but less than \$20,000,
 101 commits a felony of the third degree, punishable as provided in
 102 s. 775.082, s. 775.083, or s. 775.084.

103 3. Twenty thousand dollars or more, but less than
 104 \$100,000, commits a felony of the second degree, punishable as
 105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 4. One hundred thousand dollars or more, commits a felony
 107 of the first degree, punishable as provided in s. 775.082, s.
 108 775.083, or s. 775.084.

109 (c) As used in this subsection, the term "willful" means a
 110 voluntary and intentional violation of a known legal duty.

111 (d) The department shall give written notice of the duty
 112 to collect taxes or fees to the dealer by personal service, by

113 sending notice to the dealer's last known address by registered
 114 mail, or by both personal service and mail.

115 Section 2. Paragraph (d) of subsection (2) of section
 116 212.12, Florida Statutes, is amended to read:

117 212.12 Dealer's credit for collecting tax; penalties for
 118 noncompliance; powers of Department of Revenue in dealing with
 119 delinquents; brackets applicable to taxable transactions;
 120 records required.-

121 (2)

122 (d) A Any person who makes a false or fraudulent return
 123 with a willful intent to evade payment of any tax or fee imposed
 124 under this chapter ~~is; any person who, after the department's~~
 125 ~~delivery of a written notice to the person's last known address~~
 126 ~~specifically alerting the person of the requirement to register~~
 127 ~~the person's business as a dealer, intentionally fails to~~
 128 ~~register the business; and any person who, after the~~
 129 ~~department's delivery of a written notice to the person's last~~
 130 ~~known address specifically alerting the person of the~~
 131 ~~requirement to collect tax on specific transactions,~~
 132 ~~intentionally fails to collect such tax, shall, in addition to~~
 133 ~~the other penalties provided by law, be liable for a specific~~
 134 ~~penalty of 100 percent of any unreported or any uncollected tax~~
 135 ~~or fee. This penalty is in addition to any other penalty~~
 136 provided by law. A person who makes a false or fraudulent return
 137 with a willful intent to evade payment of taxes or fees
 138 totaling:

139 1. Less than \$300:

140 a. For a first offense, commits a misdemeanor of the

141 second degree, punishable as provided in s. 775.082 or s.
 142 775.083.
 143 b. For a second offense, commits a misdemeanor of the
 144 first degree, punishable as provided in s. 775.082 or s.
 145 775.083.
 146 c. For a third or subsequent offense, commits a felony of
 147 the third degree, punishable as provided in s. 775.082, s.
 148 775.083, or s. 775.084.
 149 2. Three hundred dollars or more, but less than \$20,000,
 150 commits a felony of the third degree, punishable as provided in
 151 s. 775.082, s. 775.083, or s. 775.084.
 152 3. Twenty thousand dollars or more, but less than
 153 \$100,000, commits a felony of the second degree, punishable as
 154 provided in s. 775.082, s. 775.083, or s. 775.084.
 155 4. One hundred thousand dollars or more, commits a felony
 156 of the first degree, punishable as provided in s. 775.082, s.
 157 775.083, or s. 775.084. and, upon conviction, for fine and
 158 ~~punishment as provided in s. 775.082, s. 775.083, or s. 775.084.~~
 159 ~~Delivery of written notice may be made by certified mail, or by~~
 160 ~~the use of such other method as is documented as being necessary~~
 161 ~~and reasonable under the circumstances. The civil and criminal~~
 162 ~~penalties imposed herein for failure to comply with a written~~
 163 ~~notice alerting the person of the requirement to register the~~
 164 ~~person's business as a dealer or to collect tax on specific~~
 165 ~~transactions shall not apply if the person timely files a~~
 166 ~~written challenge to such notice in accordance with procedures~~
 167 ~~established by the department by rule or the notice fails to~~
 168 ~~clearly advise that failure to comply with or timely challenge~~

169 ~~the notice will result in the imposition of the civil and~~
 170 ~~criminal penalties imposed herein.~~

171 ~~1. If the total amount of unreported or uncollected taxes~~
 172 ~~or fees is less than \$300, the first offense resulting in~~
 173 ~~conviction is a misdemeanor of the second degree, the second~~
 174 ~~offense resulting in conviction is a misdemeanor of the first~~
 175 ~~degree, and the third and all subsequent offenses resulting in~~
 176 ~~conviction is a misdemeanor of the first degree, and the third~~
 177 ~~and all subsequent offenses resulting in conviction are felonies~~
 178 ~~of the third degree.~~

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

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

185 ~~4. If the total amount of unreported or uncollected taxes~~
 186 ~~or fees is \$100,000 or more, the offense is a felony of the~~
 187 ~~first degree.~~

188 Section 3. Subsection (3) of section 212.18, Florida
 189 Statutes, is amended to read:

190 212.18 Administration of law; registration of dealers;
 191 rules.-

192 (3) (a) Every person desiring to engage in or conduct
 193 business in this state as a dealer, ~~as defined in this chapter,~~
 194 or to lease, rent, or let or grant licenses in living quarters
 195 or sleeping or housekeeping accommodations in hotels, apartment
 196 houses, roominghouses, or tourist or trailer camps that are

197 | subject to tax under s. 212.03, or to lease, rent, or let or
 198 | grant licenses in real property, ~~as defined in this chapter,~~ and
 199 | every person who sells or receives anything of value by way of
 200 | admissions, must file with the department an application for a
 201 | certificate of registration for each place of business. The
 202 | application must include, ~~showing~~ the names of the persons who
 203 | have interests in the ~~such~~ business and their residences, the
 204 | address of the business, and ~~such~~ other data reasonably required
 205 | by ~~as~~ the department ~~may reasonably require~~. However, owners and
 206 | operators of vending machines or newspaper rack machines are
 207 | required to obtain only one certificate of registration for each
 208 | county in which such machines are located. The department, by
 209 | rule, may authorize a dealer that uses independent sellers to
 210 | sell its merchandise to remit tax on the retail sales price
 211 | charged to the ultimate consumer in lieu of having the
 212 | independent seller register as a dealer and remit the tax. The
 213 | department may appoint the county tax collector as the
 214 | department's agent to accept applications for registrations. The
 215 | application must be made to the department before the person,
 216 | firm, copartnership, or corporation may engage in such business,
 217 | and it must be accompanied by a registration fee of \$5. However,
 218 | a registration fee is not required to accompany an application
 219 | to engage in or conduct business to make mail order sales. The
 220 | department may waive the registration fee for applications
 221 | submitted through the department's Internet registration
 222 | process.

223 | (b) The department, upon receipt of such application,
 224 | shall ~~will~~ grant to the applicant a separate certificate of

225 registration for each place of business, which certificate may
 226 be canceled by the department or its designated assistants for
 227 any failure by the certificateholder to comply with any of the
 228 provisions of this chapter. The certificate is not assignable
 229 and is valid only for the person, firm, copartnership, or
 230 corporation to which issued. The certificate must be placed in a
 231 conspicuous place in the business or businesses for which it is
 232 issued and must be displayed at all times. Except as provided in
 233 this subsection, a no person may not shall engage in business as
 234 a dealer or in leasing, renting, or letting of or granting
 235 licenses in living quarters or sleeping or housekeeping
 236 accommodations in hotels, apartment houses, roominghouses,
 237 tourist or trailer camps, or real property or as hereinbefore
 238 ~~defined, nor shall any person~~ sell or receive anything of value
 239 by way of admissions, without a valid first having obtained such
 240 a certificate. A or after such certificate has been canceled; no
 241 person may not shall receive a any license from any authority
 242 within the state to engage in any such business without a valid
 243 ~~first having obtained such a certificate or after such~~
 244 ~~certificate has been canceled. A person may not engage~~ The
 245 ~~engaging~~ in the business of selling or leasing tangible personal
 246 property or services or as a dealer; engage, ~~as defined in this~~
 247 ~~chapter, or the engaging~~ in leasing, renting, or letting of or
 248 granting licenses in living quarters or sleeping or housekeeping
 249 accommodations in hotels, apartment houses, roominghouses, or
 250 tourist or trailer camps that are taxable under this chapter, or
 251 real property; 7 or engage ~~the engaging~~ in the business of
 252 selling or receiving anything of value by way of admissions,

253 without a valid ~~such~~ certificate ~~first being obtained or after~~
 254 ~~such certificate has been canceled by the department, is~~
 255 ~~prohibited.~~

256 (c)1. A ~~The failure or refusal of any person who engages~~
 257 in acts requiring a certificate of registration under this
 258 subsection and who fails or refuses to register, commits, firm,
 259 copartnership, or corporation to so qualify when required
 260 ~~hereunder is~~ a misdemeanor of the first degree, punishable as
 261 provided in s. 775.082 or s. 775.083. Such acts are, or subject
 262 to injunctive proceedings as provided by law. A person who
 263 engages in acts requiring a certificate of registration and who
 264 fails or refuses to register is also subject ~~Such failure or~~
 265 ~~refusal also subjects the offender~~ to a \$100 initial
 266 registration fee in lieu of the \$5 registration fee required by
 267 ~~authorized in~~ paragraph (a). However, the department may waive
 268 the increase in the registration fee if it finds is determined
 269 ~~by the department~~ that the failure to register was due to
 270 reasonable cause and not to willful negligence, willful neglect,
 271 or fraud.

272 2. A person who willfully fails to register after the
 273 department provides notice of the duty to register as a dealer
 274 commits a felony of the third degree, punishable as provided in
 275 s. 775.082, s. 775.083, or s. 775.084.

276 a. As used in this subsection, the term "willful" means a
 277 voluntary and intentional violation of a known legal duty.

278 b. The department shall give written notice of the duty to
 279 register to the person by personal service, by sending notice by
 280 registered mail to the person's last known address, or by both

281 personal service and mail.

282 (d)~~(e)~~ In addition to the certificate of registration, the
 283 department shall provide to each newly registered dealer an
 284 initial resale certificate that will be valid for the remainder
 285 of the period of issuance. The department shall provide each
 286 active dealer with an annual resale certificate. For purposes of
 287 this section, "active dealer" means a person who is currently
 288 registered with the department and who is required to file at
 289 least once during each applicable reporting period.

290 (e)~~(d)~~ The department may revoke a ~~any~~ dealer's
 291 certificate of registration if ~~when~~ the dealer fails to comply
 292 with this chapter. Prior to revocation of a dealer's certificate
 293 of registration, the department must schedule an informal
 294 conference at which the dealer may present evidence regarding
 295 the department's intended revocation or enter into a compliance
 296 agreement with the department. The department must notify the
 297 dealer of its intended action and the time, place, and date of
 298 the scheduled informal conference by written notification sent
 299 by United States mail to the dealer's last known address of
 300 record furnished by the dealer on a form prescribed by the
 301 department. The dealer is required to attend the informal
 302 conference and present evidence refuting the department's
 303 intended revocation or enter into a compliance agreement with
 304 the department which resolves the dealer's failure to comply
 305 with this chapter. The department shall issue an administrative
 306 complaint under s. 120.60 if the dealer fails to attend the
 307 department's informal conference, fails to enter into a
 308 compliance agreement with the department resolving the dealer's

309 noncompliance with this chapter, or fails to comply with the
 310 executed compliance agreement.

311 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"
 312 means a person who enters into an agreement authorizing the
 313 display of tangible personal property or services at a
 314 convention or a trade show. The following provisions apply to
 315 the registration of exhibitors as dealers under this chapter:

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

319 2. An exhibitor whose agreement provides for the sale at
 320 wholesale only of tangible personal property or services subject
 321 to the tax imposed in this chapter must obtain a resale
 322 certificate from the purchasing dealer but is not required to
 323 register as a dealer.

324 3. An exhibitor whose agreement authorizes the retail sale
 325 of tangible personal property or services subject to the tax
 326 imposed in this chapter must register as a dealer and collect
 327 the tax imposed under this chapter on such sales.

328 4. Any exhibitor who makes a mail order sale pursuant to
 329 s. 212.0596 must register as a dealer.

330
 331 Any person who conducts a convention or a trade show must make
 332 their exhibitor's agreements available to the department for
 333 inspection and copying.

334 Section 4. This act shall take effect upon becoming a law.