A bill to be entitled

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

Section 1. Short title.--This act may be cited as the "Fairness in Retail Sales Taxation Act."

Section 2. Findings and Intent.--

(1) The Legislature of the State of Florida finds:

(a) Millions of dollars of retail sales are made each year involving the transport of property from outside this state to purchasers in this state.

(b) Sales and use taxes to this state are not being paid on many, if any, of these sales.

(c) There is a substantial loss of revenue to this state as a result of failure or refusal to collect and remit to the treasury of this state sales and use taxes on these sales.

(d) Such failure or refusal is detrimental to the residents of and visitors to this state in two respects: First, the resulting loss of revenue increases the difficulty of carrying on essential state activities and maintaining and fostering a high quality of life for residents and visitors; and, second, retailers who, in compliance with laws of this state, collect and remit taxes on retail sales suffer from the unfair competition of those who do not do so, which is harmful to the business and economic climate of the state.

(e) Retailers who take advantage of the prosperity, market, laws, citizens and economy of this state by making retail sales to purchasers in this state are morally obligated

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to assume their fair share of the burden of maintaining this
state's prosperity and quality of life by collecting and
remitting taxes on sales to such purchasers.

(2) It is, therefore, the intent of this act to:
(a) Assure that those who make retail sales involving
the transport of property from outside this state to
purchasers in this state bear their fair share of this burden;
(b) Protect from unfair competition retailers who
comply with the laws of this state by collecting and remitting
tax on retail sales; and
(c) Assure that the treasury of this state receives
revenue needed to carry on essential state activities and to
maintain and foster a high quality of life for its residents
and visitors.

Section 3. Section 212.0592, Florida Statutes, is
created to read:

212.0592 Taxation of mail order sales.--

(1) For purposes of this chapter, a "mail order sale"
is a sale of tangible personal property, ordered by mail or
other means as described in subsection (2)(e), to a purchaser
who is in this state at the time the order is remitted, from a
dealer who receives the order in another state of the United
States, or in a commonwealth, territory, or other area under
the jurisdiction of the United States, and transports the
property or causes the property to be transported, whether or
not by mail, from any jurisdiction of the United States,
including this state, to a person in this state, including the
person who ordered the property. For purposes of this
definition, it will be presumed that every person resident in
this state who remits an order shall have been in this state
at the time the order was remitted.

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(2) Every dealer as is defined in paragraph (c) of section 212.06(2) who makes a mail order sale is subject to the power of this state to levy and collect the tax imposed by this chapter, when:

(a) The dealer is a corporation doing business under the laws of this state or a person domiciled in, a resident of, or a citizen of this state;

(b) The dealer maintains retail establishments or offices in this state, whether the mail order sales thus subject to taxation by this state result from or are related in any other way to the activities of such establishments or offices;

(c) The dealer has agents in this state who solicit business or transact business on behalf of the dealer, whether the mail order sales thus subject to taxation by this state result from or are related in any other way to such solicitation or transaction of business;

(d) The property was delivered in this state in fulfillment of a sales contract that was entered into in this state, in accordance with applicable conflict of laws rules, when a person in this state accepted an offer by ordering the property;

(e) The dealer, by purposefully or systematically exploiting the market provided by this state by any media assisted, facilitated or solicited means, including but not limited to direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, magazine or newspaper advertisements or other media, creates nexus with this state;

(f) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its
taxing power and its jurisdiction over the retailer in support
of this state's taxing power; or

  (q) The dealer consents, expressly or by implication,
to the imposition of the tax imposed by this chapter.

  (3) Every dealer engaged in the business of making
mail order sales is subject to the requirements of this part
for cooperation of dealers in collection of taxes and in
administration of this part, except that no fee shall be
imposed upon such dealer for carrying out any required
activity.

  (4) The department shall, with the consent of another
jurisdiction of the United States whose cooperation is needed,
enforce this part in that jurisdiction, either directly or, at
the option of that jurisdiction, through its officers or
employees.

  (5) The tax required under this section to be
collected and any amount unreturned to a purchaser that is not
tax but was collected from the purchaser under the
representation that it was tax constitute funds of the State
of Florida from the moment of collection.

Section 4. Paragraph (c) of subsection (2) and
paragraph (a) of subsection (5) of section 212.06, Florida
Statutes, 1986 Supplement, are amended to read:

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

  (2)(c) The term "dealer" is further defined to mean
every person, as used in this chapter, who sells at retail, or
who offers for sale at retail, or who has in his possession
for sale at retail, or for use, consumption, or distribution,
or for storage to be used or consumed in this state tangible
personal property as defined herein, including a retailer who
transacts a mail order sale as defined in subsection (1) of
section 212.0592.

(5)(a) 1. Except as provided in subparagraph 2., it
is not the intention of this chapter to levy a tax upon
tangible personal property imported, produced, or manufactured
in this state for export, provided that tangible personal
property may not be considered as being imported, produced, or
manufactured for export unless the importer, producer, or
manufacturer delivers the same to a licensed exporter for
exporting or to a common carrier for shipment outside the
state or mails the same by United States mail to a destination
outside the state; or, in the case of aircraft being exported
under their own power to a destination outside the continental
limits of the United States, by submission to the department
of a duly signed and validated United States customs
declaration showing the departure of the aircraft from the
continental United States and, further with respect to
aircraft, the canceled United States registry of said
aircraft; or in the case of parts and equipment installed on
aircraft of foreign registry, by submission to the department
of documentation, the extent of which shall be provided by
rule, showing the departure of the aircraft from the
continental United States; nor is it the intention of this
chapter to levy a tax on radio and television broadcasting, or
any sale which the state is prohibited from taxing under the
Constitution or laws of the United States. Every retail sale
made to a person physically present at the time of sale shall
be presumed to have been delivered in this state.

2.a. Notwithstanding subparagraph 1., a tax is levied
on each "sale of tangible personal property to be transported

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to a cooperating state* as defined in sub-subparagraph c., at
the rate specified in sub-subparagraph d.

b. For purposes of this subparagraph, "a cooperating
state" is one determined by the Executive Director of the
Department to cooperate satisfactorily with this state in
collecting taxes on mail order sales. No state shall be so
determined unless it meets all the following minimum
requirements:

I. It levies and collects taxes on mail order sales of
property transported from that state to persons in this state,
as described in section 212.0592, upon request of the
Department;

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

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

IV. Such state authorizes the department to audit
dealers within its jurisdiction who make mail order sales that
are the subject of section 212.0592, or makes arrangements
deemed adequate by the department for auditing them with its
own personnel; and

V. Such state makes arrangements deemed adequate by
the department for inspections, upon request of the
department, of that state's records relating to such mail
order sales and for auditing its performance in collecting
such taxes.

VI. Such state agrees to provide to the department
records obtained by it from retailers or dealers in such state

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showing delivery of tangible personal property into this state upon which no sales or use tax has been paid in a manner similar to that provided in s. 212.06(5)(a)2.q.

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

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

e. The tax levied by sub-subparagraph a., when collected, shall be held by the department in trust for the benefit of the cooperating state, and shall be paid to it at a time agreed upon between the department, acting for this state, and the cooperating state or the department or agency designated by it to act for it; however, such payment shall, in no event, be made later than 30 days from the last day of the calendar quarter after the tax was collected.

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

g. In furtherance of this act, dealers selling tangible personal property for delivery in another state shall make available to the Department, upon request of the Department, records of all tangible personal property so sold. Such records shall include a description of the property, the name and address of the purchaser, the name and address of the

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person to whom the property was sent, the purchase price of
the property, information regarding whether sales tax was paid
in this state on the purchase price, and such other
information as the Department may by rule prescribe.

Section 5. Refund of taxes adjudicated
unconstitutionally collected.--

Subsection (1) is amended and subsection (4) of section
212.20, Florida Statutes, is created to read:

212.20 Funds collected, disposition; additional powers
of department; operational expense.--

(1) The department shall pay over to the Treasurer of
the state all funds received and collected by it under the
provisions of this chapter, to be credited to the account of
the General Revenue Fund of the state except that funds
collected under subparagraph 2. of section 212.06(5)(a) shall
be held in trust, as provided therein.

(4) When there has been a final adjudication that any
tax under this chapter was levied, collected, or both,
contrary to the Constitution of the United States, or the
Constitution of this state, the department shall, in
accordance with rules and regulations, determine, based upon
claims for refund and other evidence and information, who paid
such tax or taxes; and refund to each such person the amount
of tax paid. For purposes of this subsection, a "final
adjudication" is a decision of a court of competent
jurisdiction from which no appeal can be taken or from which
the official or officials of this state with authority to make
such decisions has or have decided not to appeal.

Section 6. Paragraph (e) of subsection (3) and
subsection (24) of section 212.02, Florida Statutes, 1986
Supplement, are added to read:

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

(3)(a) The term "retail sale" includes a mail order sale, as defined in subsection (a) of section 212.0592.

(24) "Mail order sale" is defined in subsection (1) of section 212.0592.

Section 7. Section 212.05, Florida Statutes, 1986 Supplement, is amended to read:

212.05 Sales, storage, use tax.--It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales as defined in subsection (1) of section 212.0592, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

Section 8. Subsections (1) and (5) of of section 212.12, Florida Statutes, 1986 Supplement, are amended to read:

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

(1) For the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating

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dealers providing communication services and taxable services, and for the purpose of compensating owners of places where admissions are collected, as compensation for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, and owner (except dealers who make mail order sales as defined in s. 212.0592) shall be allowed 3 percent of the amount of the tax due and accounted for and remitted to the department, in the form of a deduction in submitting his report and paying the amount due by him; and the department shall allow such deduction of 3 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the amount due to be paid by him, and as further compensation to dealers in tangible personal property for the keeping of prescribed records and for collection of taxes and remitting the same. However, if the amount of the tax due and remitted to the department for the reporting period exceeds $1,000, the 3-percent allowance shall be reduced to 1 percent for all amounts in excess of $1,000. The Executive Director of the Department is authorized to negotiate the collection allowance with dealers who make mail order sales, provided that such allowance shall not exceed ten percent of the amount of the tax remitted for a reporting period. In negotiating such collection allowance, the Executive Director shall consider the Department's likelihood and costs of achieving tax collection by the dealer absent the dealer's cooperation.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.
(b) The Department of Revenue may reduce the
collection allowance by 10 percent or $50, whichever is less,
if a taxpayer files an incomplete return.

1. An "incomplete return" is, for purposes of this
chapter, a return which is lacking such uniformity,
completeness, and arrangement that the physical handling,
verification, or review of the return may not be readily
accomplished.

2. The department shall adopt rules requiring such
information as it may deem necessary to ensure that the tax
levied hereunder is properly collected, reviewed, compiled,
and enforced, including, but not limited to: the amount of
gross sales; the amount of taxable sales; the amount of tax
collected or due; the amount of lawful refunds, deductions, or
credits claimed; the amount claimed as the dealer's collection
allowance; the amount of penalty and interest; the amount due
with the return; and such other information as the Department
of Revenue may specify.

(5)(a) The department is authorized to audit or
inspect the records and accounts of dealers defined herein
including audits or inspections of dealers who make mail order
sales, as defined in section 212.059(1), to the extent
permitted by another state and correct by credit any
overpayment of tax; and, in the event of a deficiency, an
assessment shall be made and collected. No administrative
finding of fact is necessary prior to the assessment of any
tax deficiency.

Section 9. Subsection (1) of section 212.15, Florida
Statues, is amended to read:

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212.15 Taxes declared state funds; penalties for
failure to remit taxes; due and delinquent dates; judicial
review.-- 

(1) The taxes imposed by this chapter shall except as
provided in sub-subparagraph f. of section 212.06(5)(a)2.,
become state funds at the moment of collection and shall for
each month be due to the department on the first day of the
succeeding month and delinquent on the 21st day of such month.
All returns postmarked after the 20th day of such month are
delinquent.

Section 10. Subsection (3) of section 212.18, Florida
Statutes, 1986 Supplement, is amended to read:
212.18 Administration of law; rules and regulations.--
(3) Every person desiring to engage in or conduct
business in this state as a dealer, as defined in this
chapter, or to lease, rent, or let or grant licenses in living
quarters or sleeping or housekeeping accommodations in hotels,
apartment houses, roominghouses, tourist or trailer camps, or
real property, as defined in this chapter, and every person
who sells or receives anything of value by way of admissions,
shall file with the department an application for a
certificate of registration for each place of business,
showing the names of the persons who have interests in such
business and their residences, the address of the business,
and such other data as the department may reasonably require.
The application shall be made to the department before the
person, firm, copartnership, or corporation may engage in such
business; and it shall be accompanied by a registration fee of
$5. Notwithstanding the preceding sentence, no registration
fee is required to accompany an application to engage in or
conduct business to make mail order sales, as that term is
defined in subsection (1) of section 212.059. The department, upon receipt of such application, will grant to the applicant a separate certificate of registration for each place of business, which certificate may be canceled by the department or its designated assistants for any failure by the certificateholder to comply with any of the provisions of this chapter. The certificate shall not be assignable and shall be valid only for the person, firm, copartnership, or corporation to which issued; and such certificate shall be placed in a conspicuous place in the business or businesses for which it is issued and shall be so displayed at all times. No person shall engage in business as a dealer or in leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property as hereinbefore defined, nor shall any person sell or receive anything of value by way of admissions, without first having obtained such a certificate or after such certificate has been canceled; and no person shall receive any license from any authority within the state to engage in any such business without first having obtained such a certificate or after such certificate has been canceled. The engaging in the business of selling or leasing tangible personal property or as a dealer, as defined in this chapter, or the engaging in leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property as hereinbefore defined, or the engaging in the business of selling or receiving anything of value by way of admissions, without such certificate first being obtained or after such certificate has been canceled by the department is

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prohibited. The failure or refusal of any person, firm, copartnership, or corporation to so qualify when required hereunder is a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or subject to injunctive proceedings as provided by law.

Section 11. The department is hereby given the authority to purchase such supplies and equipment as may be necessary and incur any other necessary expenses as are proper for the enforcement and administration of this act. The Department is hereby appropriated the sum of $75,000 in order to retain legal consultants to assist in any litigation arising as a result of this act.

Section 12. Severability.—If any provision of this act or the application thereof to any person or circumstance is held invalid, the validity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 13. This act shall take effect on October 1, 1987.

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