

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 485 Consumer Protection

SPONSOR(S): Business & Professional Regulation Subcommittee; Brodeur

TIED BILLS: **IDEN./SIM. BILLS:** SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Morton	Luczynski
2) Appropriations Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

There is currently no state regulation of the retail sale of used tires.

The bill would prohibit the sale of unsafe tires and provide violations constitute unfair and deceptive trade practices.

The bill provides that a used tire is considered unsafe if:

- (a) Is worn to 2/32 of an inch tread depth or less on any area of the tread;
- (b) Has any damage exposing the reinforcing piles of the tire, including any cuts, cracks, bulges, punctures, scrapes, or wear;
- (c) Has had an improper repair including:
 1. Any repair made in the tread shoulder or belt edge area of the tire;
 2. Any puncture that has not been sealed or patched on the inside and repaired with a cured rubber stem through to the outside of the tire;
 3. A repair to the sidewall or bead area of the tire; or
 4. A puncture repair of damage larger than one-quarter of an inch;
- (d) Has evidence of prior use of a temporary tire sealant without evidence of a subsequent proper repair;
- (e) Has its tire identification number defaced or removed;
- (f) Is a recalled tire whose sale is prohibited pursuant to federal law;
- (g) Has inner liner or bead damage; or
- (h) Has an indication of internal separation, such as bulges or local areas of irregular tread wear.

The bill is expected to have an indeterminate and insignificant fiscal impact on state funds.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

There is no state regulation of the retail sale of used tires.

Section 403.717, F.S., provides for the regulation of waste tire collection centers and waste tire processing facilities by the Department of Environmental Protection. It contains the following definitions:

'Waste tire' means a tire that has been removed from a motor vehicle and has not been retreaded or regrooved. The term includes, but is not limited to, used tires and processed tires.

'Used tire' means a waste tire which has a minimum tread depth of 3/32 inch or greater and is suitable for use on a motor vehicle.

While there is no state regulation of used tires, the Rubber Manufacturers Association has issued a tire industry service bulletin that lists conditions under which a used tire should never be installed on a vehicle. These conditions include:

- Any punctures or other penetrations, whether repaired or not. NOTE: This is not meant to preclude the proper repair of a tire installed on a consumer's vehicle when the consumer is aware of the tire's history.
- Any innerliner or bead damage.
- Indication of internal separation, such as bulges or local areas of irregular/fast treadwear indicating possible tread or belt separation.
- Indication of run-flat, under inflated and/or overloaded damage (e.g., innerliner abrasion, mid- to upper sidewall abrasion and stamping deterioration, delamination, or discoloration, excessive tread shoulder wear, etc.).
- Any damage or wear exposing the body material of the tire — cuts, cracks, bulges, scrapes, ozone cracking/weather checking, impact damage, punctures, splits, snags, etc.
- Defaced or removed DOT tire identification number (TIN), which is located on the tire sidewall.
- Involved in a recall or a replacement program.
- Inadequate tread depth for continued service (i.e., nearly worn out). Tires with a tread depth of 2/32" or less at any point on the tire are worn out.
- Currently mounted on a rim that is bent, dented, cracked or otherwise damaged.
- Evidence of improper storage.
- Chemical, fire, excessive heat damage, or other environmental damage.
- Designated as a "scrap tire" or otherwise not intended for continued highway service.
- Evidence of prior use of tire repair sealant.
- Altered to look like new tires (e.g., a regrooved tread).
- Labeled on the sidewall as "Not For Highway Use," "NHS," "For Racing Purposes Only", "Agricultural Use Only", "SL" (service limited agricultural tire), or any other indication that the tire is barred from use on public thoroughfares.¹

The RMA also offers criteria for proper used tire repair, including:

- Repairs are limited to the tread area only.
- Puncture injury cannot be greater than 1/4 inch (6mm) in diameter.

¹ Rubber Manufacturers Association, Used Tires, available at http://www.rma.org/tire_safety/tire_maintenance_and_safety/used_tires.
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- Repairs must be performed by removing the tire from the rim/wheel assembly to perform a complete inspection to assess all damage that may be present.
- Repairs cannot overlap.
- A rubber stem, or plug, must be applied to fill the puncture injury and a patch must be applied to seal the inner liner. A common repair unit is a one-piece unit with a stem and patch portion. A plug by itself is an unacceptable repair.²

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.³ The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs,⁴ or by a private suit filed by an individual.⁵

Enforcing authorities may bring actions to enjoin the unfair practice or to recover actual damages on behalf of one or more harmed consumers.⁶ Willful FDUTPA violations are subject to civil penalties up to \$10,000 per violation.⁷ Private suits under FDUTPA may recover actual damages, plus attorney's fees and court costs.⁸

Proposed Changes

The bill provides that it is unlawful for any used tire retailer to sell unsafe used tires. Violation of the provision constitutes an unfair and deceptive trade practice, subject to enforcement actions, civil penalties and private causes of action for actual damages, as described above.

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- Has had an improper repair including:
 - Any repair made in the tread shoulder or belt edge area of the tire;
 - Any puncture that has not been sealed or patched on the inside and repaired with a cured rubber stem through to the outside of the tire;
 - A repair to the sidewall or bead area of the tire; or
 - A puncture repair of damage larger than one-quarter of an inch;
- Has evidence of prior use of a temporary tire sealant without evidence of a subsequent proper repair;
- Has its tire identification number defaced or removed;
- Is a recalled tire whose sale is prohibited pursuant to federal law;
- Has inner liner or bead damage; or
- Has an indication of internal separation, such as bulges or local areas of irregular tread wear.

The bill does not require any state agency to regulate the sale of used tires.

B. SECTION DIRECTORY:

² Rubber Manufacturers Association, Used Tires, available at http://www.rma.org/tire_safety/tire_maintenance_and_safety/tire_repair

³ Section 501.204, F.S.

⁴ Section 501.203(2), F.S.

⁵ Section 501.211, F.S.

⁶ Section 501.207, F.S.

⁷ Section 501.2075, F.S.

⁸ Section 501.211, F.S.

Section 1 creates an unnumbered section of law to prohibit the sale of unsafe used tires by used tire retailers, provides what constitutes an unsafe used tire, and provides violations are unfair trade practices.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill deems the sale of unsafe used tires an unfair and deceptive trade practice, which could result in investigations and enforcement actions by the Department of Legal Affairs. This cost is indeterminate and likely insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that used tire retailers are currently selling tires that would be considered unsafe under the bill, they could see a reduction in sales.

D. FISCAL COMMENTS:

The bill is expected to have an indeterminate and insignificant fiscal impact on state funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2013, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably as a committee substitute.

The staff analysis is drafted to reflect the committee substitute.