

By the Committee on Commerce and Tourism; and Senator Ring

577-02093A-15

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1 A bill to be entitled
2 An act relating to consumer protection; amending s.
3 501.142, F.S.; requiring retail sales establishments
4 that sell goods to the public to grant a refund within
5 a specified period of time for goods costing more than
6 a specified amount if returned by a consumer who has
7 been adjudicated incapacitated, is subject to a
8 certain type of guardianship, or has a certain medical
9 condition, if specified requirements are satisfied;
10 providing penalties for a violation of the
11 requirements; making technical changes; amending s.
12 501.95, F.S.; conforming a cross-reference; providing
13 an effective date.

14
15 WHEREAS, the Legislature finds that persons who are
16 incapacitated, are subject to certain types of guardianships, or
17 have been diagnosed with a medical condition causing a lack of
18 capacity to make reasonable decisions need additional
19 protections in consumer transactions involving costly purchases,
20 and

21 WHEREAS, it is in the public interest to protect the
22 welfare of this state's most vulnerable residents and their
23 family members, and

24 WHEREAS, it is the intent of the Legislature to safeguard
25 such residents' financial interests by providing them with the
26 ability to return certain goods within a reasonable period of
27 time, NOW, THEREFORE,

28
29 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.—

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce the provisions of this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, each every retail sales establishment offering goods for sale to the general public must grant a cash refund or credit refund to a consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney pursuant to chapter 709 or similar law in another state is

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59 currently exercisable by the consumer's agent, and the consumer
60 has been diagnosed with a medical condition that causes him or
61 her to lack sufficient understanding or capacity to make or
62 communicate reasonable decisions concerning his or her person or
63 property, which is evidenced by a written statement signed by a
64 physician licensed pursuant to chapter 458 or chapter 459 or
65 licensed to practice medicine under the laws of another state.

66 (3) (a) Except as provided in subsection (2), a retail sales
67 establishment offering goods for sale to the general public may
68 refuse to offer a ~~that offers no~~ cash refund, credit refund, or
69 exchange ~~for the purchase if the retailer posts of merchandise~~
70 ~~must post~~ a sign at the point of sale ~~se~~ stating that refunds or
71 exchanges are not allowed ~~at the point of sale~~. Failure of a
72 retail sales establishment to exhibit a "no refund or exchange"
73 sign at the point of sale under such circumstances ~~at the point~~
74 ~~of sale~~ shall mean that a refund or exchange policy exists, and
75 the policy must ~~shall~~ be presented in writing to the consumer
76 upon request.

77 (b) A ~~Any~~ retail sales establishment that violates this
78 subsection must ~~failing to comply with the provisions of this~~
79 section ~~shall~~ grant to the consumer, upon request and proof of
80 purchase, a refund for the purchase ~~on the merchandise~~, within 7
81 days after ~~of~~ the date of purchase, if provided the goods are
82 ~~merchandise is~~ unused and in the original carton, if one was
83 furnished. This section does not ~~Nothing herein shall~~ prohibit a
84 retail sales establishment from having a refund policy that
85 ~~which exceeds 7 the number of days and specified herein.~~
86 ~~However, this subsection~~ does not prohibit a local government
87 from enforcing ~~the provisions established by~~ this section.

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88 (4)~~(2)~~ ~~The provisions of~~ This section does ~~shall~~ not apply
89 to the sale of food, perishable goods, goods that ~~which~~ are
90 custom made, goods that ~~which~~ are custom altered at the request
91 of the customer, or goods that ~~which~~ cannot be resold by the
92 merchant because of any law, rule, or regulation adopted by a
93 governmental body.

94 (5)~~(3)~~ If the department finds that a person has violated
95 or is operating in violation of:

96 (a) Subsection (2), the department shall enter an order
97 that imposes an administrative fine in the amount of twice the
98 value of the goods, excluding tax, which the person refused to
99 refund.

100 (b) Subsection (3) or an order issued under this section,
101 the department may enter an order that imposes ~~doing~~ one or more
102 of the following ~~if the department finds that a person has~~
103 ~~violated or is operating in violation of any of the provisions~~
104 ~~of this section or the orders issued under this section:~~

105 1.~~(a)~~ ~~Impose~~ An administrative fine not to exceed \$100 for
106 each violation.

107 2.~~(b)~~ A directive to ~~Direct~~ the person to cease and desist
108 specified activities.

109 (6)~~(4)~~ ~~An~~ The administrative proceeding ~~proceedings~~ that
110 may ~~could~~ result in the entry of an order imposing any of the
111 penalties specified in subsection (5) ~~is~~ ~~(3)~~ ~~are~~ governed by
112 chapter 120.

113 (7)~~(5)~~ ~~Any~~ Moneys recovered by the department ~~of~~
114 ~~Agriculture and Consumer Services~~ as a penalty under this
115 section shall be deposited in the General Inspection Trust Fund.

116 (8)~~(6)~~ Upon the first violation of this section, a local

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117 government may issue a written warning. Upon a second or ~~and any~~
118 subsequent violation, a local government may impose a fine of up
119 to \$50 per violation. ~~Any~~ Moneys recovered by the local
120 government as a penalty under this section shall be deposited in
121 the appropriate local account.

122 Section 2. Paragraph (c) of subsection (2) of section
123 501.95, Florida Statutes, is amended to read:

124 501.95 Gift certificates and credit memos.-

125 (2)

126 (c) Enforcement of this section shall be as provided in s.
127 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
128 violations of this section.

129 Section 3. This act shall take effect July 1, 2015.