

By the Committees on Fiscal Policy; and Commerce and Tourism;  
and Senator Ring

594-04424-15

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1 A bill to be entitled

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

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

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

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

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

31  
32 Section 1. This act may be cited as "Terry's Law."

33 Section 2. Section 501.142, Florida Statutes, is amended to  
34 read:

35 501.142 Retail sales establishments; preemption; ~~notice of~~  
36 refund policy requirements; exceptions; penalty.-

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

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

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

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

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

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

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

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59 3. A power of attorney or a durable power of attorney  
60 pursuant to chapter 709 or similar law in another state is  
61 currently exercisable by the consumer's agent, and the consumer  
62 has been diagnosed with a medical condition that causes him or  
63 her to lack sufficient understanding or capacity to make or  
64 communicate reasonable decisions concerning his or her person or  
65 property, which is evidenced by a written statement signed by a  
66 physician licensed pursuant to chapter 458 or chapter 459 or  
67 licensed to practice medicine under the laws of another state.

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

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

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88 ~~However, this subsection~~ does not prohibit a local government  
89 from enforcing ~~the provisions established by~~ this section.

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

96 (5)(3) If the department finds that a person has violated  
97 or is operating in violation of:

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

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

107 1.(a) Impose An administrative fine not to exceed \$100 for  
108 each violation.

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

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

115 (7)(5) Any Moneys recovered by the department ~~of~~  
116 ~~Agriculture and Consumer Services~~ as a penalty under this

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117 section shall be deposited in the General Inspection Trust Fund.

118 (8)~~(6)~~ Upon the first violation of this section, a local  
119 government may issue a written warning. Upon a second or ~~and any~~  
120 subsequent violation, a local government may impose a fine of up  
121 to \$50 per violation. ~~Any~~ Moneys recovered by the local  
122 government as a penalty under this section shall be deposited in  
123 the appropriate local account.

124 Section 3. Paragraph (c) of subsection (2) of section  
125 501.95, Florida Statutes, is amended to read:

126 501.95 Gift certificates and credit memos.-

127 (2)

128 (c) Enforcement of this section shall be as provided in s.  
129 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for  
130 violations of this section.

131 Section 4. This act shall take effect July 1, 2015.