

By the Committee on Commerce and Tourism; and Senator Ring

577-00705-16

2016148c1

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

14
15 Be It Enacted by the Legislature of the State of Florida:

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

18 Section 2. Section 501.142, Florida Statutes, is amended to
19 read:

20 501.142 Retail sales establishments; preemption; ~~notice of~~
21 refund policy requirements; exceptions; penalty.-

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

27 (2) Notwithstanding the Uniform Commercial Code, each every
28 retail sales establishment offering goods for sale to the
29 general public shall grant a cash refund or credit refund to a

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30 consumer for goods returned within 3 business days after the
31 date of purchase if all of the following conditions are met:

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

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

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

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

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

44 3. A power of attorney or a durable power of attorney
45 pursuant to chapter 709 or similar law in another state is
46 currently exercisable by the consumer's agent, and the consumer
47 has been diagnosed with a medical condition that causes him or
48 her to lack sufficient understanding or capacity to make or
49 communicate reasonable decisions concerning his or her person or
50 property, which is evidenced by a written statement signed by a
51 physician licensed pursuant to chapter 458 or chapter 459 or
52 licensed to practice medicine under the laws of another state.

53 (3) (a) Except as provided in subsection (2), a retail sales
54 establishment offering goods for sale to the general public may
55 refuse to offer a ~~that offers no~~ cash refund, credit refund, or
56 exchange ~~for the purchase if the retailer posts of merchandise~~
57 ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or
58 exchanges are not allowed ~~at the point of sale~~. Failure of a

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59 retail sales establishment to exhibit a "no refund or exchange"
60 sign at the point of sale under such circumstances means ~~at the~~
61 ~~point of sale shall mean~~ that a refund or exchange policy
62 exists, and the policy must ~~shall~~ be presented in writing to the
63 consumer upon request.

64 (b) A Any retail sales establishment that violates this
65 subsection failing to comply with the provisions of this section
66 shall grant to the consumer, upon request and proof of purchase,
67 a refund for the purchase ~~on the merchandise~~, within 7 business
68 days after ~~of~~ the date of purchase if, provided ~~the goods are~~
69 ~~merchandise is~~ unused and in the original carton, if one was
70 furnished. This section does not ~~Nothing herein shall~~ prohibit a
71 retail sales establishment from having a refund policy that
72 which exceeds 7 business ~~the number of days and specified~~
73 ~~herein. However, this subsection does not prohibit a local~~
74 ~~government from enforcing the provisions established by this~~
75 ~~section.~~

76 (4)-(2) The provisions of This section does shall not apply
77 to the sale of food, perishable goods, goods that ~~which~~ are
78 custom made, goods that ~~which~~ are custom altered at the request
79 of the customer, or goods that ~~which~~ cannot be resold by the
80 merchant because of any law, rule, or regulation adopted by a
81 governmental body.

82 (5)-(3) If the department finds that a person has violated
83 or is operating in violation of:

84 (a) Subsection (2), the department shall enter an order
85 that imposes an administrative fine in the amount of twice the
86 value of the goods, excluding tax, which the person refused to
87 refund.

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88 (b) Subsection (3) or an order issued under this section,
89 the department may enter an order that imposes ~~doing~~ one or more
90 of the following ~~if the department finds that a person has~~
91 ~~violated or is operating in violation of any of the provisions~~
92 ~~of this section or the orders issued under this section:~~

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

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

97 ~~(6)(4) An~~ The administrative proceeding ~~proceedings~~ that
98 ~~may could~~ result in the entry of an order imposing any of the
99 penalties specified in subsection (5) is ~~(3) are~~ governed by
100 chapter 120.

101 ~~(7)(5) Any~~ Moneys recovered by the department ~~of~~
102 ~~Agriculture and Consumer Services~~ as a penalty under this
103 section shall be deposited in the General Inspection Trust Fund.

104 ~~(8)(6)~~ Upon the first violation of this section, a local
105 government may issue a written warning. Upon a second or ~~and any~~
106 subsequent violation, a local government may impose a fine of up
107 to \$50 per violation. ~~Any~~ Moneys recovered by the local
108 government as a penalty under this section shall be deposited in
109 the appropriate local account.

110 Section 3. Paragraph (c) of subsection (2) of section
111 501.95, Florida Statutes, is amended to read:

112 501.95 Gift certificates and credit memos.—

113 (2)

114 (c) Enforcement of this section shall be as provided in s.
115 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
116 violations of this section.

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Section 4. This act shall take effect July 1, 2016.