

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

594-02124-16

2016148c2

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; providing an exemption; making
12 technical changes; amending s. 501.95, F.S.;
13 conforming a cross-reference; providing an effective
14 date.

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

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

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

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

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

28 (2) Notwithstanding the Uniform Commercial Code, each every
29 retail sales establishment offering goods for sale to the
30 general public shall grant a cash refund or credit refund to a
31 consumer for goods returned within 3 business days after the

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32 date of purchase if all of the following conditions are met:

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

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

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

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

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

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

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

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61 sign at the point of sale under such circumstances means ~~at the~~
62 ~~point of sale shall mean~~ that a refund or exchange policy
63 exists, and the policy must ~~shall~~ be presented in writing to the
64 consumer upon request.

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

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

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

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

89 (b) Subsection (3) or an order issued under this section,

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

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

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

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

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

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

111 (9) Retail sales regulated under part VI of this chapter
112 are exempt from the provisions of this section.

113 Section 3. Paragraph (c) of subsection (2) of section
114 501.95, Florida Statutes, is amended to read:

115 501.95 Gift certificates and credit memos.—

116 (2)

117 (c) Enforcement of this section shall be as provided in s.
118 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for

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119 violations of this section.

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