

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 793 Consumer Protection  
**SPONSOR(S):** Stark and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 726

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N	Gonzalez	Luczynski
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The mission of the Florida Department of Agriculture and Consumer Services (FDACS) is to safeguard the public and support agriculture. The Division of Consumer Services within FDACS serves as a clearinghouse for matters relating to consumer protection and services. It receives complaints from consumers and seeks a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution in accordance with its jurisdiction.

The regulation of refunds from retail sales establishments is preempted to FDACS. Currently, no retail sales establishment offering goods for sale to the general public is required to provide cash or credit refunds or exchanges for any reason. Establishments that do not accept returns or exchanges must post a "no refund" sign, at the point of sale. Retail sales establishments that violate the current law related to refund policies must grant the consumer, upon request and proof of purchase, a refund on the merchandise, within seven days of the date of purchase, if the merchandise is unused and in the original carton.

The bill requires retail sales establishments to grant a refund within three days after the date of purchase for goods costing more than \$1,000 if returned by a consumer who has been adjudicated incapacitated or who has documentation from a physician of a medical condition that causes the consumer to lack sufficient understanding or capacity to make reasonable decisions concerning his or her person or property.

If a person refuses to make a refund to a consumer who meets these conditions, the bill requires FDACS to enter an order for restitution to be paid to the consumer and imposes an administrative fine in the amount of twice the value of the goods, excluding tax. The bill makes technical changes and conforms a cross-reference.

The bill has no fiscal impact.

The bill has an effective date of July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

The mission of the Florida Department of Agriculture and Consumer Services (FDACS) is to safeguard the public and support agriculture. The Division of Consumer Services (division) within FDACS serves as a clearinghouse for matters relating to consumer protection, information, and services. It receives complaints from consumers and transmits them to the agency most directly concerned in order that the complaint may be expeditiously handled in the best interests of the complaining consumer. If no agency exists, the division seeks a settlement of the complaint using formal or informal methods of mediation and conciliation and may seek any other resolution in accordance with its jurisdiction.<sup>1</sup>

The regulation of refunds from retail sales establishments is preempted to FDACS notwithstanding any other law or local ordinance to the contrary.<sup>2</sup> Currently, no retail sales establishment offering goods for sale to the general public is required to provide cash or credit refunds or exchanges in their refund or exchange policies for any reason. Establishments that do not accept returns or exchanges must post a “no refund” sign, at the point of sale. Failure to post such a sign means that a refund or exchange policy exists and the policy must be presented to the consumer upon request.<sup>3</sup>

Retail sales establishments that violate these requirements must grant the consumer, upon request and proof of purchase, a refund on the merchandise, within seven days of the date of purchase, if the merchandise is unused and in the original carton.<sup>4</sup> This section does not apply to certain goods such as food, perishable goods, goods that are custom made, or goods that cannot be resold by the merchant because any law, rule, or regulation.

According to FDACS, it has only issued one administrative fine for an establishment found to be noncompliant with the provisions of this statute. Historically, retail establishments are mostly compliant or come into compliance in response to communications from FDACS, therefore, issuance of fines has been unnecessary. FDACS has also indicated that in the past year, they have only had approximately 11 complaints relating purchases made by incapacitated persons. FDACS current system for consumer complaint resolution has generally been effective in resolving complaints.

#### **Effect of the Bill**

The bill requires retail sales establishments to grant a refund within three days after the date of purchase for goods returned if:

- The purchase exceeds \$1,000, excluding tax.
- The goods are unused and in their original carton.
- The consumer or a representative provides the retailer with proof of purchase.
- The consumer has documentation establishing that the consumer has been adjudicated incapacitated or has a signed written statement from a licensed physician which indicates that the consumer has been diagnosed with a medical condition that causes the consumer to lack sufficient understanding or capacity to make reasonable decisions concerning his or her person or property.

The bill will primarily affect consumers, or their representatives, that have documentation that the consumer has been adjudicated incapacitated, since returning the goods within the specified time is more feasible if the consumer possesses the necessary documentation at the time of purchase. For consumers without documentation of adjudication or a physician’s written statement indicating the

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<sup>1</sup> s. 570.544(4), F.S.

<sup>2</sup> s. 501.142(1), F.S.

<sup>3</sup> Id.

<sup>4</sup> Id.

consumer has been diagnosed with a medical condition, returning the goods may be impractical within three days after the date of purchase as the legal process, or the process of obtaining an appointment and the requisite signed written statement may require more than three days.

The bill requires retail sales establishment employees to evaluate legal documents and written statements of doctors licensed in and out of the state. The employee must determine, at the time of the refund, whether the doctor who signed the written statement is licensed. The bill does not provide that identification must be presented at the time of the refund to validate that the legal document or written statement belongs to the consumer making the return. It is unclear how the retail sales establishment will determine whether the consumer making the return is the same consumer that made the purchase if the purchase was paid for with cash.

The bill also requires FDACS to enter an order for restitution to be paid to the consumer and imposes an administrative fine in the amount of twice the value of the goods, excluding tax, which the person refused to refund. The bill makes technical changes and conforms a cross-reference.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 501.142, F.S., relating to refund policy requirements or retail sales establishments.

**Section 2:** Amends s. 501.95, F.S., relating to mechanical changes and conforming cross-references.

**Section 3:** Providing an effective date of July 1, 2015.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Uncertain. Minimal positive impact for consumers. Private businesses will be subject to fines as penalties for violations of this bill.

**D. FISCAL COMMENTS:**

None.

## **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:

The bill provides three days to return merchandise with legal documents or a doctor's statement. For consumers that do not have the requisite documents necessary to return the merchandise, three days may be an impractical amount of time to obtain these documents from either a court or physician. Additionally, if the consumer has not been diagnosed with a medical condition prior to the sale, diagnosis by a doctor may take longer than the allotted three days.

There are also concerns with requiring a signed written statement from a licensed physician. Physicians may be reluctant to sign such statements, because their statements and diagnoses could be disputed in court and cause them to testify on such matters. Additionally, it is unclear whether allowing a refund based on this type of statement would effectuate the intent of the bill as some disorders or conditions may intermittently affect a person's capacity and it may be plausible that, although the person has such a condition as indicated in the physician's statement, the person had full mental capacity at the specific time the person made the purchase.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.