

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: CS/SB 1588

INTRODUCER: Commerce and Tourism Committee and Senator Evers

SUBJECT: Used Tires

DATE: April 3, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|-------------|
| 1. | Malcolm | Hrdlicka | CM | Fav/CS |
| 2. | Akhavein | Halley | AG | Pre-meeting |
| 3. | | | AP | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1588 makes it unlawful for any used tire retailer to sell unsafe used tires. The bill provides conditions under which a used tire is considered unsafe, including if the tire:

- Is worn to 2/32 of an inch or less of tread depth;
- Has any damage that exposes the reinforcing plies of the tire;
- Has an improper repair, such as an improperly sealed puncture; a repair to the tread shoulder, belt edge, sidewall, or bead area; or a puncture repair larger than 1/4 of an inch; or
- Has its identification number defaced or removed.

The sale or offer of sale of an unsafe tire constitutes an unfair and deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.¹

This bill creates general law not contained in a designated section of the Florida Statutes.

¹ See Part II, ch. 501, F.S.

II. Present Situation:

According to one estimate, approximately 10 percent of tires sold in the U.S. annually are used tires.² Used tires are generally less expensive for the consumer and provide a greater profit margin for the retailer.³ Although federal regulations require tire manufacturers to mark each new tire with a tire identification number that indicates the week and year the tire was manufactured,⁴ used tires are not subject to any federal standards.⁵ Similarly, the sale of used tires is not regulated in Florida.

While there is no state regulation of used tires, the Rubber Manufacturers Association (RMA) has issued a tire industry service bulletin that lists conditions under which a used tire should never be installed on a vehicle. These conditions include:

- Any punctures or other penetrations, whether repaired or not. This is not meant to preclude the proper repair of a tire installed on a consumer's vehicle when the consumer is aware of the tire's history;
- Any innerliner or bead damage;
- Indication of internal separation, such as bulges or local areas of irregular/fast treadwear indicating possible tread or belt separation;
- Indication of run-flat, under inflated and/or overloaded damage (e.g., innerliner abrasion, mid- to upper sidewall abrasion and stamping deterioration, delamination, or discoloration, excessive tread shoulder wear, etc.);
- Any damage or wear exposing the body material of the tire — cuts, cracks, bulges, scrapes, ozone cracking/weather checking, impact damage, punctures, splits, snags, etc;
- Defaced or removed DOT tire identification number (TIN), which is located on the tire sidewall;
- Involved in a recall or a replacement program;
- Inadequate tread depth for continued service (i.e., nearly worn out). Tires with a tread depth of 2/32" or less at any point on the tire are worn out;
- Currently mounted on a rim that is bent, dented, cracked or otherwise damaged;
- Evidence of improper storage;
- Chemical, fire, excessive heat damage, or other environmental damage;
- Designated as a "scrap tire" or otherwise not intended for continued highway service;
- Evidence of prior use of tire repair sealant;
- Altered to look like new tires (e.g., a regrooved tread); and
- Labeled on the sidewall as "Not For Highway Use," "NHS," "For Racing Purposes Only," "Agricultural Use Only," "SL" (service limited agricultural tire), or any other indication that the tire is barred from use on public thoroughfares.⁶

² Safety Research & Strategies, *Used Tires: A Booming Business with Hidden Dangers*, 2007, available at http://www.safetyresearch.net/Library/Used_Tires.htm (last visited April 3, 2013).

³ *Supra* note 1.

⁴ 49 CFR §571.139.

⁵ Ronald Montoya, *How Old – and Dangerous – Are Your Tires?* (Nov. 18, 2011) available at <http://www.edmunds.com/car-care/how-old-and-dangerous-are-your-tires.html> (last visited April 3, 2013).

⁶ Rubber Manufacturers Association, *Passenger and Light Truck Used Tires*, available at http://www.rma.org/tire_safety/tire_maintenance_and_safety/used_tires (last visited April 3, 2013).

The RMA also offers criteria for proper used tire repair, including:

- Repairs should be limited to the tread area only;
- Punctures cannot be greater than 1/4 inch (6mm) in diameter;
- Repairs must be performed by removing the tire from the rim/wheel assembly to perform a complete inspection to assess all damage that may be present;
- Repairs cannot overlap; and
- A rubber stem, or plug, must be applied to fill the puncture and a patch must be applied to seal the inner liner. A common repair unit is a one-piece unit with a stem and patch portion. A plug by itself is an unacceptable repair.⁷

III. Effect of Proposed Changes:

Section 1 makes it unlawful for any used tire retailer to sell unsafe used tires. The bill excludes retailers who sell used tires for recapping. A used tire is considered unsafe if it:

- Is worn to 2/32 of an inch or less of tread depth;
- Has any damage that exposes the reinforcing plies of the tire;
- Has an improper repair, such as an improperly sealed puncture; a repair to the tread shoulder, belt edge, sidewall, or bead area; or a puncture repair larger than 1/4 of an inch;
- Has evidence that a temporary tire sealant has been used and there is no evidence of a subsequent proper repair;
- Has its identification number defaced or removed;
- Has inner liner or bead damage; or
- Has any indication of internal separation.

The sale or offer of sale of an unsafe tire constitutes an unfair and deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act.

Section 2 provides that the bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁷ Rubber Manufacturers Association, Puncture Repair Procedures for Passenger and Light Truck Tires, *available at* http://www.rma.org/tire_safety/tire_maintenance_and_safety/tire_repair/ (last visited April 3, 2013).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent used tire retailers are currently selling used tires that would be considered unsafe under the bill, they may see a reduction in revenues or may be subject to civil penalties up to \$10,000 and liability for damages in private civil suits.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Violations of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) can be enforced either by a state attorney, the Department of Legal Affairs, or a private suit filed by an individual.⁸ A state attorney or the Department of Legal Affairs may bring an action to enjoin the unfair practice or to recover actual damages on behalf of one or more harmed consumers.⁹ Willful FDUTPA violations are subject to civil penalties up to \$10,000 per violation.¹⁰ Additionally, private suits under FDUTPA may recover actual damages, plus attorney's fees and court costs.¹¹

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on April 1, 2013:

The committee substitute:

- Corrects a misspelled word;
- Removes tires that have been recalled pursuant to federal regulations from being considered unsafe used tires under the bill;

⁸ Sections 501.203(2), 501.211, F.S.

⁹ Section 501.207, F.S.

¹⁰ Section 501.2075, F.S.

¹¹ Section 501.211, F.S.

- Removes the civil penalty and distribution of fines into the General Inspection Trust Fund; and
- Makes the sale or offer for sale of unsafe used tires an unfair and deceptive trade practice under part II of ch. 501, F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
