

By Senator Ring

29-00440-15

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

15  
16           WHEREAS, the Legislature finds that persons who are  
17   incapacitated or unable to make reasonable decisions due to a  
18   medical condition need additional protections in consumer  
19   transactions involving costly purchases, and

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

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

27  
28   Be It Enacted by the Legislature of the State of Florida:  
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29-00440-15

2015726\_\_

30 Section 1. Section 501.142, Florida Statutes, is amended to  
31 read:

32 501.142 Retail sales establishments; preemption; ~~notice of~~  
33 refund policy requirements; exceptions; penalty.—

34 (1) The regulation of refunds is preempted to the  
35 Department of Agriculture and Consumer Services notwithstanding  
36 any other law or local ordinance to the contrary.

37 (2) Notwithstanding the Uniform Commercial Code, each every  
38 retail sales establishment offering goods for sale to the  
39 general public must grant a cash refund or credit refund to a  
40 consumer for goods returned within 3 days after the date of  
41 purchase if:

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

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

45 (c) The consumer, or a representative of the consumer,  
46 provides the retailer with proof of purchase and:

47 1. Documentation establishing that the consumer has been  
48 adjudicated incapacitated pursuant to chapter 744 or under  
49 similar law in another state; or

50 2. A written statement signed by a physician licensed  
51 pursuant to chapter 458 or chapter 459 or licensed to practice  
52 medicine under the laws of another state which indicates that  
53 the consumer has been diagnosed with a medical condition that  
54 causes him or her to lack sufficient understanding or capacity  
55 to make or communicate reasonable decisions concerning his or  
56 her person or property.

57 (3) (a) Except as provided in subsection (2), a retail sales  
58 establishment offering goods for sale to the general public may

29-00440-15

2015726\_\_

59 refuse to offer a ~~that offers no~~ cash refund, credit refund, or  
 60 exchange for the purchase if the retailer posts ~~of merchandise~~  
 61 ~~must post~~ a sign at the point of sale ~~se~~ stating that refunds or  
 62 exchanges are not allowed ~~at the point of sale~~. Failure of a  
 63 retail sales establishment to exhibit a "no refund or exchange"  
 64 sign at the point of sale under such circumstances ~~at the point~~  
 65 ~~of sale~~ shall mean that a refund or exchange policy exists, and  
 66 the policy must ~~shall~~ be presented in writing to the consumer  
 67 upon request.

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

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

85 (5)~~(3)~~ If the department finds that a person has violated  
 86 or is operating in violation of:

87 (a) Subsection (2), the department shall enter an order

29-00440-15

2015726\_\_

88 that requires restitution to be paid to the consumer and that  
 89 imposes an administrative fine in the amount of twice the value  
 90 of the goods, excluding tax, which the person refused to refund.

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

96 1. ~~(a) Impose~~ An administrative fine not to exceed \$100 for  
 97 each violation.

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

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

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

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

113 Section 2. 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)

29-00440-15

2015726\_\_

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  
119 violations of this section.

120 Section 3. This act shall take effect July 1, 2015.