

By Senator Ring

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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 WHEREAS, the Legislature finds that persons who are
16 incapacitated, are subject to certain types of guardianships, or
17 have been diagnosed with a medical condition causing a lack of
18 capacity to make reasonable decisions need additional
19 protections in consumer transactions involving costly purchases,
20 and

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

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

28
29 Be It Enacted by the Legislature of the State of Florida:

29-00060-16

2016148__

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

32 Section 2. Section 501.142, Florida Statutes, is amended to
33 read:

34 501.142 Retail sales establishments; preemption; ~~notice of~~
35 refund policy requirements; exceptions; penalty.—

36 (1) The regulation of refunds is preempted to the
37 Department of Agriculture and Consumer Services notwithstanding
38 any other law or local ordinance to the contrary, provided that
39 a local government may enforce this section as specified in
40 subsection (8).

41 (2) Notwithstanding the Uniform Commercial Code, each every
42 retail sales establishment offering goods for sale to the
43 general public shall grant a cash refund or credit refund to a
44 consumer for goods returned within 3 business days after the
45 date of purchase if all of the following conditions are met:

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

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

49 (c) The consumer, or a representative of the consumer,
50 provides the retailer with proof of purchase and documentation
51 establishing that:

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

54 2. The consumer is subject to a guardianship pursuant to
55 chapter 744 or similar law in another state, and the guardian
56 has the authority to determine the consumer's right to manage
57 property; or

58 3. A power of attorney or a durable power of attorney

29-00060-16

2016148__

59 pursuant to chapter 709 or similar law in another state is
60 currently exercisable by the consumer's agent, and the consumer
61 has been diagnosed with a medical condition that causes him or
62 her to lack sufficient understanding or capacity to make or
63 communicate reasonable decisions concerning his or her person or
64 property, which is evidenced by a written statement signed by a
65 physician licensed pursuant to chapter 458 or chapter 459 or
66 licensed to practice medicine under the laws of another state.

67 (3) (a) Except as provided in subsection (2), a retail sales
68 establishment offering goods for sale to the general public may
69 refuse to offer a ~~that offers no~~ cash refund, credit refund, or
70 exchange for the purchase if the retailer posts ~~of merchandise~~
71 ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or
72 exchanges are not allowed at the point of sale. Failure of a
73 retail sales establishment to exhibit a "no refund or exchange"
74 sign at the point of sale under such circumstances means at the
75 point of sale shall mean that a refund or exchange policy
76 exists, and the policy must ~~shall~~ be presented in writing to the
77 consumer upon request.

78 (b) A ~~Any~~ retail sales establishment that violates this
79 subsection failing to comply with the provisions of this section
80 shall grant to the consumer, upon request and proof of purchase,
81 a refund for the purchase ~~on the merchandise,~~ within 7 business
82 days after ~~of~~ the date of purchase ~~if, provided~~ the goods are
83 ~~merchandise is~~ unused and in the original carton, if one was
84 furnished. This section does not ~~Nothing herein shall~~ prohibit a
85 retail sales establishment from having a refund policy that
86 ~~which~~ exceeds 7 business ~~the number of~~ days and ~~specified~~
87 herein. However, this subsection does not prohibit a local

29-00060-16

2016148__

88 government from enforcing ~~the provisions established by~~ this
89 section.

90 (4)~~(2)~~ ~~The provisions of~~ This section does ~~shall~~ not apply
91 to the sale of food, perishable goods, goods that ~~which~~ are
92 custom made, goods that ~~which~~ are custom altered at the request
93 of the customer, or goods that ~~which~~ cannot be resold by the
94 merchant because of any law, rule, or regulation adopted by a
95 governmental body.

96 (5)~~(3)~~ If the department finds that a person has violated
97 or is operating in violation of:

98 (a) Subsection (2), the department shall enter an order
99 that imposes an administrative fine in the amount of twice the
100 value of the goods, excluding tax, which the person refused to
101 refund.

102 (b) Subsection (3) or an order issued under this section,
103 the department may enter an order that imposes ~~doing~~ one or more
104 of the following ~~if the department finds that a person has~~
105 ~~violated or is operating in violation of any of the provisions~~
106 ~~of this section or the orders issued under this section:~~

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

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

111 (6)~~(4)~~ An ~~The~~ administrative proceeding ~~proceedings~~ that
112 may ~~could~~ result in the entry of an order imposing any of the
113 penalties specified in subsection (5) ~~is~~ ~~(3)~~ are governed by
114 chapter 120.

115 (7)~~(5)~~ Any Moneys recovered by the department ~~of~~
116 ~~Agriculture and Consumer Services~~ as a penalty under this

29-00060-16

2016148__

117 section shall be deposited in the General Inspection Trust Fund.

118 (8)~~(6)~~ Upon the first violation of this section, a local
119 government may issue a written warning. Upon a second or ~~and any~~
120 subsequent violation, a local government may impose a fine of up
121 to \$50 per violation. ~~Any~~ Moneys recovered by the local
122 government as a penalty under this section shall be deposited in
123 the appropriate local account.

124 Section 3. Paragraph (c) of subsection (2) of section
125 501.95, Florida Statutes, is amended to read:

126 501.95 Gift certificates and credit memos.-

127 (2)

128 (c) Enforcement of this section shall be as provided in s.
129 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
130 violations of this section.

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