

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.

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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,

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

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

501.142 Retail sales establishments; preemption; ~~notice of refund policy~~ requirements; exceptions; penalty.-

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

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

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

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

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

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

2. A written statement signed by a physician licensed pursuant to chapter 458 or chapter 459 or licensed to practice 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
 58 sales establishment offering goods for sale to the general
 59 public may refuse to offer a ~~that offers no~~ cash refund, credit
 60 refund, or exchange for the purchase if the retailer posts of
 61 merchandise ~~must post~~ a sign at the point of sale ~~so~~ stating
 62 that refunds or exchanges are not allowed ~~at the point of sale.~~
 63 Failure of a retail sales establishment to exhibit a "no refund
 64 or exchange" sign at the point of sale under such circumstances
 65 ~~at the point of sale~~ shall mean that a refund or exchange policy
 66 exists, and the policy must ~~shall~~ be presented in writing to the
 67 consumer 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
 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~~

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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)

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.