

ACT 79

S.B. NO. 1115

A Bill for an Act Relating to the Return of Merchandise.

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

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§481B- Returns for refunds, merchandise credits, and exchanges.
(a) As used in this section, unless the context otherwise requires:

“Ancillary charges” includes all charges paid to the merchant that are necessary for the use of the goods for their purchased purpose and all sums paid for agreements for service, warranty, or replacement.

“Conspicuous sign” means a sign posted in the merchant’s place of business in a location reasonably calculated to bring the sign to the attention of purchasers before a purchaser makes a purchase.

“Exchange” means a transaction between a merchant and a purchaser in which a previously purchased item is exchanged for another item.

“Full amount of the payment” includes the amount paid for the returned goods, including any ancillary charges or taxes incident to the purchase of the returned goods, and without any deduction for restocking of the merchant’s inventory, or for administration of the refund, exchange, or merchandise credit.

“Merchandise credit” means the crediting to the purchaser of the full amount of the payment upon return of the goods and allowing the purchaser to purchase goods from the merchant with the merchandise credit, or applying to the purchaser’s credit account with the merchant, in the amount of the merchandise credit.

“Merchant” means any person engaged in the business of offering goods for sale to purchasers at retail.

“Proof of purchase” means a sales slip, receipt, credit card slip, or any other documentation that substantiates the sale of the goods from the merchant and the amount of payment.

“Purchaser” means a natural person who is returning goods that were purchased or received primarily for personal, family, or household purposes.

“Refund” means the return to the purchaser of the full amount of the payment upon return of the goods, in accordance with this chapter.

“Repacking and transportation charges” means the charges for repacking, pickup, and transportation of goods previously delivered, unpacked, and set up by the merchant at the direction of the purchaser.

“Return” or “return of goods” means the acceptance by the merchant of goods from a purchaser, whether for refund, merchandise credit, or exchange, and includes the cancellation of a custom or special order before the merchant is obligated to make payment on the order and the cancellation of a layaway.

(b) Except as provided in this section, all merchants shall accept the return of goods for refund, merchandise credit, or exchange, giving purchasers rights that are no less than those provided in this section. The merchant may:

- (1) Choose one of the following policies by posting a conspicuous sign notifying purchasers of any one of the following limitations:
 - (A) Refunds only;
 - (B) Refunds or merchandise credit only;
 - (C) Exchanges or merchandise credit only; or
 - (D) No refunds, merchandise credits, or exchanges; and
- (2) Place specific limitations on the policy adopted by posting a conspicuous sign notifying the purchasers of any limitations allowed by subsections (c), (d), (e), and (f).

(c) Any merchant who does not accept the return of goods shall post conspicuous signs bearing the words “All sales final”, or “No returns for refunds, merchandise credits, or exchanges”, or words or phrases of similar import, to inform customers that no return of goods shall be accepted.

(d) Any merchant who limits the period during which goods may be returned to less than sixty days after the date of purchase or delivery shall post conspicuous signs informing purchasers of the limitation of the period during which the return of goods shall be accepted.

(e) Any merchant who excludes a certain category or type of goods from its return policy shall post one or more conspicuous signs identifying that type of goods.

(f) Any merchant who excludes custom or specially ordered goods from its return policy shall post conspicuous signs, or otherwise notify the purchaser, with the purchaser’s written acknowledgement, of the return policy. For custom or specially ordered goods, the policy may allow the merchant to accept the return of the goods and to charge the purchaser for the cost of shipping if the charge is disclosed prior to the purchase.

(g) Any person engaged in the business of offering goods for sale at retail who fails to post a conspicuous sign as required by this section shall accept the return of goods from purchasers and make refunds in accordance with subsection (h).

(h) All merchants, except as provided in subsection (c), shall handle returns for refunds in the following manner:

- (1) If payment was made in cash, the refund shall be made in cash at the time of the return of goods, except that if the amount to be returned exceeds \$25, cash refunds may be made by check issued within ten days of the date of the return;
- (2) If payment was made by check, the refund shall be made in cash upon acceptance of the returned goods by the merchant, or by check issued within ten days of the acceptance of the returned goods by the merchant, except that if the purchaser's check has not cleared the bank on which it was drawn, the refund may be delayed for no more than ten days after the date the purchaser's check has cleared; provided that the merchant shall have complied with this provision if the check is mailed to the purchaser at the address provided by the purchaser within the ten-day period;
- (3) If payment was made by credit card, the refund shall be made by credit to the purchaser's credit card account; provided that the merchant shall initiate the submittal of the charge card credit memo or other appropriate documentation to the merchant's financial institution within five banking business days after the return of goods or, at the merchant's option, the refund may be made in cash at the time of the return of the goods or by check issued and mailed within ten days of the acceptance of the returned goods; or
- (4) If payment was made by charging a credit account administered by the merchant, the refund shall be made by credit to the purchaser's credit account initiated at the time of the return of the goods.

(i) All merchants, except as provided in subsection (c), shall handle returns for merchandise credit in the following manner:

- (1) If the purchaser does not select goods in exchange for the returned goods within thirty days of the return, the merchant shall make a full refund to the purchaser in cash or in accordance with subsection (h). The merchant shall not be required to return cash in exchange for a merchandise credit issued pursuant to this paragraph if the merchant posts a conspicuous sign to notify purchasers that the merchandise credit cannot be turned into cash;
- (2) The merchandise credit shall be valid for a minimum of two years; and
- (3) Before exchanging the merchandise credit for cash or, in the case of a purchaser selecting goods in exchange costing less than the amount of the merchandise credit, refunding the difference in cash, the merchant may require proof of purchase and require the surrender of the credit memo.

(j) All merchants, except as provided in subsection (c), shall handle returns for exchanges in the following manner:

- (1) If the exchange involves an exchange for only size or color, the exchange shall be made without regard to the full amount of payment; provided that the merchant may make an appropriate adjustment if the differing size or color normally sells at a different price; and
- (2) If the exchange does not involve an exchange for only size or color, then if the full amount of the payment for the goods received in exchange is less than the full amount of the payment for the returned

goods, the merchant shall issue a refund or merchandise credit in the amount of the difference.

(k) In determining the full amount of the payment for returns for reasons other than damaged or defective goods, a deduction for repacking and transportation charges may be made from the full amount of the payment, if the deduction is disclosed to the purchaser prior to the purchase.

(l) Any return policies adopted by the merchant pursuant to this section that limits the purchaser's ability to obtain a refund shall not apply if the goods were damaged or defective prior to the time of sale, unless the merchant was aware of the damage or defect and notified the purchaser of the damage or defect in writing prior to the time of sale.

(m) A merchant is not required to accept a return if:

- (1) There is no proof of purchase, by sales slips, receipts, or other evidence of purchase of the goods returned;
- (2) The purchaser has retained the goods in excess of sixty days after the purchase;
- (3) The goods have been used or damaged after sale, or altered by the purchaser at the time of or after the sale; or
- (4) The goods are of a type which are unsuitable for resale, pursuant to any applicable law.

(n) The following constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under section 480-2:

- (1) Any violation of this section; and
- (2) Any act or policy that causes a compromise of the purchaser's rights and protections established by this section."

SECTION 2. Section 481B-5, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval.

(Approved April 29, 1997.)

Note

1. Edited pursuant to HRS §23G-16.5.