

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1029 Unfair Insurance Trade Practices

SPONSOR(S): Yarborough

TIED BILLS: **IDEN./SIM. BILLS:** SB 1032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N	Lloyd	Luczynski
2) Commerce Committee			

SUMMARY ANALYSIS

Section 626.9541, F.S., provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these are prohibitions on certain inducements to the purchase of insurance; however, there are also exceptions provided by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to \$25 per gift to an insured, prospective insured, or any person, for the purpose of advertising. This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given over any period of time. The \$25 limit has been in place since 1989.

The bill expands the exception for advertising gifts to:

- Allow gifting of goods, wares, gift cards, gift certificates, event tickets and other items, in addition to merchandise,
- Remove the limitation that the gifts be for advertising purposes,
- Increase the maximum allowed value from \$25 to \$100 per customer or prospective customer, and
- Limit the total value given to any customer or prospective customer to \$100 in one calendar year.

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts in the business of insurance. It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. However, there are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to \$25 per gift to an insured, prospective insured, or any person for the purpose of advertising. There are several similar limitations on advertising gifts under the Insurance Code related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.¹ This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given. The \$25 limit has been in place since 1989.²

The Insurance Code³ does not define the term “merchandise,” nor has the Department of Financial Services or the Office of Insurance Regulation defined this term in rules implementing their duties and obligations under the Insurance Code.⁴ The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”⁵ Therefore, insurers and agents are allowed to give saleable items valued at \$25 or less to others for advertising purposes.

The bill expands the exception to allow gifting of goods, wares, gift cards, gift certificates, event tickets and other items, in addition to merchandise. It removes the requirement that the gift be given for advertising purposes. The bill increases the allowed maximum value of the item given from \$25 to \$100 per customer or prospective customer. It also applies the value limit per customer or prospective customer to one calendar year.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. s. 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. s. 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. s. 634.282(17), F.S.

² ch. 89-360, Laws of Fla.

³ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

⁴ Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. §2607 (2017).

⁵ MERRIAM-WEBSTER, DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise>.

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. While insurers and agents may see increased opportunities for solicitation and sales through use of higher value and new types of advertising and promotional gifts, the impact is not known.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Since there are other prohibitions in the Insurance Code on advertising gifts in excess of \$25,⁶ it may be prudent to review the status of each of these prohibitions and consider revising them consistent with the intent of the bill. Since the other prohibitions are more specific than the general prohibition revised by the bill, they will continue to limit the proscribed activity in certain circumstances.⁷

The inclusion of "other items" in the list of allowed gifts makes the types of things that can be gifted undefined.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁶ *Supra* note 1.

⁷ *Heron at Destin W. Beach & Bay Resort Condo. Ass'n v. Osprey at Destin W. Beach & Bay Resort Condo. Ass'n*, 94 So. 3d 623, 631 2012 (Fla. 1st DCA 2012).