

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 483 Unfair Insurance Trade Practices

SPONSOR(S): Commerce Committee; Insurance & Banking Subcommittee; Yarborough and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee	23 Y, 0 N, As CS	Lloyd	Hamon

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act 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, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise;
- Authorize charitable contributions in the name of insureds or prospective insureds, up to the specified limit;
- Remove the limitation that the gifts be for advertising purposes;
- Increase the maximum allowed value from \$25 to \$100 per insured or prospective insured; and
- Limit the total value given to any insured or prospective insured to \$100 in one calendar year.

The bill also creates an exception to the prohibitions of the Unfair Insurance Trade Practices Act to allow the offering of complimentary grief counseling or funeral planning services and discounted rates on funeral services as part of a group policy.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate \$25 gift value with no annual aggregate limitation).

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, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,¹ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.² 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 Code³ related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.⁴ 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 1989.⁵

The Insurance Code 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.⁶ The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”⁷ 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, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, 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 insured or prospective insured. It also applies the value limit per insured or prospective insured over one calendar year, rather than per gift without an annual limit.

The bill also creates an exception to the prohibitions of the Unfair Insurance Trade Practices Act to allow the offering of complimentary grief counseling or funeral planning services and discounted rates on funeral services as part of a group policy. Such offers are not a violation of law if the funeral planning services and funeral services are provided by a Florida licensed funeral provider or one licensed by another state and the group plan beneficiary, or his or her family (in the case of a death of the beneficiary), initiate contact to receive the services, rather than the funeral provider.

¹ part IX, ch. 626, F.S.

² s. 626.9541, F.S.

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

⁴ 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.

⁵ Ch. 89-360, Laws of Fla.

⁶ 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).

⁷ MERRIAM-WEBSTER, DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise>.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate \$25 gift value with no annual aggregate limitation).

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, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment creates an exception to the Unfair Insurance Trade Practices Act to allow insurers, in association with the sale of a group policy, to give vouchers for grief counseling and funeral services to insureds, prospective insureds, or others. It also removes a proposed annual gifting limitation applicable to title insurers, title agencies, and title agents, thus restoring current law.

On January 18, 2018, the Commerce Committee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment conformed the terms “customer” and “prospective customer” to the terms “insured” and “prospective insured,” to ensure the consistent use of terminology.

The staff analysis has been updated to reflect the committee substitute.