

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: CS/SB 1754

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Prohibited Free Insurance Practices

DATE: April 18, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The Committee Substitute (CS) excludes from the prohibition against free insurance, insurance covering communications equipment (cell phone handsets, etc.) if the person (service provider) paying for the insurance:

- Has an ongoing contractual or economic interest in the communications equipment;
- Requires the communications equipment to deliver its services;
- Discloses the cost of the insurance at the time the communications equipment is sold; and
- Provides the insurance to every person who purchases a service warranty contract on the equipment, but not to anyone who does not purchase a service warranty.

This CS substantially amends the following sections of the Florida Statutes: 626.9541.

**II. Present Situation:**

**Prohibition Against “Free Insurance”**

Section 626.9541(1)(n)1., F.S., states that it is an unfair method of competition and unfair or deceptive act to offer, advertise or provide “free insurance” as an inducement to purchase or sell real or personal property, or services directly or indirectly connected with the real or personal property. Free insurance is defined as insurance for which no identifiable and additional charge is made to the purchaser of real property, personal property or services. Additionally, insurance for which an identifiable or additional charge is made in an amount less than the cost of such insurance to the seller or other person other than the insurer is defined as free insurance. The statute also prohibits using the word “free,” or other words to imply that insurance will be provided without cost in describing life or disability insurance, in connection with the advertising

or offering for sale any goods, merchandise or services. The statute contains seven exceptions to the prohibition against free insurance:

- Insurance of, loss of, or damage to the real or personal property involved in any such sale or services, under a policy covering the interests therein of the seller or vendor;
- Blanket disability insurance as defined in s. 627.659, F.S.;
- Credit life insurance or credit disability insurance;
- Any individual, isolated, nonrecurring unadvertised transaction not in the regular course of business;
- Title insurance;
- Any purchase agreement involving the purchase of a cemetery lot or lots in which, under stated conditions, any balance due is forgiven upon the death of the purchaser; and
- Life insurance, trip cancellation insurance, or lost baggage insurance offered by a travel agency as part of a travel package offered by and booked through the agency.

A policy argument for prohibiting free insurance is that the charge for such coverage will be hidden or built into the cost of the property or service being purchased, and thus not be truly free.

### **Insurance for the Loss or Theft of a Cell Phone and Service Warranties**

Currently, insurance for the loss or theft of a cell phone or other communications equipment offered by the company selling the equipment and a related service plan may be sold by a communications company as an option to the consumer for a separate, identifiable premium, and must be sold under an insurance agent license. The coverage for loss or theft is an insurance product that differs from a service warranty that covers the product if it is defective or accidentally damaged. A service warranty contract may be sold by a communications company under part III, ch. 634, F.S. Sales representatives of service warranties must be licensed and appointed, similar to procedures that apply to insurance agents, except that the requirements that apply to the service warranties and their sales representatives are generally less stringent than comparable requirements for insurance policies and insurance agents.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 626.9541, F.S., regarding the prohibition against offering free insurance. The CS exempts from the prohibition against free insurance, insurance that covers communications equipment (defined as handsets, pagers, or personal digital assistants) if the person (service provider) paying for the insurance:

- Has an ongoing contractual interest or other economic interest in the communications equipment;
- Requires the communications equipment to deliver its services;
- Discloses the cost of the insurance at the time the communications equipment is sold; and
- Provides the insurance to every person who purchases a service warranty contract on the equipment and does not provide the insurance to anyone who does not purchase a service warranty contract on the equipment.

Under the CS, the cost of the insurance for loss or theft could be “free” or otherwise included in the cost of the cell phone, service warranty, or the related service plan without a separate, identifiable charge and without being offered as an option. The insurance is included *only if* the consumer elects to purchase a service warranty on the product (which may be necessary to prevent fraudulent claims of theft or loss). A communications company providing such free insurance will not be required to have an insurance agent’s license to sell the insurance product. The insurance company may not be subject to certain provisions of the Insurance Code that apply to the sale of insurance, except for provisions that may apply under the sale of a service warranty contract. The rates for the “master” policy sold by an insurance company to the communications company would continue to be subject to insurance rate and policy form regulation. However, it appears that the price and form of the “retail” coverage sold to the consumer would no longer be subject to regulation as a separate identifiable charge or product.

**Section 2** provides that this act is effective upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Companies providing insurance that meet the CS’s criteria for allowing “free insurance,” such as communications companies providing coverage for loss or theft of a cell phone or other communications equipment would be allowed to include the cost of such coverage within the plan or within the cost of a service warranty. This may allow the communications company to provide such coverage without having an insurance agent license and without being subject to related provisions of the Insurance Code for the sale of insurance. Consumers buying such products may not be protected by provisions of the Insurance Code that apply to the sale of insurance.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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