

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1032

INTRODUCER: Senator Mayfield

SUBJECT: Unfair Insurance Trade Practices

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1032 allows licensed insurers and agents to give promotional items to insureds or prospective insureds, not to exceed \$100 in value within one calendar year. Promotional items include prizes, goods, wares, gift cards, gift certificates, event tickets and other items, in addition to merchandise.

Current law allows licensed insurers and agents to give out gifts valued at not more than \$25 for advertising purposes.

The bill is effective July 1, 2017.

II. Present Situation:

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 for 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 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 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.

III. Effect of Proposed Changes:

The bill allows licensed insurers and agents to give out goods, wares, gift cards, gift certificates, event tickets and other promotional 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 items given from \$25 to \$100 and applies the limit within one calendar year per insured or prospective insured.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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. Section 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. Section 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. Section 634.282(17), F.S.

² Chapter 89-360, Laws of Fla.

³ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” Section 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> (last visited April 7, 2017).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.9541 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.