

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: CS/SB 762

INTRODUCER: Banking and Insurance Committee and Senator Mayfield

SUBJECT: Permissible Insurance Acts

DATE: February 5, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 762 amends the Unfair Insurance Trade Practices Act to allow insurers or their agents to give gifts, certain services, donations, or other items not exceeding \$100 in value per calendar year to insureds, prospective insureds, and others.

Current law limits the gifting of promotional merchandise to \$25 or less per gift to an insured, prospective insured, or any person, for the purpose of advertising. There is no limit on the frequency of giving or the aggregate value of advertising merchandise given over any period of time. The bill specifies that insurers or their agents are allowed to either give a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others. The gift or donation may not exceed a value of \$100 per calendar year, per insured or prospective insured.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of \$25 per gift with no annual aggregate limitation.

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 life or health insurance policy.

The bill is effective July 1, 2018.

II. Present Situation:

The Unfair Insurance Trade Practices Act¹ (Act) prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance. The Act prohibits certain inducements for the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to prospective insurance purchasers. However, the Act also provides exceptions to these provisions.

The Act allows a licensed insurer or its agent to provide a gift for the purpose of advertising to insureds, prospective insureds, and others in the form of any article of merchandise having a value of not more than \$25.² Such gifts are exceptions to the Act's prohibitions against issuing specified stock, benefit certificates, shares, securities, or contracts as an inducement to insurance;³ engaging in specified acts of unfair discrimination;⁴ and providing unlawful rebates. While the exception restricts the value of the advertising gift, it does not limit the frequency of giving or the aggregate value of gifts given over any period of time.

III. Effect of Proposed Changes:

Section 1 amends s. 626.9541(1)(m), F.S., regarding advertising gifts permitted under the Unfair Insurance Trade Practices Act. The bill allows insurers or their agents to either make a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others.

The bill expands the items that insurers or their agents may give to include goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items.

The bill provides that total value of gifts or charitable contributions may not exceed \$100 in a calendar year and prohibits the giving of both merchandise and charitable contributions to a policyholder or prospective policyholder in the same year.

The bill exempts such gifts and charitable contributions from the prohibitions in paragraphs (f), (g), and (h) of s. 626.9541(1), F.S. Generally, rebates are unlawful under the Act. For example, it is an unfair method of competition and unfair act or practice to pay any valuable consideration or inducement not specified in the insurance contract as an inducement to insurance under s. 626.9541(1)(h)1.b., F.S. The bill eliminates the requirement that gifts be for the purpose of advertising, thus converting the provision allowing advertising gifts to a provision allowing certain inducements to purchase insurance.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of a \$25 value per gift with no annual aggregate limitation.

The bill also creates an exception to the prohibitions of the Act to allow insurers or their agents to offer complimentary grief counseling or funeral planning services and discounted rates on

¹ Section 626.9541, F.S.

² The \$25 limit has been in place since 1989. Chapter 89-360, Laws of Fla.; Section 626.9541(1)(m), F.S.

³ Section 626.9541(1)(f), F.S.

⁴ Section 626.9541(1)(g), F.S.

funeral services as part of a group life or health insurance policy. Funeral planning services or funeral services must be rendered by persons licensed under ch. 497, F.S., or licensed under the applicable laws in another jurisdiction in which the funeral provider is located. The contact to such funeral providers must be initiated by the beneficiaries or family members of the group policy insured and not by the funeral provider. The bill provides that such offerings are not an advertisement, designation, direction, rebate, or inducement.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers and agents will be allowed to provide insureds, prospective insureds, and others with a limited amount of gifts, gift cards and services, or provide a charitable donation, as an appreciation for doing business.

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 Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 23, 2018:

The CS:

- Changes the term customer to insured.
- Clarifies that merchandise and a charitable contribution cannot both be provided to insureds or prospective insureds in the same year.
- Allows group life and health insurers to offer policyholders, at no additional cost, funeral planning services and grief counseling provided by the proper license holders. Such added benefits are not considered an advertisement, designation, direction, inducement or rebate under the Unfair Insurance Trade Practices Act.

- B. **Amendments:**

None.