

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1473

Prohibited Free Insurance Practices

SPONSOR(S): Brown

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Jobs & Entrepreneurship Council</u>	<u>8 Y, 5 N, As CS</u>	<u>Davis</u>	<u>Thorn</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, the law prohibits advertising, offering, or providing free insurance to induce the purchase or sale of real or personal property or directly or indirectly connected services. Florida law provides seven exceptions to this prohibition.

The bill provides an additional exception: insurance covering communications equipment. Communications equipment is defined as "handsets, pagers, or personal digital assistants used to originate or receive communications signals or service."

If the person paying for the insurance has an ongoing contractual interest or other economic interest in the communications equipment, or the person paying for the insurance requires the communications equipment to deliver its services, the person may provide free insurance covering such equipment.

The bill does not create a fiscal impact for state or local governments.

The bill will become effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty--- The bill increases the options available to communications equipment insurers to provide blanket insurance policies to communications equipment vendors who, in turn, offer free insurance to their customers.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Communications Equipment Warranties and Insurance

When a customer purchases a cell phone (or other form of communications equipment), a variety of service options are usually available. Two of these options are a service warranty and insurance. Warranties generally cover mechanical breakdowns, whereas insurance generally covers lost or stolen equipment. Customers may purchase a warranty and/or insurance. State law specifically prohibits providers from providing free service warranties¹ or free insurance,² considering both practices to fall into the category of unfair competition/unfair or deceptive acts or practices.

Free Insurance Prohibitions and Exceptions

Section 626.9541, Florida Statutes, of the Florida Insurance Code defines unfair methods of competition and unfair or deceptive acts or practices, among them, “advertising, offering, or providing free insurance as an inducement to the purchase or sale of real or personal property or of services directly or indirectly connected with such real or personal property.”

The section defines free insurance two ways: first, free insurance is insurance that the purchaser of real or personal property or services receives without being assessed an identifiable and additional charge for the insurance.³ Additionally, free insurance is insurance for which there is an identifiable or additional charge, but the charge is less than the cost of the insurance to the seller (or other person, other than the insurer).⁴

Currently, there are seven exceptions to the prohibition on free insurance. They are: (1) 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; (2) blanket disability insurance; (3) credit life insurance or credit disability insurance; (4) any individual, isolated, nonrecurring unadvertised transaction not in the regular course of business; (5) title insurance; (6) 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; or (7) 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 travel agency.

¹ Section 634.436 (8), F.S.

² Section 626.9541(1)(n), F.S.

³ Section 626.9541(1)(n)2.a., F.S.

⁴ Section 626.9541(1)(n)2.b., F.S.

PROPOSED CHANGES

The bill proposes an eighth exception for free insurance covering communications equipment. The bill defines "communications equipment" for the purposes of this exception as "handsets, pagers, or personal digital assistants used to originate or receive communications signals or service."

Two conditions must be met in order to utilize the exception. First, the person paying for the insurance must either (a) have an ongoing contractual interest or other economic interest in the communications equipment, or (b) require the communications equipment to deliver its services. Second, the person paying for the insurance must disclose the cost of the insurance at the time the communications equipment is sold.

For instance, handset (cellular phone) providers often sell a handset to a customer in conjunction with a 1-year or 2-year service agreement. In order to ensure that a customer maintains the service throughout the entire contractual period, it is in the provider's best interest to keep a phone in the customer's hands. This is so because if a customer loses a phone, the customer may not continue to pay for service for a phone that he or she no longer has. Thus, the provider has an ongoing contractual interest as well as an economic interest in the cell phone, ensuring that the full length of the service contract can be completed and the customer continues to pay for the service throughout. Furthermore, in this instance, the cell phone is required for the provider to deliver its services. Thus, this exception would be available to the provider so long as the provider discloses the cost of the insurance at the time of sale.

Essentially, the bill allows an insurer to sell a blanket policy to a communications equipment and service vendor and allows the vendor to provide free insurance to customers who have purchased a warranty. The free insurance would be available only in conjunction with paid warranty service coverage.

C. SECTION DIRECTORY:

Section 1: Amends section 626.9541(1)(n); provides exception to free insurance prohibition for insurance covering communications equipment.

Section 2: Provides that act will take effect upon becoming law.

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:

The entrance of additional providers into the insurance arena may have a fiscal impact on companies who currently sell this type of insurance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 12, 2007, the Jobs and Entrepreneurship Council adopted one amendment. The amendment requires that the person paying for the communications equipment insurance disclose the cost of the insurance at the time the communications equipment is sold.

The staff analysis was updated to reflect the amendment.