

**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 1032

INTRODUCER: Commerce and Tourism Committee and Senator Mayfield

SUBJECT: Unfair Insurance Trade Practices

DATE: April 17, 2017

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

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

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1032 allows a licensed insurer or its agent to give advertising and promotional gifts to insureds and prospective insureds that do not exceed total value of \$100 within one calendar year. Advertising and promotional gifts include articles of merchandise, goods, wares, gift cards, gift certificates, event tickets, and other items. The bill also allows a licensed insurer or its agent to make charitable contributions up to \$100 per calendar year on behalf of each insured or prospective insured.

Under current law, a licensed insurer and its agent may give out gifts valued at not more than \$25 for advertising purposes. The bill clarifies that title insurance agents, title insurance agencies, and title insurers remain subject to the \$25 maximum value restriction for any article of merchandise given to insureds or prospective insureds for the purpose of advertising.

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 gift articles 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.<sup>1</sup> The \$25 limit has been in place since 1989.<sup>2</sup>

The Insurance Code<sup>3</sup> 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.<sup>4</sup> The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”<sup>5</sup> 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 a licensed insurer and its agent to give out goods, wares, gift cards, gift certificates, event tickets, and other items in addition to articles of 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 customer or prospective customer.

The bill allows a licensed insurer and its agent to make charitable contributions, as defined in s. 107(c) of the Internal Revenue Code, of up to \$100 per calendar year on behalf of each insured or prospective insured.

The bill clarifies that title insurance agents, title insurance agencies, and title insurers remain subject to the \$25 maximum value restriction for any article of merchandise given to insureds or prospective insureds for the purpose of advertising.

The bill takes effect July 1, 2017.

---

<sup>1</sup> 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.

<sup>2</sup> Chapter 89-360, Laws of Fla.

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

<sup>4</sup> 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).

<sup>5</sup> MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise> (last visited April 7, 2017).

**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:

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 Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism Committee on April 17, 2017:**

The committee substitute:

- Removes prizes from the list of promotional items that may be given by a licensed insurer or its agent under certain circumstances;

- Removes the provision requiring listed items to be given for the purpose of conducting a promotional or advertising program;
- Limits the allowable value of items given by a licensed insurer or its agent to a total value of \$100 or less “per customer or prospective customer” per calendar year;
- Allows a licensed insurer or its agent to make charitable contributions up to \$100 per calendar year on behalf of each insured or prospective insured; and
- Clarifies that any article of merchandise given by title insurance agents, title insurance agencies, or title insurers to insureds or prospective insureds for the purpose of advertising may not exceed a value of \$25.

B. Amendments:

None.