

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 483	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Unfair Insurance Trade Practices	114	Y's 0	N's
<b>SPONSOR(S):</b>	Commerce Committee; Insurance & Banking Subcommittee; Yarborough and others	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/CS/SB 762			

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**SUMMARY ANALYSIS**

CS/CS/HB 483 passed the House on February 14, 2018, and subsequently passed the Senate on March 9, 2018.

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these are prohibitions on certain inducements to the purchase of insurance; however, there are also exceptions provided 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. This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given over any period of time. The \$25 limit has been in place since 1989.

The bill expands the exception for advertising gifts to:

- Allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise;
- Authorize charitable contributions in the name of insureds or prospective insureds, up to the specified limit;
- Remove the limitation that the gifts be for advertising purposes;
- Increase the maximum allowed value from \$25 to \$100 per insured or prospective insured; and
- Limit the total value given to any insured or prospective insured to \$100 in one calendar year.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate \$25 gift value with no annual aggregate limitation).

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill was approved by the Governor on April 6, 2018, ch. 2018-149, L.O.F., and will become effective on July 1, 2018.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

The Unfair Insurance Trade Practices Act,<sup>1</sup> among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.<sup>2</sup> It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to 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 also 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 Florida Insurance Code<sup>3</sup> related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.<sup>4</sup> This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given. The \$25 limit has been in place since 1989.<sup>5</sup>

The Florida Insurance Code 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 Florida Insurance Code.<sup>6</sup> The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”<sup>7</sup> Therefore, insurers and agents are allowed to give saleable items valued at \$25 or less to others for advertising purposes.

The bill expands the exception to allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other 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 the item given from \$25 to \$100 per insured or prospective insured. It also applies the value limit per insured or prospective insured over one calendar year, rather than per gift without an annual limit.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate \$25 gift value with no annual aggregate limitation).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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<sup>1</sup> part IX, ch. 626, F.S.

<sup>2</sup> s. 626.9541, F.S.

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

<sup>4</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. s. 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. s. 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. s. 634.282(17), F.S.

<sup>5</sup> Ch. 89-360, Laws of Fla.

<sup>6</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>7</sup> MERRIAM-WEBSTER, DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise>.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. While insurers and agents may see increased opportunities for solicitation and sales through use of higher value and new types of advertising and promotional gifts, the impact is not known.

D. FISCAL COMMENTS:

None.