

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 Rules

BILL: CS/CS/SB 312

INTRODUCER: Rules Committee; Banking and Insurance Committee; and Senator Collins

SUBJECT: Insurance

DATE: April 25, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	Fav/CS
2.	Denny	Cibula	JU	Favorable
3.	Thomas	Twogood	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 312 reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

The bill also authorizes a life or health insurer or a life or health agent of the life or health insurer to offer or provide value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy. Such products or services must relate to the insurance coverage and be primarily designed to do one or more of the following:

- Provide loss mitigation or control;
- Reduce claim or claim settlement costs;
- Provide education about liability risks or risk of loss to people or property;
- Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health, or reduce the risk of death or disability; or
- Assist in the administration of employee or retiree benefit insurance coverage.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

II. Present Situation:

Life Insurance Agents

Section 626.7851, F.S., sets forth education or experience requirements for becoming a life insurance agent. Requirements include:

- Successful completion of 40 hours of coursework in life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Successful completion of at least 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Earned or maintained an active designation as Chartered Financial Consultant from the American College of Financial Services; or Fellow, Life Management Institute from the Life Management Institute;
- Held an active license in life insurance in another state, where such state grants reciprocal treatment to Florida licensees; or
- Been employed full time by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) in life insurance regulatory matters for at least one year if the application for the examination is made within 4 years after leaving employment and if the employee was not terminated for cause.

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,¹ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance and prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance.² 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.

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 charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to \$100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.³ Insurers are allowed to offer and give

¹ Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.

² Section 626.9541, F.S.

³ Rule 69B-186.010, F.A.C., Unlawful Rebates and 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,

insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.⁴ There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.⁵

A person who commits acts prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to \$5,000 for each nonwillful violation, and up to \$40,000 for each willful violation.⁶ However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.⁷ Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of up to \$5,000 for each nonwillful violation, and up to \$75,000 for each willful violation.⁸

Anti-Rebating Laws

Rebating is the practice whereby an agent or broker reduces or shares his or her commission with an insured as way to induce a customer to purchase an insurance policy. Historically, rebates were used in the life insurance industry.⁹ However, anti-rebate laws began to be enacted when rebates began to threaten the solvency of life insurance companies and raised questions around unfair discriminatory practices.¹⁰ Supporters of the laws argued it kept the consumer's focus on a product's merits, not on the size of the rebate. Opponents suggested the laws infringed on their rights to competition and stifled innovation. Today, most states have enacted anti-rebate statutes and many have enacted the National Association of Insurance Commissioners' (NAIC) Unfair Trade Practices Act (Model #880) created in 1945. The Model Act provides a uniform framework for the state related to anti-rebating issues and concerns. Over time, numerous exceptions have been enacted to these laws. The most common exceptions are for promotion items, referrals, raffles, charity donations, and value-added services.

Rebates are common in many industries, but they present a different set of issues in the insurance area. This is due to a number of reasons:

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. s. 2607 (2017).

⁴ Section 626.9541(5), F.S.

⁵ 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(9), 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, F.S.

⁶ Section 626.9521(2), F.S.

⁷ See, e.g., Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.

⁸ Section 626.9521(3)(b), F.S.

⁹ *Time to Dust Off the Anti-Rebate Laws*, Journal of Insurance Regulation, 2017, <https://content.naic.org/sites/default/files/jir-za-36-07-el-dust-off-anti-rebate.pdf> (last accessed March 24, 2023).

¹⁰ *Time to Dust Off the Anti-Rebate Laws - Summary*, National Association of Insurance Commissioners, <https://content.naic.org/sites/default/files/cipr-brief-time-dust-anti-rebate-laws.pdf> (last accessed March 24, 2023).

- In other industries, the rebate is typically offered by the manufacturer directly. For insurance products, the rebate is offered by an intermediary (the agent).
- Insurance rates are set by filing with the state regulators and have the cost of agent commissions built into the premium. If an agent has the capacity to give a rebate on the commission, it may be considered as a factor that the rate is too high.
- Giving rebates on insurance products to the policyholder is not transparent. This may give the agent an advantage over other agents, but does not affect competition between insurers themselves.

Emerging technologies and innovations create new challenges and opportunities regrading insurance products and anti-rebating laws.¹¹ Value-added services encompass many of the emerging technologies used for risk management and identification, such as water sensors given to homeowners for early detection of water damage or tracking shipping containers. There is substantial movement to update the anti-rebating laws to strike a new balance between protecting the consumer and allowing for innovation.

The NAIC updated its Model Act in 2020 with a substantial rewrite to Section 4(H) regarding anti-rebating.¹² Nine states have enacted some form of the updated rebating provisions - Connecticut, Georgia (property and casualty), Kansas, Nebraska, New Mexico, North Dakota, Ohio, Rhode Island, and Vermont. Indiana has adopted provisions from the National Council of Insurance Legislators' Model Act.¹³ Eight states are currently pursuing legislation - Florida, Georgia (life), Hawaii, Iowa, Maryland, Oklahoma, South Dakota, and Wyoming.¹⁴

A Timeline of Anti-Rebating¹⁵

- 1887 – Massachusetts enacts the first anti-rebating statute.
- 1889 – New York enacts an anti-discrimination law mandating equal treatment of individuals in the same actuarial class.
- 1895 – Thirty insurers enter into an anti-rebating agreement disallowing the practice by agents.
- 1945 – The federal McCarran-Ferguson Act¹⁶ is passed, and the NAIC develops Model #880.
- 1988 – California repeals anti-rebating with the passage of Proposition 103.
- 1990 – Florida amends the anti-rebating law, keeping rebating illegal but allowing specific exceptions.

¹¹ *Id.*

¹² *Unfair Trade Practices Act*, National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/inline-files/MO880%20-%202020%20revisions-12042020_As_Amended.pdf (last accessed March 24, 2023).

¹³ *Rebate Reform Model Act*, National Council of Insurance Legislators, <https://ncoil.org/wp-content/uploads/2020/05/NCOIL-Rebate-Reform-Model-FINAL-3-8-20-3.pdf> (last accessed March 24, 2023).

¹⁴ Information provided by email to Committee staff by the NAIC on February 6, 2023 (on file with the Committee on Banking and Insurance).

¹⁵ *See, Time to Dust Off the Anti-Rebate Laws – Summary* fn 86.

¹⁶ 5 U.S. Code section 1011 et seq. Section 1011 of the Act provides “that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.”

- 2009 – present – A wave of states begin raising monetary limits for promotional items, clarifying and revising rules for value-added services, and carving out additional exceptions to anti-rebating laws.
- 2019 – The Innovation and Technology (EX) Task Force begins discussion of anti-rebating amendments to Model #880.
- 2020 – The NAIC updates the anti-rebate provisions of Model #880.

III. Effect of Proposed Changes:

Life Insurance Agents

Section 1 amends s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

Unfair Insurance Trade Practices

Section 2 amends s. 626.9541, F.S., to adopt the NAIC Model Act provisions revising anti-rebating laws. The bill provides that it is not considered discrimination or an unlawful rebate by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, to offer value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

- Provide loss mitigation or loss control;
- Reduce claim costs or claim settlement costs;
- Provide education about liability risks or risk of loss to persons or property;
- Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or
- Assist in the administration of employee or retiree benefit insurance coverage.

The bill provides further that:

- The cost of the value-added product or service to the life or health insurer or life or health agent must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.
- The life or health insurer or life or health agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.
- The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the life or health insurer or life or health agent and produced upon request by the OIR or the DFS.

- If a life or health insurer or a life or health agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets the specified criteria, the life or health insurer or life or health agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. A life or health insurer or a life or health agent must notify the OIR or the DFS, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The life or health insurer or life or health agent may commence the program unless the OIR or the DFS, as applicable, objects to the program within 21 days after receiving the notice.
- A life or health insurer, agent, or a representative may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words “free,” “no cost,” or similar words in an advertisement.

The bill grants rulemaking authority to the Financial Services Commission to administer these provisions to ensure consumer protection by addressing, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has an indeterminate direct economic impact on the private sector, but the provision of value added products and services may lead to reduced claim costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.7851 and 626.9541.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 24, 2023:**

The committee substitute replaces “insurer” and “agent” with “life or health insurer” and “life or health agent”, respectively, throughout the bill for clarification.

CS by Banking and Insurance on March 29, 2023:

The committee substitute makes the following changes:

- Removed provisions in the bill that authorized a life insurer, long-term care insurer, or a disability income insurer authorized to do business in this state to use genetic information for underwriting purposes if the genetic information is contained in the applicant’s medical record.
- Removed language describing particular value-added products or services that was redundant of, and potentially conflicted with, existing provisions in the Act regarding gifts given by insurers to policyholders.
- Adds a new section amending s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts - from 40 hours to 30 hours.

B. Amendments:

None.