HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1111 Value-added Insurance Products
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Fortenberry	Lloyd

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act (Act), among other things, 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 to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The Act describes prohibited discrimination and prohibits sliding.

Value-added insurance products or services (VAS) are provided with the sale of insurance, but extend beyond simply providing insurance coverage. Examples of VAS include risk control or claims management services, funeral planning, or financial planning. Depending on how VAS are structured or offered, there is a concern that by providing them to policyholders, insurers may violate the Act.

The bill establishes that certain actions by insurers related to value-added insurance products are not discrimination or unlawful rebates under the Code. All of these criteria regarding the value-added insurance products or services must be met for the actions to be excluded:

- Offered at no cost or reduced cost;
- Not specified in the insurance policy;
- Offered or provided by an insurer, insurance agent, or employee, affiliate, or third-party representative of the insurer or insurance agent; and
- 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.

Under the bill, the cost to the insurer or agent offering the product or service must be reasonable in comparison to the customer's premiums or insurance coverage for the type of policy. The bill specifies that the availability of the product or service must be based on documented objective evidence maintained by the insurer or agent and produced to OIR or DFS upon request. If an insurer or agent has a good faith believe, but lacks sufficient evidence to demonstrate, that the product or service meets the criteria explained above, the insurer or agent may provide the product or service as part of a pilot or testing program implemented for up to one year. The insurer or agent must notify OIR or DFS, as applicable, of the pilot or testing program before beginning the program. After providing notification, the insurer or agent may begin the program unless OIR or DFS objects to it within 21 days after receiving the notice. An insurer, agent, or representative may not: offer to provide insurance or inducement to the purchase of another policy; or use the words "free" or "no cost," or similar words in an advertisement.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate direct economic impact on the private sector.

The bill is effective July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unfair Methods of Competition and Unfair or Deceptive Acts

The Unfair Insurance Trade Practices Act (Act),[1] among other things, defines 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 Act describes prohibited discrimination, which includes refusal to insure anyone solely because of the following reasons:[3]

- The insured's race, color, creed, marital status, sex, or national origin;
- The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;
- The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;
- The insured's or applicant's failure to purchase noninsurance services or commodities, including motor vehicle services;
- The fact that the insured or applicant is a public official; or
- The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

The Act also prohibits sliding, which includes:

- Representing to an applicant that a specific ancillary coverage or product is required by law when it is not;
- Representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and
- Charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.[4]

There are 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.[5]

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[1] Ch. 626, F.S., part IX.
[2] S. 626.9541, F.S.
[3] S. 626.9541(1)(x), F.S.
[4] S. 626.9541(1)(z), F.S.
[5] 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).

Value-added Insurance Products or Services

Value-added insurance products or services (VAS) are provided with the sale of insurance, but extend beyond simply providing insurance coverage.[6] When selecting between competing insurers, the type of quality of these services provided by an agent or insurer may be important factors in an applicant's decision making.[7] VAS may include risk control or claims management services.[8] For example, those VAS provided with employer practices liability insurance attempt to prevent and control claims covered by this type of insurance and include: [9]

- Human resource audits;
- Training and reference manuals;
- Sample employee handbooks;
- Loss prevention software; and
- Access to hotlines manned by human resource professionals.

VAS are also often included with life insurance to provide extra support for decisions that must be made shortly after the loss of a loved one or at other difficult times.[10] These VAS include:[11]

- Will and funeral preparation services;
- Counseling services; and
- Accelerated benefit cash advances.

Depending on how VAS are structured or offered, there is a concern that by providing them to policyholders, insurers may violate the Act. In 2021, The National Association of Insurance Commissioners (NAIC) created a model Unfair Trade Practices Act, that, among other provisions, addresses these concerns regarding VAS and clarifies the circumstances under which VAS are not unfair trade practices.

Effect of the Bill

The bill codifies certain portions of the NAIC Unfair Trade Practices Act. It establishes that certain actions by insurers related to VAS are not discrimination or unlawful rebates under the Act. All of these criteria regarding the value-added insurance products or services must be met for the provision of VAS to be excluded:

- Offered at no cost or reduced cost;
- Not specified in the insurance policy;
- Offered or provided by an insurer, insurance agent, or employee, affiliate, or third-party representative of the insurer or insurance agent; and
- 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

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[6] *See* IRMI, *Value-added services*, https://www.irmi.com/term/insurance-definitions/value-added-services (last visited Mar. 19, 2023).
[7] *Id.*
[8] *Id.* VAS help to prevent or mitigate covered losses.
[9] *Id.*
[10] *The Hartford*, *Protecting and Preparing Employees with the Value-added Services of Life Insurance*, https://www.thehartford.com/insights/employee-benefits/value-added-services-life-insurance (last visited Mar. 19, 2023).
[11] *Id.*

- Assist in the administration of employee or retiree benefit insurance coverage.

Under the bill, the cost to the insurer or agent offering the product or service must be reasonable in comparison to the customer's premiums or insurance coverage for the type of policy. The insurer or agent must ensure the customer receives the contact information necessary to assist the customer with the product or service. The bill specifies that the availability of the product or service must be based on documented objective evidence maintained by the insurer or agent and produced to OIR or DFS upon request.

If an insurer or agent has a good faith believe, but lacks sufficient evidence to demonstrate, that the product or service meets the criteria explained above, the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program implemented for a maximum of one year. The bill requires that the insurer or agent notify OIR or DFS, as applicable, of the pilot or testing program before beginning the program. After providing notification, the insurer or agent may begin the program unless OIR or DFS objects to it within 21 days after receiving the notice.

The bill establishes that an insurer, agent, or representative may not:
- Offer to provide insurance or inducement to the purchase of another policy;
- Use the words "free" or "no cost," or similar words in an advertisement.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.9541, F.S. relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2. Provides an effective date of July 1, 2023.

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 bill has an indeterminate direct economic impact on the private sector, but VAS may lead to reduced claim costs to the extent they fulfill their intended purpose.[12]

D. FISCAL COMMENTS:

[12] A bill analysis has been requested from OIR, but has not been received at the time of publication of this analysis.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides the Financial Services Commission with the authority to adopt rules necessary to administer the statutory changes set forth in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES