

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1001 Timeshares

**SPONSOR(S):** Economic Affairs Committee; Judiciary Committee; Business & Consumer Affairs Subcommittee and Eisnaugle

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Collins	Creamer
2) Judiciary Committee	16 Y, 0 N, As CS	Caridad	Havlicak
3) Economic Affairs Committee	15 Y, 0 N, As CS	Collins	Tinker

### SUMMARY ANALYSIS

The bill amends ch. 721, F.S., to require the full and fair disclosure of terms, conditions and services offered by timeshare resale service providers. Specifically, the bill:

- Redefines the term 'resale service provider;'
- Defines the terms 'consumer resale timeshare interest,' 'consumer timeshare reseller,' 'resale broker,' 'resale brokerage services,' 'resale advertiser,' and 'resale advertising service;'
- Provides specific activities that a resale service provider may not engage in;
- Provides specific activities that a resale advertising service provider may not engage in;
- Requires resale advertising service providers to comply with certain contract requirements, including a minimum right of termination that must be afforded to the consumer reseller;
- Provides that a violation of this section is a violation by both the resale service provider and the individual actually committing the violation;
- Provides jurisdiction for Florida courts regarding violations of this section by a resale advertising service provider who offers services related to a timeshare interest located or offered within the state, or in a multi-state timeshare plan registered to be offered within the state; and
- Provides that violation of this section results in a civil penalty, and is also a violation of the Florida Deceptive and Unfair Trade Practices Act.

The bill has an indeterminate fiscal impact on state funds. See Fiscal Comments.

The bill has an effective date of July 1, 2012.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### *Chapter 721, F.S., Purposes*

Chapter 721, F.S., governs vacation plans and timesharing. Section 721.02, F.S., provides that the purposes of the chapter are to: 1) give statutory recognition to real and personal property timeshare plans in the state; 2) establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans; 3) provide full and fair disclosure to the purchasers and prospective purchasers of timeshare plans; 4) require every timeshare plan in the state to be subjected to the provisions of this chapter; and 5) recognize that a uniform and consistent method of regulation is necessary in order to safeguard Florida's tourism industry and the state's economic well-being. No mention is made regarding resale service providers.

###### *Definition of Resale Service Provider*

A "resale service provider" is defined as any person who uses unsolicited telemarketing, direct mail, or email in connection with the offering of resale brokerage and/or advertising services to owners of timeshare interests. This definition explicitly states that it does not include developers, managing entities, or exchange companies, to the extent that they offer brokerage and/or advertising services to owners of timeshare interests in their own timeshare plans or members of their own exchange programs.<sup>1</sup>

###### *Resale Service Provider Disclosures*

Section 721.20(9)(a), F.S., requires resale service providers to disclose the description of any fees or costs related to advertising, listing, or selling the timeshare interest that must be paid to the resale service provider or third party, and when that fee is due. Additionally, the resale service provider must disclose the ratio or percentage of the number of timeshare interests for sale versus the number of interests sold by the service provider for the previous two years. This is essentially a success rate of the broker or advertiser's services.

###### *Resale Service Provider Penalties*

Section 721.20(9)(b), F.S., provides that failure by a resale service provider to disclose required information in writing constitutes an unfair and deceptive trade practice pursuant to ch. 501, F.S. Further, any contract entered into in violation of the section is void, which entitles the purchaser to a full refund.

##### **Effect of Proposed Changes**

###### *Chapter 721, F.S., Purposes*

The bill amends s. 721.02, F.S., to designate that an additional purpose of ch. 721, F.S., is to require full and fair disclosure of terms, conditions, and services by resale service providers who are acting on

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<sup>1</sup> Fla. Stat. § 721.05(44).

behalf of consumer timeshare resellers or purchasers, regardless of the business model employed by the service provider.

### *Definition of Resale Service Provider*

The bill amends s. 721.05(44), F.S., to define a 'resale service provider' as any advertiser or other person or entity who offers or uses telemarketing, direct mail, email, or any other means of communication in connection with the offering of resale brokerage and/or advertising services to consumer timeshare resellers. This definition includes agents and employees of such person or entity. The definition does not include:

- Developers or managing entities to the extent that they offer brokerage or advertising services to owners of timeshare interests in their own timeshare plans;
- A consumer timeshare reseller who acquires a timeshare interest for his or her own use, and later offers that interest for rent or offers for resale seven or fewer of such timeshare interests within a year; or
- A resale broker to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance.

In addition, to better define "resale service provider," the bill defines the terms: "consumer resale timeshare interest," "consumer timeshare reseller," "resale broker," "resale brokerage services," "resale advertiser," and "resale advertising service."

- "Consumer resale timeshare interest" is defined as a timeshare interest owned by a purchaser; one or more reserved occupancy rights relating to a timeshare interest owned by a purchaser; or one or more reserved occupancy rights relating to or arranged through an exchange program in which a purchaser is a member.
- "Consumer timeshare reseller" is defined as a purchaser that acquires a timeshare interest for his or her own use and who later offers the interest for resale or rental.
- "Resale broker" is defined as any person, including an agent or employee of such person, who is licensed pursuant to ch. 475, F.S.,<sup>2</sup> and who offers or provides resale brokerage services to consumer timeshare resellers for compensation or valuable consideration. The offer may be made in person, by mail, by telephone, through the Internet, or by any other medium of communication.
- "Resale brokerage services" is defined as any activity that is traditionally performed by a broker and is carried out in relation to a consumer timeshare interest located or offered within the state.
- "Resale advertiser" is defined as any person, including an agent of such person, who offers resale advertising services to consumer timeshare resellers for compensation or valuable consideration. Generally, the term does not include: 1) media (i.e. a newspaper, periodical or website owner, operator or publisher), unless such media derives more than ten percent of its gross revenue from providing resale advertising services; and 2) a resale broker, developer, or managing entity so long as they are not providing advertising services.
- "Resale advertising service" is defined as any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer timeshare interest located or offered within the state.

### *Resale Service Provider Disclosures*

The bill eliminates s. 721.20(9), F.S., and instead creates a new section providing disclosure requirements and penalties regarding resale service providers. These requirements are similar to the current requirements in s. 721.20(9), F.S. Specifically, before providing resale advertising services, a service provider is required to disclose:

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<sup>2</sup> Chapter 475, F.S., relates to real estate brokers, sales associates, schools and appraisers.

- The description of any fees or costs related to the service that must be paid to the resale service provider or third party; and
- When the fees or costs are due.

The bill eliminates the requirement that resale service providers supply the consumer with their success ratios for the previous two years, unless the resale service provider states or implies that it has sold or rented a specific number of timeshare interests.

In addition, the bill places specific limitations on the actions of resale brokerage activities. Specifically, a resale service provider may not provide brokering services unless validly licensed to do so pursuant to ch. 475, F.S.

The bill also provides a list of prohibited activities relating to resale advertising service providers. Specifically, when offering resale advertising services, an advertiser may not:

- State or imply that it will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the timeshare interest;
- State or imply, directly or indirectly, that it has identified a person interested in buying or renting the timeshare interest without providing the contact information for the prospective purchaser;
- State or imply, directly or indirectly, that resales or rentals have been achieved or generated as a result of its advertising services, unless it possesses and is able to provide documentation to substantiate the statement to the consumer timeshare reseller. In such circumstances, the resale service provider must disclose the ratio or percentage of all the timeshare interests that have resulted in a sale or rental versus the number of timeshare interests advertised for sale or rent by the resale advertiser for each of the previous two calendar years, depending on whether the representation is about sales or rentals;
- State or imply that the timeshare interest has a specific resale value;
- Make or submit any charges or otherwise collect money from a consumer timeshare reseller totaling more than \$75 per year, until after the resale advertiser has received a signed, written contract from the consumer reseller;
- Make or submit any charges or otherwise collect money from a consumer timeshare reseller totaling less than \$75 per year, unless the consumer timeshare reseller has been provided a copy of the terms and conditions of the contract, and the consumer reseller has agreed to those terms and conditions by mail or electronic delivery; or
- Engage in any advertising services for compensation or valuable consideration without first obtaining a written contract, signed by the consumer reseller.

Further, a contract entered into by a resale advertising service provider must contain the following information:

- The name, address, phone number, and email address of the advertiser;
- The mailing and email address at which a contract cancellation notice may be delivered by the consumer;
- A complete description of all resale advertising services to be provided, including details regarding the advertising medium(s) expected to be used, the dates or time intervals for such advertising, the minimum number of times the advertising will be run in each medium, the itemized cost of each advertising service to be provided, and a statement of the total cost of all advertising services to be provided;
- A standardized statement of the timeshare owner's right of cancellation including the consumer reseller's right to cancel the contract within ten days, which is to immediately precede the consumer reseller's signature; and
- A statement that any resale contract entered into by or on behalf of the consumer reseller must comply with the provisions of s. 721.065, F.S., regarding resale purchase agreements, including the requirement of a ten-day cancellation period for the prospective purchaser.

If a resale advertiser fails to comply with the above contract requirements, the contract is voidable at the option of the consumer reseller, available within one year after the date the contract is executed. Moreover, the resale advertising service provider may not fail to honor a properly executed cancellation notice, or fail to provide a full refund in compliance with the right of cancellation statement.

### *Resale Service Provider Penalties*

The bill creates s. 721.205, F.S., to provide a number of penalties regarding violation of the section. Specifically, the bill definitively states that it is the duty of the resale service provider to supervise, manage, and control all aspects of the offering of resale brokerage and/or advertising services. Any violation made while offering resale services is deemed a violation by both the resale service provider and the individual who actually commits the violation.

In addition, the bill specifically addresses resale advertising services. Specifically, it establishes that providing resale advertising services related to timeshare interests located or offered within the state constitutes “operating, conducting, engaging in, or carrying on a business or business venture” for the purposes of s. 48.193(1), F.S., relating to personal jurisdiction. Further, providing resale advertising services related to timeshare interests in a multi-state timeshare plan registered to be offered within the state constitutes “operating, conducting, engaging in, or carrying on a business or business venture” for the purposes of s. 48.193(1), F.S. These provisions effectively afford Florida courts with jurisdiction in the event of a dispute between the advertising service and the consumer reseller or another third party, so long as the timeshare interest is located within the state. It is immaterial whether any of the parties involved in the dispute are residents of the state.

Finally, the bill provides that the use of any unfair or deceptive practice by any person in connection with resale advertising services is a violation of s. 721.205, F.S., and that any violation of the section is subject to a civil penalty of not more than \$15,000 per violation. Moreover, a violation of the section will also be considered an unfair and deceptive trade practice as prohibited by s. 501.204, F.S., and is subject to the penalties and remedies otherwise provided in the Florida Deceptive and Unfair Trade Practices Act.<sup>3</sup>

The bill has an effective date of July 1, 2012.

#### B. SECTION DIRECTORY:

**Section 1:** amends s. 721.02, F.S., to designate that a purpose of ch. 721, F.S., is to require the full and fair disclosure of terms, conditions, and services offered by resale services providers.

**Section 2:** amends s. 721.05(44), F.S., to redefine the definition of “resale service provider,” and creates definitions for “consumer retail interest,” “consumer timeshare reseller,” “resale broker,” “resale brokerage services,” “resale advertiser,” and “resale advertising service.”

**Section 3:** amends s. 721.20, F.S., to eliminate the current resale service provider disclosures and penalties.

**Section 4:** creates s. 721.205, F.S., to provide for increased disclosure and oversight of timeshare resale service providers, including resale advertising services.

**Section 5:** provides for an effective date of July 1, 2012.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>3</sup> See Part II of ch. 501, F.S.

1. Revenues:

The bill may have a positive fiscal impact on the department's trust fund related to an increase in civil penalties. This impact is indeterminate.

2. Expenditures:

The bill may have a negative fiscal impact on the Department of Business and Professional Regulation and the Office of the Attorney General due to increased workload related to compliance oversight. This impact is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be increased disclosure by and oversight of timeshare resale service providers, making these services more transparent to consumers.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require amendment to rule 61B-41.001, F.A.C., which relates to timeshare penalties. Section 4 of this bill stipulates that any violation of the section is subject to a civil penalty not to exceed \$15,000 per violation. The rule may need to be amended to reflect this guideline. Adequate rulemaking authority exists pursuant to s. 721.26(6), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the January 24, 2012 meeting of the Business & Consumer Affairs Subcommittee, one amendment was proposed and adopted. The bill was reported favorably as a Committee Substitute. Specifically, the amendment:

- Eliminated various references to “resale transfer agreements,” “resale transferee entities,” and “solicitation” of consumers;
- Amended the definition of a “resale service provider” to specifically exclude from the definition, a resale broker that offers resale advertising services in connection with resale brokerage services, so long as the resale broker collects no fee for the advertising service in advance;
- Amended the definition of “resale brokerage service” and “resale advertising service” to clarify that the provisions are only applicable to timeshare interests located or offered within the state;
- Eliminates service providers who engage in brokerage services from complying with the disclosure obligations of s. 721.205, F.S.;
- Eliminated the requirement that resale service providers supply the consumer with their success ratios for the previous two years, unless the resale service provider states or implies that it has sold or rented any specific number of timeshare interests;
- Prohibited resale service providers from stating or implying that resales or rentals have been achieved or generated as a result of its advertising services, unless they possess and are able to provide documentation to substantiate the statement to the consumer timeshare reseller;
- Prohibited resale service providers from stating or implying that the timeshare interest has a specific resale value;
- Increased the consumer timeshare reseller’s right to cancel the contract from seven to ten days;
- Eliminated the requirement that resale advertising service providers explicitly state in the contract for services that the resale value of the timeshare interest may be significantly less than it was purchased for;
- Clarified that it is a violation for a consumer resale service provider to fail to refund a consumer pursuant to the Timeshare Owners’ Right of Cancellation; and
- Clarified that Florida jurisdiction is proper in regards to a resale timeshare interest that is located or offered within the state, or in a multi-state timeshare plan registered to be offered within the state.

On February 8, 2012, the Judiciary Committee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Modified the definition of "resale service provider" to exclude a resale broker and to remove exchange companies from the list of entities to which the term does not apply; and made corresponding changes throughout the bill;
- Modified the information which a resale advertiser must provide to a consumer timeshare reseller when the resale advertiser represents that he or she has sold or rented a specific number of timeshare interests; and
- Corrected minor drafting issues.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

On February 16, 2012, the Economic Affairs Committee proposed and adopted one amendment. The bill was reported favorably as a Committee Substitute. Specifically, the amendment:

- Prohibited resale service providers from making or submitting any charges or otherwise collecting money from a consumer timeshare reseller totaling more than \$75 per year, until after the resale advertiser has received a signed, written contract from the consumer reseller.
- Prohibited resale service providers from making or submitting any charges or otherwise collecting money from a consumer timeshare reseller totaling less than \$75 per year, unless the consumer timeshare reseller has been provided a copy of the terms and conditions of the contract, and the consumer reseller has agreed to those terms and conditions by mail or electronic delivery.

The analysis is drafted to the Committee Substitute.