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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2012	.	
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The Committee on Regulated Industries (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (5) of section 721.02, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section to read:

721.02 Purposes.—The purposes of this chapter are to:
(5) Require full and fair disclosure of terms, conditions, and services by resale service providers acting on behalf of consumer timeshare resellers or on behalf of prospective consumer resale purchasers, regardless of the business model



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13 employed by the resale service provider.

14 Section 2. Subsection (44) of section 721.05, Florida
15 Statutes, is amended, and subsections (45) through (50) are
16 added to that section, to read:

17 721.05 Definitions.—As used in this chapter, the term:

18 (44) “Resale service provider” means any resale broker,
19 resale advertiser, or other person or entity, including any
20 agent or employee of such person or entity, who offers or uses
21 unsolicited telemarketing, direct mail, ~~or~~ e-mail, or any other
22 means of communication in connection with the offering of resale
23 brokerage services or resale advertising services to consumer
24 owners of timeshare resellers interests. The term does not
25 include developers, managing entities, or exchange companies to
26 the extent they offer resale brokerage services or resale
27 advertising services to owners of timeshare interests in their
28 own timeshare plans or members of their own exchange programs,
29 or a resale broker to the extent that resale advertising
30 services are offered in connection with resale brokerage
31 services and no fee for the advertising service is collected in
32 advance. The term also does not include a consumer timeshare
33 reseller who acquires a timeshare interest or timeshare
34 interests for his or her own use and occupancy and who later
35 offers the timeshare interest or timeshare interests for rent or
36 offers for resale in a given calendar year seven or fewer of the
37 timeshare interests that he or she acquired for his or her own
38 use and occupancy.

39 (45) “Consumer resale timeshare interest” means:

40 (a) A timeshare interest owned by a purchaser;

41 (b) One or more reserved occupancy rights relating to a



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42 timeshare interest owned by a purchaser; or

43 (c) One or more reserved occupancy rights relating to, or
44 arranged through, an exchange program in which a purchaser is a
45 member.

46 (46) "Consumer timeshare reseller" means a purchaser who
47 acquires a timeshare interest for his or her own use and
48 occupancy and later offers the timeshare interest for resale or
49 rental.

50 (47) "Resale broker" means any person, or any agent or
51 employee of such person, who is licensed pursuant to chapter 475
52 and who offers or provides resale brokerage services to consumer
53 timeshare resellers for compensation or valuable consideration,
54 regardless of whether the offer is made in person, by mail, by
55 telephone, through the Internet, or by any other medium of
56 communication.

57 (48) "Resale brokerage services" means, with respect to a
58 consumer resale timeshare interest in a timeshare property
59 located or offered within this state, any activity that directly
60 or indirectly consists of any of activities described in s.
61 475.01(1)(a).

62 (49) "Resale advertiser" means any person who offers,
63 personally or through an agent, resale advertising services to
64 consumer timeshare resellers for compensation or valuable
65 consideration, regardless of whether the offer is made in
66 person, by mail, by telephone, through the Internet, or by any
67 other medium of communication. The term does not include:

68 (a) A resale broker to the extent that resale advertising
69 services are offered in connection with timeshare resale
70 brokerage services and no fee for the resale advertising service



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71 is collected in advance;

72 (b) A developer, managing entity, or exchange company to
73 the extent that any of them offers resale advertising services
74 to owners of timeshare interests in their own timeshare plans or
75 members of their own exchange programs; or

76 (c) A newspaper, periodical, or website owner, operator, or
77 publisher, unless the newspaper, periodical, or website owner,
78 operator, or publisher derives more than 10 percent of its gross
79 revenue from providing resale advertising services. For purposes
80 of this paragraph, the calculation of gross revenue derived from
81 providing resale advertising services includes revenue of any
82 affiliate, parent, agent, and subsidiary of the newspaper,
83 periodical, or website owner, operator, or publisher, so long as
84 the resulting percentage of gross revenue is not decreased by
85 the inclusion of such affiliate, parent, subsidiary, or agent in
86 the calculation.

87 (50) "Resale advertising service" means any good or service
88 relating to, or a promise of assistance in connection with,
89 advertising or promoting the resale or rental of a consumer
90 resale timeshare interest located or offered within this state,
91 including any offer to advertise or promote the sale or purchase
92 of any such interest.

93 Section 3. Subsection (9) of section 721.20, Florida
94 Statutes, is amended to read:

95 721.20 Licensing requirements; suspension or revocation of
96 license; exceptions to applicability; collection of advance fees
97 for listings unlawful.—

98 ~~(9)(a) Prior to listing or advertising a timeshare interest~~
99 ~~for resale, a resale service provider shall provide to the~~



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100 ~~timeshare interest owner a description of any fees or costs~~
101 ~~relating to the advertising, listing, or sale of the timeshare~~
102 ~~interest that the timeshare interest owner, or any other person,~~
103 ~~must pay to the resale service provider or any third party, when~~
104 ~~such fees or costs are due, and the ratio or percentage of the~~
105 ~~number of listings of timeshare interests for sale versus the~~
106 ~~number of timeshare interests sold by the resale service~~
107 ~~provider for each of the previous 2 calendar years.~~

108 ~~(b) Failure to disclose this information in writing~~
109 ~~constitutes an unfair and deceptive trade practice pursuant to~~
110 ~~chapter 501. Any contract entered into in violation of this~~
111 ~~subsection is void and the purchaser is entitled to a full~~
112 ~~refund of any moneys paid to the resale service provider.~~

113 Section 4. Section 721.205, Florida Statutes, is created to
114 read:

115 721.205 Resale service providers; disclosure obligations.-

116 (1) (a) Before engaging in resale advertising services, a
117 resale service provider must provide to the consumer timeshare
118 reseller:

119 1. A description of any fees or costs related to such
120 services that the consumer timeshare reseller, or any other
121 person, is required pay to the resale service provider or to any
122 third party.

123 2. A description of when such fees or costs are due.

124 (b) A resale service provider may not engage in those
125 activities described in s. 475.01(1) (a) without being the holder
126 of a valid and current active license in accordance with chapter
127 475.

128 (2) In the course of offering resale advertising services,



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129 a resale advertiser may not:

130 (a) State or imply that the resale advertiser will provide
131 or assist in providing any type of direct sales or resale
132 brokerage services other than the advertising of the consumer
133 resale timeshare interest for sale or rent by the consumer
134 timeshare reseller.

135 (b) State or imply to a consumer timeshare reseller,
136 directly or indirectly, that the resale advertiser has
137 identified a person interested in buying or renting the
138 timeshare resale interest without providing the name, address,
139 and telephone number of such represented interested resale
140 purchaser.

141 (c) State or imply to a consumer timeshare reseller,
142 directly or indirectly, that sales or rentals have been achieved
143 or generated as a result of its advertising services unless the
144 resale advertiser, at the time of making such representation,
145 possesses and is able to provide documentation to substantiate
146 the statement or implication made to the consumer timeshare
147 reseller. In addition, to the extent that a resale advertiser
148 states or implies to a consumer timeshare reseller that the
149 resale advertiser has sold or rented any specific number of
150 timeshare interests, the resale advertiser must also provide the
151 consumer timeshare reseller the ratio or percentage of either
152 the timeshare interests advertised for sale by the resale
153 advertiser which have actually resulted in a sale, or the ratio
154 or percentage of all timeshare interests advertised for rental
155 which have actually resulted in a rental, for each of the
156 previous 2 calendar years.

157 (d) State or imply to a consumer timeshare reseller that



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158 the timeshare interest has a specific resale value.

159 (e) Make or submit any charge to a consumer timeshare
160 reseller's credit card account, make or cause to be made any
161 electronic transfer of consumer timeshare reseller funds, or
162 collect any payment from a consumer timeshare reseller until
163 after the resale advertiser has received a written contract
164 complying in all respects with paragraph (d) which has been
165 signed by the consumer timeshare reseller.

166 (f) Engage in any resale advertising services for
167 compensation or valuable consideration without first obtaining a
168 written contract to provide such services signed by the consumer
169 timeshare reseller. Notwithstanding any other law, the contract
170 must be printed in at least 12-point type and must contain the
171 following information:

172 1. The name, address, telephone number, and web address, if
173 any, of the resale advertiser and a mailing address and e-mail
174 address to which a contract cancellation notice may be delivered
175 at the consumer timeshare reseller's election.

176 2. A complete description of all resale advertising
177 services to be provided, including, but not limited to, details
178 regarding the publications, Internet sites, and other media in
179 or on which the consumer resale timeshare interest will be
180 advertised, the dates or time intervals for such advertising or
181 the minimum number of times such advertising will be run in each
182 specific medium, the itemized cost to the consumer timeshare
183 reseller of each resale advertising service to be provided, and
184 a statement of the total cost to the consumer timeshare reseller
185 of all resale advertising services to be provided.

186 3. A statement printed in at least 12-point boldfaced type



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187 immediately preceding the space in the contract provided for the
188 consumer timeshare reseller's signature in substantially the
189 following form:

191 TIMESHARE OWNER'S RIGHT OF CANCELLATION

192
193 ...(Name of resale advertiser)... will provide resale
194 advertising services pursuant to this contract. If ...(name of
195 resale advertiser)... represents that ...(name of resale
196 advertiser)... has identified a person who is interested in
197 purchasing or renting your timeshare interest, then ...(name of
198 resale advertiser)... must provide you with the name, address,
199 and telephone number of such represented interested resale
200 purchaser.

201
202 You have an unwaivable right to cancel this contract for
203 any reason within 10 days after the date you sign this contract.
204 If you decide to cancel this contract, you must notify ...(name
205 of resale advertiser)... in writing of your intent to cancel.
206 Your notice of cancellation shall be effective upon the date
207 sent and shall be sent to ...(resale advertiser's physical
208 address)... or to ...(resale advertiser's e-mail address)....
209 Your refund will be made within 20 days after receipt of notice
210 of cancellation or within 5 days after receipt of funds from
211 your cleared check, whichever is later.

212
213 You are not obligated to pay ...(name of resale
214 advertiser)... any money unless you sign this contract and
215 return it to ...(name of resale advertiser)....



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IMPORTANT: Before signing this contract, you should carefully review your original timeshare purchase contract and other project documents to determine whether the developer has reserved a right of first refusal or other option to purchase your timeshare interest or to determine whether there are any restrictions or special conditions applicable to the resale or rental of your timeshare interest.

4. A statement that any resale contract entered into by or on behalf of the consumer timeshare reseller must comply in all respects with s. 721.065, including the provision of a 10-day cancellation period for the prospective consumer resale purchaser.

(g) Fail to honor any cancellation notice received from the consumer timeshare reseller within 10 days after the date the consumer timeshare reseller signs the contract for resale advertising services in compliance with subparagraph (f)3.

(h) Fail to provide a full refund of all money paid by a consumer timeshare reseller within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from a cleared check, whichever is later.

(3) If a resale service provider uses a contract for resale advertising services which fails to comply with subsection (2), such contract shall be voidable at the option of the consumer timeshare reseller for a period of 1 year after the date it is executed by the consumer timeshare reseller.

(4) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service



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245 provider to supervise, manage, and control all aspects of the
246 offering of resale brokerage services or resale advertising
247 services by any agent or employee of the resale service
248 provider. Any violation of this section which occurs during such
249 offering shall be deemed a violation by the resale service
250 provider as well as by the person actually committing the
251 violation.

252 (5) Providing resale advertising services with respect to a
253 consumer resale timeshare interest in a timeshare property
254 located or offered in this state, or in a multisite timeshare
255 plan registered or required to be registered to be offered
256 within this state, including acting as an agent or third-party
257 service provider for a resale service provider, constitutes
258 operating, conducting, engaging in, or carrying on a business or
259 business venture in this state for the purposes of s. 48.193(1).

260 (6) The use of any unfair or deceptive act or practice by
261 any person in connection with resale advertising services is a
262 violation of this section.

263 (7) Notwithstanding any other penalties provided for in
264 this section, any violation of this section is subject to a
265 civil penalty of not more than \$15,000 per violation. In
266 addition, a person who violates any provision of this section
267 commits an unfair and deceptive trade practice as prohibited by
268 s. 501.204 and is subject to the penalties and remedies provided
269 in part II of chapter 501.

270 Section 5. This act shall take effect July 1, 2012.

271
272 ===== T I T L E A M E N D M E N T =====

273 And the title is amended as follows:



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274 Delete everything before the enacting clause
275 and insert:

276 A bill to be entitled
277 An act relating to timeshares; amending s. 721.02,
278 F.S.; revising purposes of the chapter to include the
279 provision of certain disclosure; amending s. 721.05,
280 F.S.; revising the definition of the term "resale
281 service provider"; defining the terms "consumer resale
282 timeshare interest," "consumer timeshare reseller,"
283 "resale broker," "resale brokerage services," "resale
284 advertiser," and "resale advertising service";
285 amending s. 721.20, F.S.; deleting a provision
286 requiring resale service providers to provide certain
287 fee or cost and listing information to timeshare
288 interest owners; creating s. 721.205, F.S.; specifying
289 information that a resale service provider must
290 provide to the consumer timeshare reseller;
291 prohibiting unlicensed resale service providers from
292 engaging in certain activities; prohibiting certain
293 services related to the offering of resale advertising
294 by resale advertisers; providing certain restrictions
295 on the offering of resale advertising services by
296 resale advertisers; providing voidability of certain
297 contracts; providing duties of a resale service
298 provider; providing that the provision of resale
299 advertising services in this state constitutes
300 operating, conducting, engaging in, or carrying on a
301 business or business venture for purposes relating to
302 jurisdiction of the courts of this state; providing



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penalties; providing an effective date.