



CHAMBER ACTION

The Committee on Business Regulation recommends the following:

**Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to sales disclosures; creating s. 475.423, F.S.; specifying the transactions that are subject to the requirements of the act; providing definitions; requiring that certain disclosures be made by the transferor or his or her agent with respect to real property located within a flood hazard area, an area with severe constraints for development, an area having sinkhole activity, a wellhead protection area, a priority wetland zone, a habitat conservation area, an airport's environs, an environmental hazard site, or a radon gas zone; providing that the waiver of such requirements is against public policy; providing certain exceptions; specifying the form to be used as the Property Identification Disclosure Statement; providing requirements for identifying information that accompanies the disclosure statement; providing requirements for delivery of the required disclosure statement; providing a limitation with respect to liability for errors, inaccuracy, or omissions; requiring



29 a third party that provides information with respect to  
 30 the disclosure statement to maintain a specified amount of  
 31 insurance protection; providing that information updates  
 32 are not required after delivery of the required  
 33 disclosures; requiring that disclosures be made in good  
 34 faith; providing that the act does not limit or abridge  
 35 other disclosures required by law; authorizing the  
 36 amendment of a disclosure; providing for delivery of  
 37 disclosures; providing requirements for the licensee or  
 38 broker acting as an agent in a transaction subject to the  
 39 act; specifying liability for willful or negligent  
 40 violation or failure to perform; providing an effective  
 41 date.

42  
 43 Be It Enacted by the Legislature of the State of Florida:

44  
 45 Section 1. Section 475.423, Florida Statutes, is created  
 46 to read:

47 475.423 Property identification disclosure statement.--  
 48 (1)(a) Except as provided in subsection (2), this section  
 49 applies to any transfer by sale, exchange, or installment land  
 50 sale contract of residential properties, wherein one party  
 51 agrees to convey title to real property to another party upon  
 52 the satisfaction of specified conditions set forth in the  
 53 contract and which does not require conveyance of title within 1  
 54 year after the date of formation of the contract, lease with an  
 55 option to purchase, any other option to purchase, ground lease  
 56 coupled with improvements of any real property described in



HB 1649

2003  
CS

57 paragraph (b), or residential stock cooperative, improved with  
58 or consisting of not less than one or more than four dwelling  
59 units.

60 (b) The transferor or his or her agent is required by one  
61 or more of the following to disclose the property's location  
62 within an applicable zone:

63 1. A person who is either acting as an agent for a  
64 transferor of real property that is located within a special  
65 flood hazard area, which is any type Zone "A" or "V" as  
66 designated by the Federal Emergency Management Agency, or the  
67 transferor, if he or she is acting without an agent, shall  
68 disclose to any prospective transferee the fact that the  
69 property is located within a special flood hazard area if:

70 a. The transferor, or the transferor's agent, has actual  
71 knowledge that the property is within a special flood hazard  
72 area; or

73 b. Other readily available and officially adopted  
74 governmental information exists regarding the flood zone.

75 2. A person who is acting as an agent for a transferor of  
76 real property that is located on soils with very severe  
77 constraints for development, or the transferor, if he or she is  
78 acting without an agent, shall disclose to any prospective  
79 transferee the fact that the property is located on soils with  
80 very severe constraints for development pursuant to maps issued  
81 by the United States Department of Agriculture or other readily  
82 available and officially adopted governmental maps and  
83 information if:



84 a. The transferor, or the transferor's agent, has actual  
 85 knowledge that the property is on soils with very severe  
 86 constraints for development; or

87 b. Other readily available and officially adopted  
 88 governmental information exists regarding the soils with very  
 89 severe constraints for development.

90 3. A person who is acting as an agent for a transferor of  
 91 real property that is located in an area impacted by sinkhole  
 92 activity, or the transferor, if he or she is acting without an  
 93 agent, shall disclose to any prospective transferee the fact  
 94 that the property is located in an area impacted by sinkhole  
 95 activity pursuant to readily available and officially adopted  
 96 governmental maps and information if:

97 a. The transferor, or the transferor's agent, has actual  
 98 knowledge that the property is in an area impacted by sinkhole  
 99 activity; or

100 b. Other readily available and officially adopted  
 101 governmental information exists regarding sinkhole activity.

102 4. A person who is acting as an agent for a transferor of  
 103 real property that is located within a quarter of a mile of a  
 104 wellhead protection area, or the transferor, if he or she is  
 105 acting without an agent, shall disclose to any prospective  
 106 transferee the fact that the property is located within a  
 107 quarter of a mile of a wellhead protection area according to  
 108 maps issued by the Department of Environmental Protection or a  
 109 water management district or other readily available and  
 110 officially adopted governmental maps and information if:



HB 1649

2003  
CS

111 a. The transferor, or the transferor's agent, has actual  
112 knowledge that the property is located within a quarter of a  
113 mile of a wellhead protection area; or

114 b. Other readily available and officially adopted  
115 governmental information exists regarding a wellhead protection  
116 area.

117 5. A person who is acting as an agent for a transferor of  
118 real property that is located in a priority wetland zone, or the  
119 transferor, if he or she is acting without an agent, shall  
120 disclose to any prospective transferee the fact that the  
121 property is located in a priority wetland zone pursuant to maps  
122 issued by the Fish and Wildlife Conservation Commission or other  
123 readily available and officially adopted governmental maps and  
124 information if:

125 a. The transferor, or the transferor's agent, has actual  
126 knowledge that the property is located in a priority wetland  
127 zone; or

128 b. Other readily available and officially adopted  
129 governmental information exists regarding a priority wetland  
130 zone.

131 6. A person who is acting as an agent for a transferor of  
132 real property that is located in a strategic habitat  
133 conservation area, or the transferor, if he or she is acting  
134 without an agent, shall disclose to any prospective transferee  
135 the fact that the property is located in a strategic habitat  
136 conservation area pursuant to maps issued by the Fish and  
137 Wildlife Conservation Commission or other readily available and  
138 officially adopted governmental maps and information if:



HB 1649

2003  
CS

139 a. The transferor, or the transferor's agent, has actual  
140 knowledge that the property is located in a strategic habitat  
141 conservation area; or

142 b. Other readily available and officially adopted  
143 governmental information exists regarding a strategic habitat  
144 conservation area.

145 7. A person who is acting as an agent for a transferor of  
146 real property that is located within 2 statute miles of the  
147 nearest point of the nearest runway at any airport, or the  
148 transferor, if he or she is acting without an agent, shall  
149 disclose to any prospective transferee the fact that the  
150 property is located within 2 statute miles of the nearest point  
151 of the nearest runway at any airport if:

152 a. The transferor, or the transferor's agent, has actual  
153 knowledge that the property is located within 2 statute miles of  
154 the nearest point of the nearest runway at any airport; or

155 b. The local jurisdiction has maps that identify  
156 properties that are located within 2 statute miles of the  
157 nearest point of the nearest runway at any airport.

158 8. A person who is acting as an agent for a transferor of  
159 real property that is located within a quarter of a mile of an  
160 environmental hazard site, limited to filed governmental  
161 reports, or the transferor, if he or she is acting without an  
162 agent, shall disclose to any prospective transferee the fact  
163 that the property is located within a quarter of a mile of an  
164 environmental hazard site, including leaking underground storage  
165 tanks, solid waste landfills, incinerators or transfer stations,



HB 1649

2003  
CS

166 national priority list sites, or CERCLIS sites under review by  
167 the United States Environmental Protection Agency if:

168 a. The transferor, or the transferor's agent, has actual  
169 knowledge that the property is located within a quarter of a  
170 mile of an environmental hazard site; or

171 b. Other readily available and officially adopted  
172 governmental information exists regarding environmental hazard  
173 sites.

174 9. A person who is acting as an agent for a transferor of  
175 real property that is located within a mapped radon gas  
176 potential zone pursuant to maps issued by the United States  
177 Environmental Protection Agency or other readily available and  
178 officially adopted governmental maps and information, or the  
179 transferor, if he or she is acting without an agent, shall  
180 disclose to any prospective transferee the fact that the  
181 property is located within a mapped radon gas potential zone if:

182 a. The transferor, or the transferor's agent, has actual  
183 knowledge that the property is located in a mapped radon gas  
184 potential zone; or

185 b. Other readily available and officially adopted  
186 governmental information exists regarding radon gas.

187 (c) Any waiver of the requirements of this section is void  
188 as against public policy.

189 (2)(a) This section does not apply to the following  
190 transfers:

191 1. Transfers pursuant to court order, including, but not  
192 limited to, transfers ordered by a probate court in  
193 administration of an estate, transfers pursuant to a writ of



HB 1649

2003  
CS

194 execution, transfers by any foreclosure sale, transfers by a  
195 trustee in bankruptcy, transfers by eminent domain, and  
196 transfers resulting from a decree for specific performance.

197 2. Transfers to a mortgagee by a mortgagor or successor in  
198 interest who is in default and transfers to a beneficiary of a  
199 deed of trust by a trustor or successor in interest who is in  
200 default.

201 3. Transfers by a fiduciary in the course of the  
202 administration of a decedent's estate, guardianship,  
203 conservatorship, or trust.

204 4. Transfers from one coowner to one or more other  
205 coowners.

206 5. Transfers made to a spouse or to a person or persons in  
207 the lineal line of consanguinity of one or more of the  
208 transferors.

209 6. Transfers between spouses resulting from a judgment of  
210 dissolution of marriage or of legal separation of the parties or  
211 from a property settlement agreement incidental to that  
212 judgment.

213 7. Transfers by sale, resale, exchange, or installment  
214 land sales contract of any manufactured mobile home, mobile home  
215 park, or residential manufactured building.

216 (b) Transfers not subject to this section may be subject  
217 to other disclosure requirements. In transfers that are not  
218 subject to this section, agents may make required disclosures in  
219 a separate writing.





HB 1649

2003  
CS

220           (3)(a) The disclosures required by this section are set  
 221 forth in, and shall be made on a copy of, the following Property  
 222 Identification Disclosure Statement:

224 PROPERTY IDENTIFICATION DISCLOSURE STATEMENT

226 This statement applies to the following property:

227 \_\_\_\_\_

229 The transferor and his or her agent(s) disclose the following  
 230 information with the knowledge that even though this is not a  
 231 warranty, prospective transferees may rely on this information  
 232 in deciding whether and on what terms to purchase the subject  
 233 property.

235 Transferor hereby authorizes any agent(s) representing any  
 236 principal(s) in this action to provide a copy of this statement  
 237 to any person or entity in connection with any actual or  
 238 anticipated sale of the property.

240 The following are representations made by the transferor and his  
 241 or her agent(s) based on their knowledge and official maps and  
 242 information prepared by the state and federal governments. This  
 243 information is a disclosure and is not intended to be part of  
 244 any contract between the transferee and transferor.

246 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING AREA(S):

247



HB 1649

2003  
CS

248           (1) A SPECIAL FLOOD HAZARD AREA (Any type Zone "A" or "V")  
 249 designated by the Federal Emergency Management Agency.

250  
 251 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 252 \_\_\_\_\_ Pending \_\_\_\_\_

254           (2) ON SOILS WITH VERY SEVERE CONSTRAINTS FOR DEVELOPMENT  
 255 pursuant to maps issued by the United States Department of  
 256 Agriculture or other readily available and officially adopted  
 257 governmental maps and information.

258  
 259 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 260 \_\_\_\_\_ Pending \_\_\_\_\_

262           (3) AN AREA IMPACTED BY SINKHOLE ACTIVITY pursuant to  
 263 readily available and officially adopted governmental maps and  
 264 information.

265  
 266 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 267 \_\_\_\_\_ Pending \_\_\_\_\_

269           (4) WITHIN A QUARTER OF A MILE OF A WELLHEAD PROTECTION  
 270 AREA pursuant to maps issued by the Department of Environmental  
 271 Protection or a water management district or other readily  
 272 available and officially adopted governmental maps and  
 273 information.

274



HB 1649

2003  
CS

275 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 276 \_\_\_\_\_ Pending \_\_\_\_\_

277  
 278 (5) A PRIORITY WETLAND ZONE pursuant to maps issued by the  
 279 Fish and Wildlife Conservation Commission or other readily  
 280 available and officially adopted governmental maps and  
 281 information.

282  
 283 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 284 \_\_\_\_\_ Pending \_\_\_\_\_

285  
 286 (6) A STRATEGIC HABITAT CONSERVATION AREA pursuant to maps  
 287 issued by the Fish and Wildlife Conservation Commission or other  
 288 readily available and officially adopted governmental maps and  
 289 information.

290  
 291 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 292 \_\_\_\_\_ Pending \_\_\_\_\_

293  
 294 (7) WITHIN 2 STATUTE MILES OF THE NEAREST POINT OF THE  
 295 NEAREST RUNWAY AT ANY AIRPORT.

296  
 297 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 298 \_\_\_\_\_ Pending \_\_\_\_\_

299  
 300 (8) WITHIN A QUARTER OF A MILE OF AN ENVIRONMENTAL HAZARD  
 301 SITE, including leaking underground storage tanks, solid waste  
 302 landfills, incinerators or transfer stations, national priority



HB 1649

2003  
CS

303 list sites, and/or CERCLIS sites under review by the United  
 304 States Environmental Protection Agency.

305  
 306 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 307 \_\_\_\_\_ Pending \_\_\_\_\_

308  
 309 (9) WITHIN A MAPPED RADON GAS POTENTIAL ZONE pursuant to  
 310 maps issued by the United States Environmental Protection Agency  
 311 or other readily available and officially adopted governmental  
 312 maps and information.

313  
 314 Yes \_\_\_\_\_ No \_\_\_\_\_ Do not know and information not available  
 315 \_\_\_\_\_ Pending \_\_\_\_\_

316  
 317 THESE ZONES MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY,  
 318 TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER.

319  
 320 THE MAPS AND INFORMATION ON WHICH THESE DISCLOSURES ARE BASED  
 321 ARE ESTIMATES WHERE THE APPLICABLE ZONES AND PROTECTED LANDS  
 322 EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A  
 323 PROPERTY WILL BE AFFECTED BY A NATURAL OR ENVIRONMENTAL  
 324 DISASTER. TRANSFEREE(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN  
 325 PROFESSIONAL ADVICE REGARDING THESE AND OTHER HAZARDS AND  
 326 PROTECTION ZONES THAT MAY AFFECT THE PROPERTY.

327  
 328 Transferor represents that the information herein is true and  
 329 correct to the best of the transferor's knowledge as of the date  
 330 signed by the transferor.



HB 1649

2003  
CS

331  
332 Signature of Transferor: \_\_\_\_\_ Date: \_\_\_\_\_  
333

334 Signature of Transferor: \_\_\_\_\_ Date: \_\_\_\_\_  
335

336 Agent represents that the information herein is true and correct  
337 to the best of the agent's knowledge as of the date signed by  
338 the agent.  
339

340 Signature of Transferor's Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
341

342 Signature of Transferor's Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
343

344 Transferee represents that he or she has read and understands  
345 this document.  
346

347 Signature of Transferee: \_\_\_\_\_ Date: \_\_\_\_\_  
348

349 Signature of Transferee: \_\_\_\_\_ Date: \_\_\_\_\_  
350

351 (b) If a map or accompanying information is not of  
352 sufficient accuracy or scale that a reasonable person can  
353 determine if the subject real property is included in an  
354 applicable area, the transferor or transferor's agent shall mark  
355 "Yes" on the Property Identification Disclosure Statement. The  
356 transferor or transferor's agent may mark "No" on the Property  
357 Identification Disclosure Statement if he or she attaches a  
358 report prepared pursuant to paragraph (5)(c) which verifies that



HB 1649

2003  
CS

359 the property is not in the applicable zone. This paragraph does  
360 not limit or abridge any existing duty of the transferor or the  
361 transferor's agents to exercise reasonable care in making a  
362 determination under this subsection.

363 (c) If the Federal Emergency Management Agency has issued  
364 a Letter of Map Revision confirming that a property is no longer  
365 within a special flood hazard area, the transferor or  
366 transferor's agent may mark "No" on the Property Identification  
367 Disclosure Statement, even if the map has not yet been updated.

368 (d) If the Federal Emergency Management Agency has issued  
369 a Letter of Map Revision confirming that a property is within a  
370 special flood hazard area and the location of the letter has  
371 been posted, the transferor or transferor's agent shall mark  
372 "Yes" on the Property Identification Disclosure Statement, even  
373 if the map has not yet been updated.

374 (4)(a) The transferor of any real property subject to this  
375 section shall deliver to the prospective transferee the written  
376 statement required by this section, as follows:

377 1. In the case of a sale, as soon as practicable before  
378 transfer of title.

379 2. In the case of transfer by a real property sales  
380 contract or by a lease together with an option to purchase, or a  
381 ground lease coupled with improvements, as soon as practicable  
382 before execution of the contract. For the purpose of this  
383 subparagraph, "execution" means the making or acceptance of an  
384 offer.

385 (b) The transferor shall indicate compliance with this  
386 section either on the receipt for deposit, the real property



HB 1649

2003  
CS

387 sales contract, the lease, or any addendum attached thereto or  
388 on a separate document.

389 (c) If any disclosure, or any material amendment of any  
390 disclosure, required to be made pursuant to this section is  
391 delivered after the execution of an offer to purchase, the  
392 transferee shall have 3 days after delivery in person or 5 days  
393 after delivery by deposit in the mail to terminate his or her  
394 offer by delivery of a written notice of termination to the  
395 transferor or the transferor's agent.

396 (5)(a) Neither the transferor nor any listing or selling  
397 agent shall be liable for any error, inaccuracy, or omission of  
398 any information delivered pursuant to this section if the error,  
399 inaccuracy, or omission was caused by inaccurate or incomplete  
400 information provided by public agencies to the transferor,  
401 listing or selling agent, or other persons specified in  
402 paragraph (c), if ordinary care was exercised in obtaining and  
403 transmitting the information.

404 (b) The delivery of any information required to be  
405 disclosed by this section to a prospective transferee by a third  
406 party providing information required to be disclosed pursuant to  
407 this section shall be deemed to comply with the requirements of  
408 this section and shall relieve the transferor or any listing or  
409 selling agent of any further duty under this section with  
410 respect to that item of information.

411 (c) The delivery of a report or opinion prepared by a  
412 licensed engineer, land surveyor, or expert in locating the  
413 applicable zones on readily available and officially adopted  
414 governmental maps and information concerning matters within the



HB 1649

2003  
CS

415 scope of the professional's license or expertise is sufficient  
416 compliance for application of the exemption provided by  
417 paragraphs (a) and (b) if the information is provided to the  
418 prospective transferee pursuant to a request therefor, whether  
419 written or oral. In responding to that request, an expert may  
420 indicate, in writing, an understanding that the information  
421 provided will be used in fulfilling the requirements of  
422 subsection (3) and, if so, shall indicate the required  
423 disclosures, or parts thereof, to which the information being  
424 furnished is applicable. If that statement is furnished, the  
425 expert is not responsible for any items of information, or parts  
426 thereof, other than those expressly set forth in the statement.

427 (d) A third party providing the information on behalf of  
428 the transferor and the transferor's agent fulfilling the  
429 requirements of subsection (3) to be disclosed by this section  
430 shall maintain a minimum of \$20 million of insurance protection  
431 to protect the transferor and the transferor's agent for any  
432 errors or omissions made by the third party.

433 (6)(a) After a transferor and his or her agent comply with  
434 subsection (3), they are relieved of further duty under this  
435 section with respect to those items of information. The  
436 transferor and his or her agent are not required to provide  
437 notice to the transferee if the information provided  
438 subsequently becomes inaccurate as a result of any governmental  
439 action, map revision, changed information, or other act or  
440 occurrence, unless the transferor or the transferor's agent has  
441 actual knowledge that the information has become inaccurate.





442        (b) Neither the transferor nor any listing or selling  
443 agent shall be required to update information disclosed in  
444 accordance with this section subsequent to the delivery of the  
445 required disclosures to the transferee.

446        (7) Each disclosure required by this section and each act  
447 that may be performed in making the disclosure shall be made in  
448 good faith. For purposes of this section, "good faith" means  
449 honesty in fact in the conduct of the transaction.

450        (8) The specification of items for disclosure in this  
451 section does not limit or abridge any obligation for disclosure  
452 created by any other provision of law or that may exist in order  
453 to avoid fraud, misrepresentation, or deceit in the transfer  
454 transaction. The Legislature does not intend to affect the  
455 existing obligations of the parties to a real estate contract,  
456 or their agents, or to disclose any fact materially affecting  
457 the value and desirability of the property, including, but not  
458 limited to, the physical condition of the property and  
459 previously received reports of physical inspection.

460        (9) Any disclosure made pursuant to this section may be  
461 amended in writing by the transferor or his or her agent, but  
462 the amendment shall be subject to subsection (4).

463        (10) Delivery of disclosures required by this section  
464 shall be by personal delivery to the transferee or by mail to  
465 the prospective transferee. For the purposes of this section,  
466 delivery to the spouse of a transferee shall be deemed delivery  
467 to the transferee, unless provided otherwise by contract.

468        (11) Any person or entity, other than a real estate  
469 licensee licensed in this state and acting in the capacity of an



HB 1649

2003  
CS

470 escrow agent for the transfer of real property subject to this  
471 section, shall not be deemed the agent of the transferor or  
472 transferee for purposes of the disclosure requirements of this  
473 section unless the person or entity is empowered to so act by an  
474 express written agreement to that effect. The extent of that  
475 agency shall be governed by the written agreement.

476 (12)(a) If more than one licensed real estate broker is  
477 acting as an agent in a transaction subject to this section, the  
478 broker who has obtained the offer made by the transferee shall,  
479 except as otherwise provided in this section, deliver the  
480 disclosure required by this section to the transferee, unless  
481 the transferor has given other written instructions for  
482 delivery.

483 (b) If a licensed real estate broker responsible for  
484 delivering the disclosure under this section cannot obtain the  
485 disclosure document required and does not have written assurance  
486 from the transferee that the disclosure has been received, the  
487 broker shall advise the transferee in writing of his or her  
488 rights to the disclosure. A licensed real estate broker  
489 responsible for delivering disclosures under this section shall  
490 maintain a record of the action taken to effect compliance of  
491 the transaction.

492 (13) A transfer subject to this section may not be  
493 invalidated solely because of the failure of any person to  
494 comply with any provision of this section. However, any person  
495 who willfully or negligently violates or fails to perform any  
496 duty prescribed by any provision of this section shall be liable  
497 in the amount of actual damages suffered by a transferee.



HB 1649

2003

CS

498           (14)(a) As used in this section, the term "listing agent"  
499 means an individual who has obtained a listing of property of  
500 the kind in respect of which he or she is authorized by law to  
501 act as an agent for compensation.

502           (b) As used in this section, the term "selling agent"  
503 means an individual who acts in cooperation with a listing agent  
504 and who sells, or finds and obtains a buyer for, the property.

505           Section 2. This act shall take effect July 1, 2003.