

By the Committee on Finance and Tax; and Senator Haridopolos

593-05157-09

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1 A bill to be entitled

2 An act relating to timeshares; amending ss. 125.0104,  
3 125.0108, 212.03, and 212.0305, F.S.; revising  
4 application of provisions imposing certain taxes upon  
5 consideration paid for occupancy of certain timeshare  
6 resort products; expanding the use of revenues derived  
7 from the tourist development tax to include publicly  
8 owned convention center hotels and their facilities;  
9 providing for application and construction; amending  
10 s. 624.605, F.S.; expanding the list of entities  
11 authorized to offer debt cancellation products for  
12 purposes of the definition of the term "casualty  
13 insurance" to include a seller of a timeshare  
14 interests or the parents, subsidiaries, or affiliated  
15 entities of a seller; amending s. 721.05, F.S.;  
16 redefining the term "facility"; amending s. 721.07,  
17 F.S.; specifying additional information required in  
18 certain public offering statements for timeshare  
19 plans; amending s. 721.20, F.S.; requiring resale  
20 service providers to provide certain fee or cost and  
21 listings information to timeshare interest owners;  
22 specifying that failure to disclose constitutes an  
23 unfair and deceptive trade practice; providing that  
24 certain contracts are void and purchasers are entitled  
25 to refunds of certain moneys; providing for  
26 severability; providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:  
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30 Section 1. Paragraph (a) of subsection (3) and paragraph  
31 (a) of subsection (5) of section 125.0104, Florida Statutes, are  
32 amended to read:

33 125.0104 Tourist development tax; procedure for levying;  
34 authorized uses; referendum; enforcement.—

35 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

36 (a)1. It is declared to be the intent of the Legislature  
37 that every person who rents, leases, or lets for consideration  
38 any living quarters or accommodations in any hotel, apartment  
39 hotel, motel, resort motel, apartment, apartment motel,  
40 roominghouse, mobile home park, recreational vehicle park, ~~or~~  
41 condominium, or timeshare resort for a term of 6 months or less  
42 is exercising a privilege which is subject to taxation under  
43 this section, unless such person rents, leases, or lets for  
44 consideration any living quarters or accommodations which are  
45 exempt according to the provisions of chapter 212.

46 2.a. Tax shall be due on the consideration paid for  
47 occupancy in the county pursuant to a regulated short-term  
48 product, as defined in s. 721.05, or occupancy in the county  
49 pursuant to a product that would be deemed a regulated short-  
50 term product if the agreement to purchase the short-term right  
51 were executed in this state. Such tax shall be collected on the  
52 last day of occupancy within the county unless such  
53 consideration is applied to the purchase of a timeshare estate.  
54 The occupancy of an accommodation of a timeshare resort pursuant  
55 to a timeshare plan, a multisite timeshare plan, or an exchange  
56 transaction in an exchange program, as defined in s. 721.05, by  
57 the owner of a timeshare interest or such owner's guest, which  
58 guest is not paying monetary consideration to the owner or to a

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59 third party for the benefit of the owner, is not a privilege  
60 subject to taxation under this section. A membership or  
61 transaction fee paid by a timeshare owner that does not provide  
62 the timeshare owner with the right to occupy any specific  
63 timeshare unit but merely provides the timeshare owner with the  
64 opportunity to exchange a timeshare interest through an exchange  
65 program is a service charge and not subject to taxation under  
66 this section.

67 b. Consideration paid for the purchase of a timeshare  
68 license in a timeshare plan, as defined in s. 721.05, is rent  
69 subject to taxation under this section.

70 (5) AUTHORIZED USES OF REVENUE.—

71 (a) All tax revenues received pursuant to this section by a  
72 county imposing the tourist development tax shall be used by  
73 that county for the following purposes only:

74 1. To acquire, construct, extend, enlarge, remodel, repair,  
75 improve, maintain, operate, or promote one or more publicly  
76 owned and operated convention centers, sports stadiums, sports  
77 arenas, coliseums, or auditoriums, ~~or~~ museums that are publicly  
78 owned and operated or owned and operated by not-for-profit  
79 organizations and open to the public, or publicly owned  
80 convention center hotels and appurtenant facilities, such as  
81 walkways and meeting facilities, within the boundaries of the  
82 county or subcounty special taxing district in which the tax is  
83 levied. Tax revenues received pursuant to this section may also  
84 be used for promotion of zoological parks that are publicly  
85 owned and operated or owned and operated by not-for-profit  
86 organizations and open to the public. However, these purposes  
87 may be implemented through service contracts and leases with

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88 lessees with sufficient expertise or financial capability to  
89 operate such facilities;

90 2. To promote and advertise tourism in the State of Florida  
91 and nationally and internationally; however, if tax revenues are  
92 expended for an activity, service, venue, or event, the  
93 activity, service, venue, or event shall have as one of its main  
94 purposes the attraction of tourists as evidenced by the  
95 promotion of the activity, service, venue, or event to tourists;

96 3. To fund convention bureaus, tourist bureaus, tourist  
97 information centers, and news bureaus as county agencies or by  
98 contract with the chambers of commerce or similar associations  
99 in the county, which may include any indirect administrative  
100 costs for services performed by the county on behalf of the  
101 promotion agency; or

102 4. To finance beach park facilities or beach improvement,  
103 maintenance, renourishment, restoration, and erosion control,  
104 including shoreline protection, enhancement, cleanup, or  
105 restoration of inland lakes and rivers to which there is public  
106 access as those uses relate to the physical preservation of the  
107 beach, shoreline, or inland lake or river. However, any funds  
108 identified by a county as the local matching source for beach  
109 renourishment, restoration, or erosion control projects included  
110 in the long-range budget plan of the state's Beach Management  
111 Plan, pursuant to s. 161.091, or funds contractually obligated  
112 by a county in the financial plan for a federally authorized  
113 shore protection project may not be used or loaned for any other  
114 purpose. In counties of less than 100,000 population, no more  
115 than 10 percent of the revenues from the tourist development tax  
116 may be used for beach park facilities.

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117 Section 2. Paragraph (b) of subsection (1) of section  
118 125.0108, Florida Statutes, is amended to read:

119 125.0108 Areas of critical state concern; tourist impact  
120 tax.—

121 (1)

122 (b)1. It is declared to be the intent of the Legislature  
123 that every person who rents, leases, or lets for consideration  
124 any living quarters or accommodations in any hotel, apartment  
125 hotel, motel, resort motel, apartment, apartment motel,  
126 roominghouse, mobile home park, recreational vehicle park, ~~or~~  
127 condominium, or timeshare resort for a term of 6 months or less,  
128 unless such establishment is exempt from the tax imposed by s.  
129 212.03, is exercising a taxable privilege on the proceeds  
130 therefrom under this section.

131 2.a. Tax shall be due on the consideration paid for  
132 occupancy in the county pursuant to a regulated short-term  
133 product, as defined in s. 721.05, or occupancy in the county  
134 pursuant to a product that would be deemed a regulated short-  
135 term product if the agreement to purchase the short-term right  
136 were executed in this state. Such tax shall be collected on the  
137 last day of occupancy within the county unless such  
138 consideration is applied to the purchase of a timeshare estate.  
139 The occupancy of an accommodation of a timeshare resort pursuant  
140 to a timeshare plan, a multisite timeshare plan, or an exchange  
141 transaction in an exchange program, as defined in s. 721.05, by  
142 the owner of a timeshare interest or such owner's guest, which  
143 guest is not paying monetary consideration to the owner or to a  
144 third party for the benefit of the owner, is not a privilege  
145 subject to taxation under this section. A membership or

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146 transaction fee paid by a timeshare owner that does not provide  
147 the timeshare owner with the right to occupy any specific  
148 timeshare unit but merely provides the timeshare owner with the  
149 opportunity to exchange a timeshare interest through an exchange  
150 program is a service charge and not subject to taxation under  
151 this section.

152 b. Consideration paid for the purchase of a timeshare  
153 license in a timeshare plan, as defined in s. 721.05, is rent  
154 subject to taxation under this section.

155 Section 3. Subsection (1) of section 212.03, Florida  
156 Statutes, is amended to read:

157 212.03 Transient rentals tax; rate, procedure, enforcement,  
158 exemptions.—

159 (1) (a) It is hereby declared to be the legislative intent  
160 that every person is exercising a taxable privilege who engages  
161 in the business of renting, leasing, letting, or granting a  
162 license to use any living quarters or sleeping or housekeeping  
163 accommodations in, from, or a part of, or in connection with any  
164 hotel, apartment house, roominghouse, ~~or~~ tourist or trailer  
165 camp, mobile home park, recreational vehicle park, condominium,  
166 or timeshare resort. However, any person who rents, leases,  
167 lets, or grants a license to others to use, occupy, or enter  
168 upon any living quarters or sleeping or housekeeping  
169 accommodations in any apartment house houses, roominghouse  
170 roominghouses, tourist camp camps, ~~or~~ trailer camp camps, mobile  
171 home park, recreational vehicle park, condominium, or timeshare  
172 resort and who exclusively enters into a bona fide written  
173 agreement for continuous residence for longer than 6 months in  
174 duration at such property is not exercising a taxable privilege.

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175 For the exercise of such taxable privilege, a tax is hereby  
176 levied in an amount equal to 6 percent of and on the total  
177 rental charged for such living quarters or sleeping or  
178 housekeeping accommodations by the person charging or collecting  
179 the rental. Such tax shall apply to hotels, apartment houses,  
180 roominghouses, ~~or~~ tourist or trailer camps, mobile home parks,  
181 recreational vehicle parks, condominiums, or timeshare resorts,  
182 whether or not these facilities have ~~there is in connection with~~  
183 ~~any of the same~~ any dining rooms, cafes, or other places where  
184 meals or lunches are sold or served to guests.

185 (b)1. Tax shall be due on the consideration paid for  
186 occupancy in the county pursuant to a regulated short-term  
187 product, as defined in s. 721.05, or occupancy in the county  
188 pursuant to a product that would be deemed a regulated short-  
189 term product if the agreement to purchase the short-term right  
190 were executed in this state. Such tax shall be collected on the  
191 last day of occupancy within the county unless such  
192 consideration is applied to the purchase of a timeshare estate.  
193 The occupancy of an accommodation of a timeshare resort pursuant  
194 to a timeshare plan, a multisite timeshare plan, or an exchange  
195 transaction in an exchange program, as defined in s. 721.05, by  
196 the owner of a timeshare interest or such owner's guest, which  
197 guest is not paying monetary consideration to the owner or to a  
198 third party for the benefit of the owner, is not a privilege  
199 subject to taxation under this section. A membership or  
200 transaction fee paid by a timeshare owner that does not provide  
201 the timeshare owner with the right to occupy any specific  
202 timeshare unit but merely provides the timeshare owner with the  
203 opportunity to exchange a timeshare interest through an exchange

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204 program is a service charge and not subject to taxation under  
205 this section.

206 2. Consideration paid for the purchase of a timeshare  
207 license in a timeshare plan, as defined in s. 721.05, is rent  
208 subject to taxation under this section.

209 Section 4. Paragraph (a) of subsection (3) of section  
210 212.0305, Florida Statutes, is amended to read:

211 212.0305 Convention development taxes; intent;  
212 administration; authorization; use of proceeds.-

213 (3) APPLICATION; ADMINISTRATION; PENALTIES.-

214 (a)1. The convention development tax on transient rentals  
215 imposed by the governing body of any county authorized to so  
216 levy shall apply to the amount of any payment made by any person  
217 to rent, lease, or use for a period of 6 months or less any  
218 living quarters or accommodations in a hotel, apartment hotel,  
219 motel, resort motel, apartment, apartment motel, roominghouse,  
220 tourist or trailer camp, mobile home park, recreational vehicle  
221 park, ~~or~~ condominium, or timeshare resort. When receipt of  
222 consideration is by way of property other than money, the tax  
223 shall be levied and imposed on the fair market value of such  
224 nonmonetary consideration. Any payment made by a person to rent,  
225 lease, or use any living quarters or accommodations which are  
226 exempt from the tax imposed under s. 212.03 shall likewise be  
227 exempt from any tax imposed under this section.

228 2.a. Tax shall be due on the consideration paid for  
229 occupancy in the county pursuant to a regulated short-term  
230 product, as defined in s. 721.05, or occupancy in the county  
231 pursuant to a product that would be deemed a regulated short-  
232 term product if the agreement to purchase the short-term right



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233 were executed in this state. Such tax shall be collected on the  
234 last day of occupancy within the county unless such  
235 consideration is applied to the purchase of a timeshare estate.  
236 The occupancy of an accommodation of a timeshare resort pursuant  
237 to a timeshare plan, a multisite timeshare plan, or an exchange  
238 transaction in an exchange program, as defined in s. 721.05, by  
239 the owner of a timeshare interest or such owner's guest, which  
240 guest is not paying monetary consideration to the owner or to a  
241 third party for the benefit of the owner, is not a privilege  
242 subject to taxation under this section. A membership or  
243 transaction fee paid by a timeshare owner that does not provide  
244 the timeshare owner with the right to occupy any specific  
245 timeshare unit but merely provides the timeshare owner with the  
246 opportunity to exchange a timeshare interest through an exchange  
247 program is a service charge and not subject to taxation under  
248 this section.

249 b. Consideration paid for the purchase of a timeshare  
250 license in a timeshare plan, as defined in s. 721.05, is rent  
251 subject to taxation under this section.

252 Section 5. Sections 1 through 4 of this act are intended to  
253 be clarifying and remedial in nature, and do not provide a basis  
254 for assessments of tax, or refunds of tax for periods prior to  
255 July 1, 2009.

256 Section 6. Paragraph (r) of subsection (1) of section  
257 624.605, Florida Statutes, is amended to read:

258 624.605 "Casualty insurance" defined.—

259 (1) "Casualty insurance" includes:

260 (r) *Insurance for debt cancellation products.*—Insurance  
261 that a creditor may purchase against the risk of financial loss

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262 from the use of debt cancellation products with consumer loans  
263 or leases or retail installment contracts. Insurance for debt  
264 cancellation products is not liability insurance but shall be  
265 considered credit insurance only for the purposes of s.  
266 631.52(4).

267 1. For purposes of this paragraph, the term "debt  
268 cancellation products" means loan, lease, or retail installment  
269 contract terms, or modifications to loan, lease, or retail  
270 installment contracts, under which a creditor agrees to cancel  
271 or suspend all or part of a customer's obligation to make  
272 payments upon the occurrence of specified events and includes,  
273 but is not limited to, debt cancellation contracts, debt  
274 suspension agreements, and guaranteed asset protection  
275 contracts. However, the term "debt cancellation products" does  
276 not include title insurance as defined in s. 624.608.

277 2. Debt cancellation products may be offered by financial  
278 institutions, as defined in s. 655.005(1)(h); ~~or~~ insured  
279 depository institutions, as defined in 12 U.S.C. s. 1813(c); ~~or~~  
280 ~~and~~ subsidiaries of such institutions, as provided in the  
281 financial institutions codes; a seller, as defined in s. 721.05,  
282 or the parents, subsidiaries, or affiliated entities of a  
283 seller, in connection with the sale of timeshare interests; ~~or~~  
284 ~~by~~ other business entities as may be specifically authorized by  
285 law. ~~and~~ Such products do ~~shall~~ not constitute insurance for  
286 purposes of the Florida Insurance Code.

287 Section 7. Subsection (17) of section 721.05, Florida  
288 Statutes, is amended to read:

289 721.05 Definitions.—As used in this chapter, the term:

290 (17) "Facility" means any permanent amenity, including any

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291 structure, furnishing, fixture, equipment, service, improvement,  
292 or real or personal property, improved or unimproved, other than  
293 an accommodation of the timeshare plan, which is made available  
294 to the purchasers of a timeshare plan. The term does not include  
295 an incidental benefit as defined in this section.

296 Section 8. Paragraph (ii) is added to subsection (5) of  
297 section 721.07, Florida Statutes, to read:

298 721.07 Public offering statement.—Prior to offering any  
299 timeshare plan, the developer must submit a filed public  
300 offering statement to the division for approval as prescribed by  
301 s. 721.03, s. 721.55, or this section. Until the division  
302 approves such filing, any contract regarding the sale of that  
303 timeshare plan is subject to cancellation by the purchaser  
304 pursuant to s. 721.10.

305 (5) Every filed public offering statement for a timeshare  
306 plan which is not a multisite timeshare plan shall contain the  
307 information required by this subsection. The division is  
308 authorized to provide by rule the method by which a developer  
309 must provide such information to the division.

310 (ii) A statement that the owner's obligation to pay  
311 assessments continues for as long as he or she owns the  
312 timeshare interest and that when a person inherits a timeshare  
313 interest, that person is responsible for paying those  
314 assessments.

315 Section 9. Subsection (9) is added to section 721.20,  
316 Florida Statutes, to read:

317 721.20 Licensing requirements; suspension or revocation of  
318 license; exceptions to applicability; collection of advance fees  
319 for listings unlawful.—

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320       (9) (a) Prior to listing or advertising a timeshare interest  
321 for resale, a resale service provider shall provide to the  
322 timeshare interest owner a description of any fees or costs  
323 relating to the advertising, listing, or sale of the timeshare  
324 interest that the timeshare interest owner, or any other person,  
325 must pay to the resale service provider or any third party, when  
326 such fees or costs are due, and the ratio or percentage of the  
327 number of listings of timeshare interests for sale versus the  
328 number of timeshare interests sold by the resale service  
329 provider for each of the previous 2 calendar years.

330       (b) Failure to disclose this information in writing  
331 constitutes an unfair and deceptive trade practice pursuant to  
332 chapter 501. Any contract entered into in violation of this  
333 subsection is void and the purchaser is entitled to a full  
334 refund of any moneys paid to the resale service provider.

335       Section 10. If any provision of this act or the application  
336 thereof to any person or circumstance is held invalid, the  
337 invalidity does not affect other provisions or applications of  
338 the act which can be given effect without the invalid provision  
339 or application, and to this end the provisions of this act are  
340 severable.

341       Section 11. This act shall take effect July 1, 2009.