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 CS/HB 61, Engrossed 2

2009 Legislature

1 A bill to be entitled
 2 An act relating to temporary accommodations; amending ss.
 3 125.0104, 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; providing application and construction;
 7 amending s. 624.605, F.S.; expanding the list of entities
 8 authorized to offer debt cancellation products for
 9 purposes of the definition of the term "casualty
 10 insurance" to include sellers of timeshare interests;
 11 amending s. 721.05, F.S.; revising a definition; amending
 12 s. 721.07, F.S.; specifying additional information
 13 required in certain public offering statements for
 14 timeshare plans; amending s. 721.20, F.S.; requiring
 15 resale service providers to provide certain fee or cost
 16 and listings information to timeshare interest owners;
 17 specifying that failure to disclose constitutes an unfair
 18 and deceptive trade practice; providing that certain
 19 contracts are void and purchasers are entitled to refunds
 20 of certain moneys; providing severability; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraph (a) of subsection (3) of section
 26 125.0104, Florida Statutes, is amended to read:

27 125.0104 Tourist development tax; procedure for levying;
 28 authorized uses; referendum; enforcement.--

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

29 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.--

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

40 2.a. Tax shall be due on the consideration paid for
 41 occupancy in the county pursuant to a regulated short-term
 42 product, as defined in s. 721.05, or occupancy in the county
 43 pursuant to a product that would be deemed a regulated short-
 44 term product if the agreement to purchase the short-term right
 45 were executed in this state. Such tax shall be collected on the
 46 last day of occupancy within the county unless such
 47 consideration is applied to the purchase of a timeshare estate.
 48 The occupancy of an accommodation of a timeshare resort pursuant
 49 to a timeshare plan, a multisite timeshare plan, or an exchange
 50 transaction in an exchange program, as defined in s. 721.05, by
 51 the owner of a timeshare interest or such owner's guest, which
 52 guest is not paying monetary consideration to the owner or to a
 53 third party for the benefit of the owner, is not a privilege
 54 subject to taxation under this section. A membership or
 55 transaction fee paid by a timeshare owner that does not provide
 56 the timeshare owner with the right to occupy any specific

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

57 timeshare unit but merely provides the timeshare owner with the
 58 opportunity to exchange a timeshare interest through an exchange
 59 program is a service charge and not subject to taxation under
 60 this section.

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

64 Section 2. Paragraph (b) of subsection (1) of section
 65 125.0108, Florida Statutes, is amended to read:

66 125.0108 Areas of critical state concern; tourist impact
 67 tax.--

68 (1)

69 (b)1. It is declared to be the intent of the Legislature
 70 that every person who rents, leases, or lets for consideration
 71 any living quarters or accommodations in any hotel, apartment
 72 hotel, motel, resort motel, apartment, apartment motel,
 73 roominghouse, mobile home park, recreational vehicle park, ~~or~~
 74 condominium, or timeshare resort for a term of 6 months or less,
 75 unless such establishment is exempt from the tax imposed by s.
 76 212.03, is exercising a taxable privilege on the proceeds
 77 therefrom under this section.

78 2.a. Tax shall be due on the consideration paid for
 79 occupancy in the county pursuant to a regulated short-term
 80 product, as defined in s. 721.05, or occupancy in the county
 81 pursuant to a product that would be deemed a regulated short-
 82 term product if the agreement to purchase the short-term right
 83 were executed in this state. Such tax shall be collected on the
 84 last day of occupancy within the county unless such

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

85 consideration is applied to the purchase of a timeshare estate.
 86 The occupancy of an accommodation of a timeshare resort pursuant
 87 to a timeshare plan, a multisite timeshare plan, or an exchange
 88 transaction in an exchange program, as defined in s. 721.05, by
 89 the owner of a timeshare interest or such owner's guest, which
 90 guest is not paying monetary consideration to the owner or to a
 91 third party for the benefit of the owner, is not a privilege
 92 subject to taxation under this section. A membership or
 93 transaction fee paid by a timeshare owner that does not provide
 94 the timeshare owner with the right to occupy any specific
 95 timeshare unit but merely provides the timeshare owner with the
 96 opportunity to exchange a timeshare interest through an exchange
 97 program is a service charge and not subject to taxation under
 98 this section.

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

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

104 212.03 Transient rentals tax; rate, procedure,
 105 enforcement, exemptions.--

106 (1) (a) It is hereby declared to be the legislative intent
 107 that every person is exercising a taxable privilege who engages
 108 in the business of renting, leasing, letting, or granting a
 109 license to use any living quarters or sleeping or housekeeping
 110 accommodations in, from, or a part of, or in connection with any
 111 hotel, apartment house, roominghouse, ~~or~~ tourist or trailer
 112 camp, mobile home park, recreational vehicle park, condominium,

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

113 or timeshare resort. However, any person who rents, leases,
 114 lets, or grants a license to others to use, occupy, or enter
 115 upon any living quarters or sleeping or housekeeping
 116 accommodations in any apartment house houses, roominghouse
 117 roominghouses, tourist camp camps, or trailer camp camps, mobile
 118 home park, recreational vehicle park, condominium, or timeshare
 119 resort and who exclusively enters into a bona fide written
 120 agreement for continuous residence for longer than 6 months in
 121 duration at such property is not exercising a taxable privilege.
 122 For the exercise of such taxable privilege, a tax is hereby
 123 levied in an amount equal to 6 percent of and on the total
 124 rental charged for such living quarters or sleeping or
 125 housekeeping accommodations by the person charging or collecting
 126 the rental. Such tax shall apply to hotels, apartment houses,
 127 roominghouses, ~~or~~ tourist or trailer camps, mobile home parks,
 128 recreational vehicle parks, condominiums, or timeshare resorts,
 129 whether or not these facilities have there is in connection with
 130 ~~any of the same any~~ dining rooms, cafes, or other places where
 131 meals or lunches are sold or served to guests.

132 (b)1. Tax shall be due on the consideration paid for
 133 occupancy in the county pursuant to a regulated short-term
 134 product, as defined in s. 721.05, or occupancy in the county
 135 pursuant to a product that would be deemed a regulated short-
 136 term product if the agreement to purchase the short-term right
 137 were executed in this state. Such tax shall be collected on the
 138 last day of occupancy within the county unless such
 139 consideration is applied to the purchase of a timeshare estate.
 140 The occupancy of an accommodation of a timeshare resort pursuant

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

141 to a timeshare plan, a multisite timeshare plan, or an exchange
 142 transaction in an exchange program, as defined in s. 721.05, by
 143 the owner of a timeshare interest or such owner's guest, which
 144 guest is not paying monetary consideration to the owner or to a
 145 third party for the benefit of the owner, is not a privilege
 146 subject to taxation under this section. A membership or
 147 transaction fee paid by a timeshare owner that does not provide
 148 the timeshare owner with the right to occupy any specific
 149 timeshare unit but merely provides the timeshare owner with the
 150 opportunity to exchange a timeshare interest through an exchange
 151 program is a service charge and not subject to taxation under
 152 this section.

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

156 Section 4. Paragraph (a) of subsection (3) of section
 157 212.0305, Florida Statutes, is amended to read:

158 212.0305 Convention development taxes; intent;
 159 administration; authorization; use of proceeds.--

160 (3) APPLICATION; ADMINISTRATION; PENALTIES.--

161 (a)1. The convention development tax on transient rentals
 162 imposed by the governing body of any county authorized to so
 163 levy shall apply to the amount of any payment made by any person
 164 to rent, lease, or use for a period of 6 months or less any
 165 living quarters or accommodations in a hotel, apartment hotel,
 166 motel, resort motel, apartment, apartment motel, roominghouse,
 167 tourist or trailer camp, mobile home park, recreational vehicle
 168 park, ~~or~~ condominium, or timeshare resort. When receipt of

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

169 consideration is by way of property other than money, the tax
 170 shall be levied and imposed on the fair market value of such
 171 nonmonetary consideration. Any payment made by a person to rent,
 172 lease, or use any living quarters or accommodations which are
 173 exempt from the tax imposed under s. 212.03 shall likewise be
 174 exempt from any tax imposed under this section.

175 2.a. Tax shall be due on the consideration paid for
 176 occupancy in the county pursuant to a regulated short-term
 177 product, as defined in s. 721.05, or occupancy in the county
 178 pursuant to a product that would be deemed a regulated short-
 179 term product if the agreement to purchase the short-term right
 180 were executed in this state. Such tax shall be collected on the
 181 last day of occupancy within the county unless such
 182 consideration is applied to the purchase of a timeshare estate.
 183 The occupancy of an accommodation of a timeshare resort pursuant
 184 to a timeshare plan, a multisite timeshare plan, or an exchange
 185 transaction in an exchange program, as defined in s. 721.05, by
 186 the owner of a timeshare interest or such owner's guest, which
 187 guest is not paying monetary consideration to the owner or to a
 188 third party for the benefit of the owner, is not a privilege
 189 subject to taxation under this section. A membership or
 190 transaction fee paid by a timeshare owner that does not provide
 191 the timeshare owner with the right to occupy any specific
 192 timeshare unit but merely provides the timeshare owner with the
 193 opportunity to exchange a timeshare interest through an exchange
 194 program is a service charge and not subject to taxation under
 195 this section.

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

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

199 Section 5. The amendments to sections 125.0104, 125.0108,
 200 212.03, and 212.0305, Florida Statutes, made by this act are
 201 intended to be clarifying and remedial in nature and do not
 202 provide a basis for assessments of tax, or refunds of tax, for
 203 periods prior to July 1, 2009.

204 Section 6. Paragraph (r) of subsection (1) of section
 205 624.605, Florida Statutes, is amended to read:

206 624.605 "Casualty insurance" defined.--

207 (1) "Casualty insurance" includes:

208 (r) Insurance for debt cancellation products.--Insurance
 209 that a creditor may purchase against the risk of financial loss
 210 from the use of debt cancellation products with consumer loans
 211 or leases or retail installment contracts. Insurance for debt
 212 cancellation products is not liability insurance but shall be
 213 considered credit insurance only for the purposes of s.
 214 631.52(4).

215 1. For purposes of this paragraph, the term "debt
 216 cancellation products" means loan, lease, or retail installment
 217 contract terms, or modifications to loan, lease, or retail
 218 installment contracts, under which a creditor agrees to cancel
 219 or suspend all or part of a customer's obligation to make
 220 payments upon the occurrence of specified events and includes,
 221 but is not limited to, debt cancellation contracts, debt
 222 suspension agreements, and guaranteed asset protection
 223 contracts. However, the term "debt cancellation products" does

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

224 not include title insurance as defined in s. 624.608.

225 2. Debt cancellation products may be offered by financial
 226 institutions, as defined in s. 655.005(1)(h), insured depository
 227 institutions as defined in 12 U.S.C. s. 1813(c), and
 228 subsidiaries of such institutions, as provided in the financial
 229 institutions codes; by sellers as defined in s. 721.05, or by
 230 the parents, subsidiaries, or affiliated entities of sellers, in
 231 connection with the sale of timeshare interests;~~7~~ or by other
 232 business entities as may be specifically authorized by law, and
 233 such products shall not constitute insurance for purposes of the
 234 Florida Insurance Code.

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

237 721.05 Definitions.--As used in this chapter, the term:

238 (17) "Facility" means any permanent amenity, including any
 239 structure, furnishing, fixture, equipment, service, improvement,
 240 or real or personal property, improved or unimproved, other than
 241 an accommodation of the timeshare plan, which is made available
 242 to the purchasers of a timeshare plan. The term does not include
 243 an incidental benefit as defined in this section.

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

246 721.07 Public offering statement.--Prior to offering any
 247 timeshare plan, the developer must submit a filed public
 248 offering statement to the division for approval as prescribed by
 249 s. 721.03, s. 721.55, or this section. Until the division
 250 approves such filing, any contract regarding the sale of that
 251 timeshare plan is subject to cancellation by the purchaser

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

252 pursuant to s. 721.10.

253 (5) Every filed public offering statement for a timeshare
 254 plan which is not a multisite timeshare plan shall contain the
 255 information required by this subsection. The division is
 256 authorized to provide by rule the method by which a developer
 257 must provide such information to the division.

258 (ii) A statement that the owner's obligation to pay
 259 assessments continues for as long as he or she owns the
 260 timeshare interest and that when a person inherits a timeshare
 261 interest, that person is responsible for paying those
 262 assessments.

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

265 721.20 Licensing requirements; suspension or revocation of
 266 license; exceptions to applicability; collection of advance fees
 267 for listings unlawful.--

268 (9) (a) Prior to listing or advertising a timeshare
 269 interest for resale, a resale service provider shall provide to
 270 the timeshare interest owner a description of any fees or costs
 271 relating to the advertising, listing, or sale of the timeshare
 272 interest that the timeshare interest owner, or any other person,
 273 must pay to the resale service provider or any third party, when
 274 such fees or costs are due, and the ratio or percentage of the
 275 number of listings of timeshare interests for sale versus the
 276 number of timeshare interests sold by the resale service
 277 provider for each of the previous 2 calendar years.

278 (b) Failure to disclose this information in writing
 279 constitutes an unfair and deceptive trade practice pursuant to

ENROLLED

CS/HB 61, Engrossed 2

2009 Legislature

280 chapter 501. Any contract entered into in violation of this
281 subsection is void and the purchaser is entitled to a full
282 refund of any moneys paid to the resale service provider.

283 Section 10. If any provision of this act or the
284 application thereof to any person or circumstance is held
285 invalid, the invalidity does not affect other provisions or
286 applications of the act which can be given effect without the
287 invalid provision or application, and to this end the provisions
288 of this act are declared severable.

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