

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED  (Y/N)  
ADOPTED AS AMENDED  (Y/N)  
ADOPTED W/O OBJECTION  (Y/N)  
FAILED TO ADOPT  (Y/N)  
WITHDRAWN  (Y/N)  
OTHER

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1 Committee/Subcommittee hearing bill: Business & Consumer  
2 Affairs Subcommittee  
3 Representative Eisnaugle offered the following:

**Amendment**

6 Remove everything after the enacting clause and insert:

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

11 721.02 Purposes.—The purposes of this chapter are to:

12 (5) Require full and fair disclosure of terms, conditions,  
13 and services by resale service providers acting on behalf of  
14 consumer timeshare resellers or on behalf of prospective  
15 consumer resale purchasers, regardless of the business model  
16 employed by the resale service provider.

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

Amendment No.

20 721.05 Definitions.—As used in this chapter, the term:

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

42 (45) "Consumer resale timeshare interest" means:

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

44 (b) One or more reserved occupancy rights relating to a  
45 timeshare interest owned by a purchaser; or

Amendment No.

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

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

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

60 (48) "Resale brokerage services" means, with respect to a  
61 consumer resale timeshare interest in a timeshare property  
62 located or offered within this state, any activity that directly  
63 or indirectly consists of any of activities described in s.  
64 475.01(1)(a).

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

71 (a) A resale broker to the extent that resale advertising  
72 services are offered in connection with timeshare resale

Amendment No.

73 brokerage services and no fee for the resale advertising service  
74 is collected in advance;

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

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

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

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

98 721.20 Licensing requirements; suspension or revocation of  
99 license; exceptions to applicability; collection of advance fees  
100 for listings unlawful.-

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Published On: 1/23/2012 5:20:22 PM

Amendment No.

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

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

116 Section 4. Section 721.205, Florida Statutes, is created  
117 to read:

118 721.205 Resale service providers; disclosure obligations.-

119 (1)(a) Before engaging in resale advertising services, a  
120 resale service provider must provide to the consumer timeshare  
121 reseller:

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

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

127 (b) A resale service provider may not engage in those  
128 activities described in s. 475.01(1)(a) without being the holder

Amendment No.

129 of a valid and current active license in accordance with chapter  
130 475.

131 (2) In the course of offering resale advertising services,  
132 a resale advertiser may not:

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

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

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

146277 - h1001-strike.docx

Published On: 1/23/2012 5:20:22 PM

Amendment No.

157 ratio or percentage of all timeshare interests advertised for  
158 rental that have actually resulted in a rental, for each of the  
159 previous 2 calendar years.

160 (d) State or imply to a consumer timeshare reseller that  
161 the timeshare interest has a specific resale value.

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

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

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

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

146277 - h1001-strike.docx

Published On: 1/23/2012 5:20:22 PM

Amendment No.

185 specific medium, the itemized cost to the consumer timeshare  
186 reseller of each resale advertising service to be provided, and  
187 a statement of the total cost to the consumer timeshare reseller  
188 of all resale advertising services to be provided.

189 3. A statement printed in at least 12-point boldfaced type  
190 immediately preceding the space in the contract provided for the  
191 consumer timeshare reseller's signature in substantially the  
192 following form:

193  
194 TIMESHARE OWNER'S RIGHT OF CANCELLATION

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

205  
206 You have an unwaivable right to cancel this contract  
207 for any reason within 10 days after the date you sign  
208 this contract. If you decide to cancel this contract,  
209 you must notify ...(name of resale advertiser)... in  
210 writing of your intent to cancel. Your notice of  
211 cancellation shall be effective upon the date sent and  
212 shall be sent to ...(resale advertiser's physical



Amendment No.

213 address)... or to ...(resale advertiser's e-mail  
214 address).... Your refund will be made within 20 days  
215 after receipt of notice of cancellation or within 5  
216 days after receipt of funds from your cleared check,  
217 whichever is later.

218  
219 You are not obligated to pay ...(name of resale  
220 advertiser)... any money unless you sign this contract  
221 and return it to ...(name of resale advertiser)....  
222

223 IMPORTANT: Before signing this contract, you should  
224 carefully review your original timeshare purchase  
225 contract and other project documents to determine  
226 whether the developer has reserved a right of first  
227 refusal or other option to purchase your timeshare  
228 interest or to determine whether there are any  
229 restrictions or special conditions applicable to the  
230 resale or rental of your timeshare interest.  
231

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

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

Amendment No.

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

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

250 (4) Notwithstanding obligations placed upon any other  
251 persons by this section, it is the duty of a resale service  
252 provider to supervise, manage, and control all aspects of the  
253 offering of resale brokerage services or resale advertising  
254 services by any agent or employee of the resale service  
255 provider. Any violation of this section that occurs during such  
256 offering shall be deemed a violation by the resale service  
257 provider as well as by the person actually committing the  
258 violation.

259 (5) Providing resale advertising services with respect to  
260 a consumer resale timeshare interest in a timeshare property  
261 located or offered in this state, or in a multisite timeshare  
262 plan registered or required to be registered to be offered  
263 within this state, including acting as an agent or third-party  
264 service provider for a resale service provider, constitutes  
265 operating, conducting, engaging in, or carrying on a business or  
266 business venture in this state for the purposes of s. 48.193(1).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1001 (2012)

Amendment No.

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

270       (7) Notwithstanding any other penalties provided for in  
271 this section, any violation of this section is subject to a  
272 civil penalty of not more than \$15,000 per violation. In  
273 addition, a person who violates any provision of this section  
274 commits an unfair and deceptive trade practice as prohibited by  
275 s. 501.204 and is subject to the penalties and remedies provided  
276 in part II of chapter 501.

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