



494606

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
	.	
	.	
	.	

The Committee on Budget Subcommittee on General Government Appropriations (Benacquisto) 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 renumbered 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



494606

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

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

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

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



494606

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

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

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

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

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

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



494606

71 (b) A developer or managing entity to the extent that
72 either of them offers resale advertising services to owners of
73 timeshare interests in their own timeshare plans; or

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

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

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

93 721.20 Licensing requirements; suspension or revocation of
94 license; exceptions to applicability; collection of advance fees
95 for listings unlawful.-

96 ~~(9) (a) Prior to listing or advertising a timeshare interest~~
97 ~~for resale, a resale service provider shall provide to the~~
98 ~~timeshare interest owner a description of any fees or costs~~
99 ~~relating to the advertising, listing, or sale of the timeshare~~



494606

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

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

111 Section 4. Section 721.205, Florida Statutes, is created to
112 read:

113 721.205 Resale service providers; disclosure obligations.-

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

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

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

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

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

128 (a) State or imply that the resale advertiser will provide



494606

129 or assist in providing any type of direct sales or resale
130 brokerage services other than the advertising of the consumer
131 resale timeshare interest for sale or rent by the consumer
132 timeshare reseller.

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

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



494606

158 about a rental or rentals.

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

161 (e) Make or submit any charge to a consumer timeshare
162 reseller's credit card account; make or cause to be made any
163 electronic transfer of consumer timeshare reseller funds; or
164 collect any payment from a consumer timeshare reseller that
165 exceeds an aggregate total amount of \$75 or more in any 12-month
166 period until after the resale advertiser has received a written
167 contract complying in all respects with paragraph (f) that has
168 been 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, if
176 any, of the resale advertiser and a mailing address and e-mail
177 address to which a contract cancellation notice may be delivered
178 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
185 specific medium, the itemized cost to the consumer timeshare
186 reseller of each resale advertising service to be provided, and



494606

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
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



494606

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) Make or submit any charge to a consumer timeshare
238 reseller's credit card account; make or cause to be made any
239 electronic transfer of consumer timeshare reseller funds; or
240 collect any payment from a consumer timeshare reseller in an
241 aggregate amount totaling less than \$75 in any 12-month period
242 unless the consumer timeshare reseller has been provided a copy
243 of the terms and conditions of the contract provided for in
244 paragraph (f) and the consumer timeshare reseller has agreed to



494606

245 such terms and conditions by mail or electronic transmission.

246 (h) Fail to honor any cancellation notice sent by the
247 consumer timeshare reseller within 10 days after the date the
248 consumer timeshare reseller signs the contract for resale
249 advertising services in compliance with subparagraph (f)3.

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

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

259 (4) Notwithstanding obligations placed upon any other
260 persons by this section, it is the duty of a resale service
261 provider to supervise, manage, and control all aspects of the
262 offering of resale advertising services by any agent or employee
263 of the resale service provider. Any violation of this section
264 that occurs during such offering shall be deemed a violation by
265 the resale service provider as well as by the person actually
266 committing the violation.

267 (5) Providing resale advertising services with respect to a
268 consumer resale timeshare interest in a timeshare property
269 located or offered within this state, or in a multisite
270 timeshare plan registered or required to be registered to be
271 offered in this state, including acting as an agent or third-
272 party service provider for a resale service provider,
273 constitutes operating, conducting, engaging in, or carrying on a



494606

274 business or business venture in this state for the purposes of
275 s. 48.193(1).

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

279 (7) Notwithstanding any other penalties provided for in
280 this section, any violation of this section is subject to a
281 civil penalty of not more than \$15,000 per violation. In
282 addition, a person who violates any provision of this section
283 commits an unfair and deceptive trade practice as prohibited by
284 s. 501.204 and is subject to the penalties and remedies provided
285 in part II of chapter 501.

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

287
288 ===== T I T L E A M E N D M E N T =====

289 And the title is amended as follows:

290 Delete everything before the enacting clause
291 and insert:

292 A bill to be entitled
293 An act relating to timeshares; amending s. 721.02,
294 F.S.; revising purposes of the chapter to include the
295 provision of certain disclosure; amending s. 721.05,
296 F.S.; revising the definition of the term "resale
297 service provider"; defining the terms "consumer resale
298 timeshare interest," "consumer timeshare reseller,"
299 "resale broker," "resale brokerage services," "resale
300 advertiser," and "resale advertising service";
301 amending s. 721.20, F.S.; deleting a provision
302 requiring resale service providers to provide certain



494606

303 fee or cost and listing information to timeshare
304 interest owners; creating s. 721.205, F.S.; specifying
305 information a resale service provider must provide to
306 the consumer timeshare reseller; prohibiting
307 unlicensed resale service providers from engaging in
308 certain activities; prohibiting certain services
309 related to the offering of resale advertising by
310 resale advertisers; providing certain restrictions on
311 the offering of resale advertising services by resale
312 advertisers; providing voidability of certain
313 contracts; providing duties of a resale service
314 provider; providing that the provision of resale
315 advertising services in this state constitutes
316 operating, conducting, engaging in, or carrying on a
317 business or business venture for purposes relating to
318 jurisdiction of the courts of this state; providing
319 penalties; providing an effective date.