

By the Committees on Budget Subcommittee on General Government Appropriations; and Regulated Industries; and Senator Gardiner

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1 A bill to be entitled
2 An act relating to timeshares; amending s. 721.02,
3 F.S.; revising purposes of the chapter to include the
4 provision of certain disclosure; amending s. 721.05,
5 F.S.; revising the definition of the term "resale
6 service provider"; defining the terms "consumer resale
7 timeshare interest," "consumer timeshare reseller,"
8 "resale broker," "resale brokerage services," "resale
9 advertiser," and "resale advertising service";
10 amending s. 721.20, F.S.; deleting a provision
11 requiring resale service providers to provide certain
12 fee or cost and listing information to timeshare
13 interest owners; creating s. 721.205, F.S.; specifying
14 information a resale service provider must provide to
15 the consumer timeshare reseller; prohibiting
16 unlicensed resale service providers from engaging in
17 certain activities; prohibiting certain services
18 related to the offering of resale advertising by
19 resale advertisers; providing certain restrictions on
20 the offering of resale advertising services by resale
21 advertisers; providing voidability of certain
22 contracts; providing duties of a resale service
23 provider; providing that the provision of resale
24 advertising services in this state constitutes
25 operating, conducting, engaging in, or carrying on a
26 business or business venture for purposes relating to
27 jurisdiction of the courts of this state; providing
28 penalties; providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:

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

35 721.02 Purposes.—The purposes of this chapter are to:

36 (5) Require full and fair disclosure of terms, conditions,
37 and services by resale service providers acting on behalf of
38 consumer timeshare resellers or on behalf of prospective
39 consumer resale purchasers, regardless of the business model
40 employed by the resale service provider.

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

44 721.05 Definitions.—As used in this chapter, the term:

45 (44) "Resale service provider" means any resale advertiser,
46 or other person or entity, including any agent or employee of
47 such person or entity, who offers or uses unsolicited
48 telemarketing, direct mail, ~~or~~ e-mail, or any other means of
49 communication in connection with the offering of resale
50 brokerage or resale advertising services to consumer ~~owners of~~
51 timeshare resellers interests. The term does not include
52 developers or managing entities, ~~or exchange companies~~ to the
53 extent they offer resale brokerage or resale advertising
54 services to owners of timeshare interests in their own timeshare
55 plans; resale brokers to the extent that resale advertising
56 services are offered in connection with resale brokerage
57 services and no fee for the advertising service is collected in
58 advance; or a consumer timeshare reseller who acquires a

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59 timeshare interest or timeshare interests for his or her own use
60 and occupancy and who later offers the timeshare interest or
61 timeshare interests for rent or offers for resale in a given
62 calendar year seven or fewer of the timeshare interests that he
63 or she acquired for his or her own use and occupancy ~~or members~~
64 ~~of their own exchange programs.~~

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

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

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

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

72 (46) "Consumer timeshare reseller" means a purchaser who
73 acquires a timeshare interest for his or her own use and
74 occupancy and later offers the timeshare interest for resale or
75 rental.

76 (47) "Resale broker" means any person, or any agent or
77 employee of such person, who is licensed pursuant to chapter 475
78 and who offers or provides resale brokerage services to consumer
79 timeshare resellers for compensation or valuable consideration,
80 regardless of whether the offer is made in person, by mail, by
81 telephone, through the Internet, or by any other medium of
82 communication.

83 (48) "Resale brokerage services" means, with respect to a
84 consumer resale timeshare interest in a timeshare property
85 located or offered within this state, any activity that directly
86 or indirectly consists of any of activities described in s.
87 475.01(1)(a).

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

94 (a) A resale broker to the extent that resale advertising
95 services are offered in connection with timeshare resale
96 brokerage services and no fee for the resale advertising service
97 is collected in advance;

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

101 (c) A newspaper, periodical, or website owner, operator, or
102 publisher, unless the newspaper, periodical, or website owner,
103 operator, or publisher derives more than 10 percent of its gross
104 revenue from providing resale advertising services. For purposes
105 of this paragraph, the calculation of gross revenue derived from
106 providing resale advertising services includes revenue of any
107 affiliate, parent, agent, and subsidiary of the newspaper,
108 periodical, or website owner, operator, or publisher, so long as
109 the resulting percentage of gross revenue is not decreased by
110 the inclusion of such affiliate, parent, subsidiary, or agent in
111 the calculation.

112 (50) "Resale advertising service" means any good or service
113 relating to, or a promise of assistance in connection with,
114 advertising or promoting the resale or rental of a consumer
115 resale timeshare interest located or offered within this state,
116 including any offer to advertise or promote the sale or purchase

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117 of any such interest.

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

120 721.20 Licensing requirements; suspension or revocation of
121 license; exceptions to applicability; collection of advance fees
122 for listings unlawful.—

123 ~~(9)(a) Prior to listing or advertising a timeshare interest
124 for resale, a resale service provider shall provide to the
125 timeshare interest owner a description of any fees or costs
126 relating to the advertising, listing, or sale of the timeshare
127 interest that the timeshare interest owner, or any other person,
128 must pay to the resale service provider or any third party, when
129 such fees or costs are due, and the ratio or percentage of the
130 number of listings of timeshare interests for sale versus the
131 number of timeshare interests sold by the resale service
132 provider for each of the previous 2 calendar years.~~

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

138 Section 4. Section 721.205, Florida Statutes, is created to
139 read:

140 721.205 Resale service providers; disclosure obligations.—

141 (1)(a) Before engaging in resale advertising services, a
142 resale service provider must provide to the consumer timeshare
143 reseller:

144 1. A description of any fees or costs related to such
145 services that the consumer timeshare reseller, or any other

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146 person, is required pay to the resale service provider or to any
147 third party.

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

149 (b) A resale service provider may not engage in those
150 activities described in s. 475.01(1)(a) without being the holder
151 of a valid and current active license in accordance with chapter
152 475.

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

155 (a) State or imply that the resale advertiser will provide
156 or assist in providing any type of direct sales or resale
157 brokerage services other than the advertising of the consumer
158 resale timeshare interest for sale or rent by the consumer
159 timeshare reseller.

160 (b) State or imply to a consumer timeshare reseller,
161 directly or indirectly, that the resale advertiser has
162 identified a person interested in buying or renting the
163 timeshare resale interest without providing the name, address,
164 and telephone number of such represented interested resale
165 purchaser.

166 (c) State or imply to a consumer timeshare reseller,
167 directly or indirectly, that sales or rentals have been achieved
168 or generated as a result of its advertising services unless the
169 resale advertiser, at the time of making such representation,
170 possesses and is able to provide documentation to substantiate
171 the statement or implication made to the consumer timeshare
172 reseller. In addition, to the extent that a resale advertiser
173 states or implies to a consumer timeshare reseller that the
174 resale advertiser has sold or rented any specific number of

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175 timeshare interests, the resale advertiser must also provide the
176 consumer timeshare reseller the ratio or percentage of all the
177 timeshare interests that have resulted in a sale versus the
178 number of timeshare interests advertised for sale by the resale
179 advertiser for each of the previous 2 calendar years if the
180 statement or implication is about a sale or sales, or the ratio
181 or percentage of all the timeshare interests that have actually
182 resulted in a rental versus the number of timeshare interests
183 advertised for rental by the resale advertiser for each of the
184 previous 2 calendar years if the statement or implication is
185 about a rental or rentals.

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

188 (e) Make or submit any charge to a consumer timeshare
189 reseller's credit card account; make or cause to be made any
190 electronic transfer of consumer timeshare reseller funds; or
191 collect any payment from a consumer timeshare reseller that
192 exceeds an aggregate total amount of \$75 or more in any 12-month
193 period until after the resale advertiser has received a written
194 contract complying in all respects with paragraph (f) that has
195 been signed by the consumer timeshare reseller.

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

202 1. The name, address, telephone number, and web address, if
203 any, of the resale advertiser and a mailing address and e-mail

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204 address to which a contract cancellation notice may be delivered
205 at the consumer timeshare reseller's election.

206 2. A complete description of all resale advertising
207 services to be provided, including, but not limited to, details
208 regarding the publications, Internet sites, and other media in
209 or on which the consumer resale timeshare interest will be
210 advertised, the dates or time intervals for such advertising or
211 the minimum number of times such advertising will be run in each
212 specific medium, the itemized cost to the consumer timeshare
213 reseller of each resale advertising service to be provided, and
214 a statement of the total cost to the consumer timeshare reseller
215 of all resale advertising services to be provided.

216 3. A statement printed in at least 12-point boldfaced type
217 immediately preceding the space in the contract provided for the
218 consumer timeshare reseller's signature in substantially the
219 following form:

220
221 TIMESHARE OWNER'S RIGHT OF CANCELLATION
222

223 ...(Name of resale advertiser)... will provide resale
224 advertising services pursuant to this contract. If
225 ...(name of resale advertiser)... represents that
226 ...(name of resale advertiser)... has identified a
227 person who is interested in purchasing or renting your
228 timeshare interest, then ...(name of resale
229 advertiser)... must provide you with the name,
230 address, and telephone number of such represented
231 interested resale purchaser.
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233 You have an unwaivable right to cancel this contract
234 for any reason within 10 days after the date you sign
235 this contract. If you decide to cancel this contract,
236 you must notify ...(name of resale advertiser)... in
237 writing of your intent to cancel. Your notice of
238 cancellation shall be effective upon the date sent and
239 shall be sent to ...(resale advertiser's physical
240 address)... or to ...(resale advertiser's e-mail
241 address).... Your refund will be made within 20 days
242 after receipt of notice of cancellation or within 5
243 days after receipt of funds from your cleared check,
244 whichever is later.

245
246 You are not obligated to pay ...(name of resale
247 advertiser)... any money unless you sign this contract
248 and return it to ...(name of resale advertiser)....

249
250 IMPORTANT: Before signing this contract, you should
251 carefully review your original timeshare purchase
252 contract and other project documents to determine
253 whether the developer has reserved a right of first
254 refusal or other option to purchase your timeshare
255 interest or to determine whether there are any
256 restrictions or special conditions applicable to the
257 resale or rental of your timeshare interest.

258
259 4. A statement that any resale contract entered into by or
260 on behalf of the consumer timeshare reseller must comply in all
261 respects with s. 721.065, including the provision of a 10-day

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262 cancellation period for the prospective consumer resale
263 purchaser.

264 (g) Make or submit any charge to a consumer timeshare
265 reseller's credit card account; make or cause to be made any
266 electronic transfer of consumer timeshare reseller funds; or
267 collect any payment from a consumer timeshare reseller in an
268 aggregate amount totaling less than \$75 in any 12-month period
269 unless the consumer timeshare reseller has been provided a copy
270 of the terms and conditions of the contract provided for in
271 paragraph (f) and the consumer timeshare reseller has agreed to
272 such terms and conditions by mail or electronic transmission.

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

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

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

286 (4) Notwithstanding obligations placed upon any other
287 persons by this section, it is the duty of a resale service
288 provider to supervise, manage, and control all aspects of the
289 offering of resale advertising services by any agent or employee
290 of the resale service provider. Any violation of this section

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291 that occurs during such offering shall be deemed a violation by
292 the resale service provider as well as by the person actually
293 committing the violation.

294 (5) Providing resale advertising services with respect to a
295 consumer resale timeshare interest in a timeshare property
296 located or offered within this state, or in a multisite
297 timeshare plan registered or required to be registered to be
298 offered in this state, including acting as an agent or third-
299 party service provider for a resale service provider,
300 constitutes operating, conducting, engaging in, or carrying on a
301 business or business venture in this state for the purposes of
302 s. 48.193(1).

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

306 (7) Notwithstanding any other penalties provided for in
307 this section, any violation of this section is subject to a
308 civil penalty of not more than \$15,000 per violation. In
309 addition, a person who violates any provision of this section
310 commits an unfair and deceptive trade practice as prohibited by
311 s. 501.204 and is subject to the penalties and remedies provided
312 in part II of chapter 501.

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