

By Senator Detert

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1                   A bill to be entitled  
2           An act relating to charitable contributions; amending  
3           s. 726.102, F.S.; defining the terms "charitable  
4           contribution" and "qualified religious or charitable  
5           entity or organization"; amending s. 726.109, F.S.;  
6           providing that a transfer of a charitable contribution  
7           that is received in good faith by a qualified  
8           religious or charitable entity or organization is not  
9           a fraudulent transfer; providing exceptions; amending  
10          ss. 213.758, 718.704, and 721.05, F.S.; conforming  
11          cross-references; providing an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15           Section 1. Present subsections (3), (4), (5), (6), (7),  
16           (8), (9), (10), (11), (12), and (13) of section 726.102, Florida  
17           Statutes, are renumbered as subsections (4), (5), (6), (7), (8),  
18           (9), (10), (11), (13), (14), and (15), respectively, and new  
19           subsections (3) and (12) are added to that section, to read:

20           726.102 Definitions.—As used in ss. 726.101-726.112:

21           (3) "Charitable contribution" means a charitable  
22           contribution as that term is defined in s. 170(c) of the  
23           Internal Revenue Code of 1986, if that contribution consists of:

24           (a) A financial instrument as defined in s. 731(c)(2)(C) of  
25           the Internal Revenue Code of 1986; or

26           (b) Cash.

27           (12) "Qualified religious or charitable entity or  
28           organization" means:

29           (a) An entity described in s. 170(c)(1) of the Internal

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30 Revenue Code of 1986; or

31 (b) An entity or organization described in s. 170(c)(2) of  
32 the Internal Revenue Code of 1986.

33 Section 2. Subsection (7) is added to section 726.109,  
34 Florida Statutes, to read:

35 726.109 Defenses, liability, and protection of transferee.—

36 (7) (a) The transfer of a charitable contribution that is  
37 received in good faith by a qualified religious or charitable  
38 entity or organization is not a fraudulent transfer under this  
39 chapter.

40 (b) However, a charitable contribution from a natural  
41 person is a fraudulent transfer if the transfer was received on,  
42 or within 2 years before, the earlier of the date of  
43 commencement of an action under this chapter, the filing of a  
44 petition under the federal Bankruptcy Code, or the commencement  
45 of insolvency proceedings by or against the transferor under any  
46 state or federal law, including the filing of an assignment for  
47 the benefit of creditors or the appointment of a receiver,  
48 unless:

49 1. The transfer was consistent with the practices of the  
50 transferor in making charitable contribution; or

51 2. The transfer was received in good faith and the amount  
52 of the contribution did not exceed 15 percent of the gross  
53 annual income of the transferor for the year in which the  
54 transfer of the contribution was made.

55 Section 3. Paragraph (c) of subsection (1) of section  
56 213.758, Florida Statutes, is amended to read:

57 213.758 Transfer of tax liabilities.—

58 (1) As used in this section, the term:

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59 (c) "Insider" means:

60 1. Any person included within the meaning of insider as  
61 used in s. 726.102~~(7)~~; or

62 2. A manager of, a managing member of, or a person who  
63 controls a transferor that is a limited liability company, or a  
64 relative as defined in s. 726.102~~(11)~~ of any such persons.

65 Section 4. Subsection (4) of section 718.704, Florida  
66 Statutes, is amended to read:

67 718.704 Assignment and assumption of developer rights by  
68 bulk assignee; bulk buyer.—

69 (4) An acquirer of condominium parcels is not a bulk  
70 assignee or a bulk buyer if the transfer to such acquirer was  
71 made:

72 (a) Before the effective date of this part;

73 (b) With the intent to hinder, delay, or defraud any  
74 purchaser, unit owner, or the association; or

75 (c) By a person who would be considered an insider under s.  
76 726.102~~(7)~~.

77 Section 5. Subsection (10) of section 721.05, Florida  
78 Statutes, is amended to read:

79 721.05 Definitions.—As used in this chapter, the term:

80 (10) "Developer" includes:

81 (a)1. A "creating developer," which means any person who  
82 creates the timeshare plan;

83 2.~~(b)~~ A "successor developer," which means any person who  
84 succeeds to the interest of the persons in this subsection by  
85 sale, lease, assignment, mortgage, or other transfer, but the  
86 term includes only those persons who offer timeshare interests  
87 in the ordinary course of business; and

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88           3.~~(e)~~ A "concurrent developer," which means any person  
89 acting concurrently with the persons in this subsection with the  
90 purpose of offering timeshare interests in the ordinary course  
91 of business.

92           (b)~~(d)~~ The term "developer" does not include:

93           1. An owner of a timeshare interest who has acquired the  
94 timeshare interest for his or her own use and occupancy and who  
95 later offers it for resale; provided that a rebuttable  
96 presumption exists ~~shall exist~~ that an owner who has acquired  
97 more than seven timeshare interests did not acquire them for his  
98 or her own use and occupancy;

99           2. A managing entity, not otherwise a developer, that  
100 offers, or engages a third party to offer on its behalf,  
101 timeshare interests in a timeshare plan which it manages,  
102 provided that such offer complies with the provisions of s.  
103 721.065;

104           3. A person who owns or is conveyed, assigned, or  
105 transferred more than seven timeshare interests and who  
106 subsequently conveys, assigns, or transfers all acquired  
107 timeshare interests to a single purchaser in a single  
108 transaction, which transaction may occur in stages; or

109           4. A person who acquires ~~has acquired~~ or has the right to  
110 acquire more than seven timeshare interests from a developer or  
111 other interestholder in connection with a loan, securitization,  
112 conduit, or similar financing arrangement transaction and who  
113 subsequently arranges for all or a portion of the timeshare  
114 interests to be offered by a developer ~~one or more developers~~ in  
115 the ordinary course of business on its ~~their~~ own behalf ~~behalfes~~  
116 or on behalf of such person.

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117        (c)~~(e)~~ A successor or concurrent developer is ~~shall be~~  
118 exempt from any liability inuring to a predecessor or concurrent  
119 developer of the same timeshare plan, except as provided in s.  
120 721.15(7) ., ~~provided that~~ This exemption does ~~shall~~ not apply to  
121 any of the successor or concurrent developer's responsibilities,  
122 duties, or liabilities with respect to the timeshare plan which  
123 ~~that~~ accrue after the date the successor or concurrent developer  
124 became a successor or concurrent developer, and ~~provided that~~  
125 such transfer does not constitute a fraudulent transfer. ~~In~~  
126 ~~addition to other provisions of law,~~ A transfer by a predecessor  
127 developer to a successor or concurrent developer shall be deemed  
128 fraudulent if the predecessor developer made the transfer:

129            1. With actual intent to hinder, delay, or defraud any  
130 purchaser or the division; or

131            2. To a person that would constitute an insider under s.  
132 726.102~~(7)~~.

133  
134 ~~The provisions of~~ This paragraph does ~~shall~~ not be construed to  
135 relieve any successor or concurrent developer from the  
136 obligation to comply with the provisions of any applicable  
137 timeshare instrument.

138            Section 6. This act shall take effect upon becoming a law.