**South Carolina General Assembly**

125th Session, 2023-2024

**S. 881**

**STATUS INFORMATION**

General Bill

Sponsors: Senators M. Johnson, McLeod, Devine and Rankin

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Introduced in the Senate on January 9, 2024

Introduced in the House on March 5, 2024

Last Amended on February 28, 2024

Currently residing in the Senate

Summary: Prohibition of Unfair Real Estate Service Agreements

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 11/30/2023 Senate Prefiled

 11/30/2023 Senate Referred to Committee on **Judiciary**

 1/9/2024 Senate Introduced and read first time (Senate Journal‑page 70)

 1/9/2024 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 70)

 1/19/2024 Senate Referred to Subcommittee: M.Johnson (ch), Sabb,
 Talley, Reichenbach, Devine

 2/21/2024 Senate Committee report: Favorable with amendment **Judiciary** (Senate Journal‑page 10)

 2/23/2024 Scrivener's error corrected

 2/28/2024 Senate Committee Amendment Adopted (Senate Journal‑page 42)

 2/28/2024 Senate Read second time (Senate Journal‑page 42)

 2/28/2024 Senate Roll call Ayes-42 Nays-0 (Senate Journal‑page 42)

 2/29/2024 Senate Read third time and sent to House (Senate Journal‑page 13)

 3/1/2024 Scrivener's error corrected

 3/5/2024 House Introduced and read first time (House Journal‑page 26)

 3/5/2024 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 26)

 5/1/2024 House Committee report: Favorable **Labor, Commerce and Industry** (House Journal‑page 467)

 5/7/2024 House Requests for debate-Rep(s). Sandifer, Hiott,
 Carter, Hixon, Blackwell, Oremus, O'Neal, Ligon,
 Guffey, Magnuson, Harris, MM Smith, McCravy,
 Williams, West, Hart, Jefferson, Bustos, Long

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**VERSIONS OF THIS BILL**

[11/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20231130.docx)

[02/21/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20240221.docx)

[02/23/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20240223.docx)

[02/28/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20240228.docx)

[03/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20240301.docx)

[05/01/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/881_20240501.docx)

Committee Report

May 01, 2024

S. 881

Introduced by Senators M. Johnson, McLeod, Devine and Rankin

S. Printed 05/01/24--H.

Read the first time March 05, 2024

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The committee on House Labor, Commerce and Industry

To whom was referred a Bill (S. 881) to amend the South Carolina Code of Laws by adding the “Prohibition Of Unfair Real Estate Service Agreements Act”; and to make the prohibitions effective for any, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass:

W.E. “BILL” SANDIFER for Committee.

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING THE “PROHIBITION OF UNFAIR REAL ESTATE SERVICE AGREEMENTS ACT”; AND TO MAKE THE PROHIBITIONS EFFECTIVE FOR ANY UNFAIR REAL ESTATE SERVICE AGREEMENTS THAT ARE RECORDED ON THE EFFECTIVE DATE OF THIS ACT OR THAT ARE EXECUTED MODIFIED, EXTENDED, OR AMENDED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 27 of the S.C. Code is amended by adding:

 CHAPTER 28

 Prohibition of Unfair Real Estate Service Agreements

 Section 27‑28‑10. This chapter may be cited as the “Prohibition of Unfair Real Estate Service Agreements Act”.

 Section 27‑28‑20. (A) This chapter is intended to prohibit the use of real estate service agreements that are unfair to an owner of residential real estate or to other persons who may become owners of that real estate in the future. This chapter also prohibits the recording of such residential real estate service agreements so that the public records will not be clouded by them and provides remedies for owners who are inconvenienced or damaged by the recording of such agreements.

 (B) As used in this chapter:

 (1) “Person” means any individual, partnership, corporation, company, or association.

 (2) “Real estate service agreement” means a written contract between a service provider and the owner or potential buyer of residential real estate to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate.

 (3) “Residential real estate” means real property located in this State which is used primarily for personal, family, or household purposes.

 (4) “Service provider” means a person who provides a service related to residential real estate, including a real estate broker.

 (5) “Unfair real estate service agreement” means a real estate service agreement that violates Section 27‑28‑30 or Section 27‑28‑40.

 Section 27‑28‑30. (A) A real estate service agreement is unfair, void, and in violation of this chapter if the agreement is to be in effect for more than one year and either expressly or implicitly aims to do any of the following:

 (1) run with the land or bind future owners of residential real estate identified in the real estate service agreement;

 (2) allow for the assignment of the right to provide services without notice or consent of the owner or buyer; or

 (3) create a lien, encumbrance, or other real property security interest.

 (B) A service provider has no right to a refund of the consideration paid to the owner or buyer in connection with an unfair real estate service agreement.

 (C) This chapter does not apply to the following types of agreements:

 (1) a home warranty or other type of similar product that covers the cost of maintenance of a major housing system, such as plumbing or electrical wiring, for a set period of time from the date a house is sold;

 (2) an insurance contract;

 (3) an option to purchase contract executed with a lease agreement or a contract for a deed;

 (4) a declaration created pursuant to Chapters 30 (Homeowner Association Act), 31 (Horizontal Property Act), and 32 (Vacation Time Share Plan) of this title or created pursuant to Chapter 31 of Title 33 (Nonprofit Corporation Act);

 (5) a maintenance or repair agreement entered into by a homeowners association in a common interest community;

 (6) a security agreement under Title 36 (the Uniform Commercial Code) relating to the sale or rental of personal property or fixtures;

 (7) the provision of water, sewer, electrical, telephone, cable, natural gas, propane, fuel oil, or other regulated utility service;

 (8) a property management contract; or

 (9) any actions regarding mechanics’, laborers’, or materialmen’s liens or commercial real estate broker liens.

 Section 27‑28‑40. (A) Any recorded unfair real estate service agreement or notice or memorandum of an unfair real estate service agreement is void.

 (B) All the following shall apply to a recording that is void under subsection (A):

 (1) The recording shall not operate as a lien, encumbrance, or security interest.

 (2) No owner or buyer shall be required to record any document voiding the recording.

 (3) The recording shall not provide actual or constructive notice to any person interested in the residential real estate that is identified in the unfair real estate service agreement.

 (C) In addition to any other rights provided by law, any person with an interest in residential real estate identified by a recording that is void under subsection (A) may recover damages, costs, and attorney’s fees that may be proved against the service provider named in the unfair real estate service agreement. Any actual damages, costs, and attorney’s fees that are proved against the service provider are not offset by the consideration paid by the service provider to the owner or buyer of the residential real estate.

 Section 27‑28‑50. In addition to any other rights provided by law, a violation of this chapter constitutes an unfair trade practice under Chapter 5 of Title 39, the South Carolina Unfair Trade Practices Act. Any party aggrieved by a violation of this chapter may bring a cause of action against the service provider and is entitled to the relief available in Section 39‑5‑140. Any recoveries available under Section 39‑5‑140 against the service provider are not offset by the consideration paid by the service provider to the owner or buyer in connection with the unfair real estate service agreement. The Attorney General is empowered to enforce this chapter as allowed by Chapter 5 of Title 39.

SECTION 2. This act takes effect upon approval by the Governor and applies to any unfair real estate service agreements that are recorded on the effective date of this act or that are executed, modified, extended, or amended on or after the effective date of this act.

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