**South Carolina General Assembly**

119th Session, 2011-2012

**A106, R113, H3095**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Clemmons, Erickson, Stavrinakis, McCoy, Bowen, Sandifer, Whitmire, Hixon, J.R. Smith, Allison, Long, Toole, Weeks, Atwater, Hardwick, Agnew, Govan and Bales

Document Path: l:\council\bills\agm\18222ab11.docx

Introduced in the House on January 11, 2011

Introduced in the Senate on February 3, 2011

Last Amended on June 1, 2011

Passed by the General Assembly on January 12, 2012

Governor's Action: February 1, 2012, Signed

Summary: Transfer fee covenants

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/7/2010 House Prefiled

 12/7/2010 House Referred to Committee on **Judiciary**

 1/11/2011 House Introduced and read first time ([House Journal‑page 43](file:///h%3A%5Chj%20archive%5C2011%5C01-11-11.docx))

 1/11/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 43](file:///h%3A%5Chj%20archive%5C2011%5C01-11-11.docx))

 1/13/2011 House Member(s) request name added as sponsor: Bowen, Sandifer, Whitmire

 1/20/2011 House Member(s) request name added as sponsor: Hixon, J.R.Smith

 1/25/2011 House Member(s) request name added as sponsor: Allison

 1/26/2011 House Member(s) request name added as sponsor: Long, Toole

 1/26/2011 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 2](file:///h%3A%5Chj%20archive%5C2011%5C01-26-11.docx))

 1/27/2011 House Member(s) request name added as sponsor: Weeks, Atwater

 2/1/2011 House Member(s) request name added as sponsor: Hardwick, Agnew

 2/1/2011 House Requests for debate‑Rep(s). GR Smith, Bikas, Toole, Hart, Crawford, Skelton, Clemmons, Hardwick, Hamilton, Hearn, Spires, Frye, Pitts, Willis, King, Anderson, Parker, Henderson, Young, Pope, DC Moss, Clyburn, Loftis, Ott, Corbin, Williams, McEachern, Forrester, and Brantley ([House Journal‑page 12](file:///h%3A%5Chj%20archive%5C2011%5C02-01-11.docx))

 2/1/2011 House Debate adjourned until Wednesday, February 2, 2011 ([House Journal‑page 24](file:///h%3A%5Chj%20archive%5C2011%5C02-01-11.docx))

 2/2/2011 House Member(s) request name added as sponsor: Govan, Bales

 2/2/2011 House Amended ([House Journal‑page 38](file:///h%3A%5Chj%20archive%5C2011%5C02-02-11.docx))

 2/2/2011 House Read second time ([House Journal‑page 46](file:///h%3A%5Chj%20archive%5C2011%5C02-02-11.docx))

 2/2/2011 House Roll call Yeas‑110 Nays‑2 ([House Journal‑page 46](file:///h%3A%5Chj%20archive%5C2011%5C02-02-11.docx))

 2/3/2011 House Debate adjourned until Tuesday, February 8, 2011

 2/3/2011 House Reconsidered

 2/3/2011 House Read third time and sent to Senate ([House Journal‑page 25](file:///h%3A%5Chj%20archive%5C2011%5C02-03-11.docx))

 2/3/2011 Senate Introduced and read first time ([Senate Journal‑page 10](file:///h%3A%5Csj%20archive%5C2011%5C02-03-11.docx))

 2/3/2011 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 10](file:///h%3A%5Csj%20archive%5C2011%5C02-03-11.docx))

 2/23/2011 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin

 5/31/2011 Senate Polled out of committee **Judiciary** ([Senate Journal‑page 22](file:///h%3A%5Csj%20archive%5C2011%5C05-31-11.docx))

 5/31/2011 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 22](file:///h%3A%5Csj%20archive%5C2011%5C05-31-11.docx))

 6/1/2011 Scrivener's error corrected

 6/1/2011 Senate Committee Amendment Amended and Adopted ([Senate Journal‑page 103](file:///h%3A%5Csj%20archive%5C2011%5C06-01-11.docx))

 6/1/2011 Senate Read second time ([Senate Journal‑page 103](file:///h%3A%5Csj%20archive%5C2011%5C06-01-11.docx))

 6/1/2011 Senate Roll call Ayes‑42 Nays‑0 ([Senate Journal‑page 103](file:///h%3A%5Csj%20archive%5C2011%5C06-01-11.docx))

 6/2/2011 Scrivener's error corrected

 1/10/2012 Senate Read third time and returned to House with amendments ([Senate Journal‑page 47](file:///h%3A%5Csj%20archive%5C2012%5C01-10-12.docx))

 1/12/2012 House Concurred in Senate amendment and enrolled ([House Journal‑page 136](file:///h%3A%5Chj%20archive%5C2012%5C01-12-12.docx))

 1/12/2012 House Roll call Yeas‑104 Nays‑0 ([House Journal‑page 136](file:///h%3A%5Chj%20archive%5C2012%5C01-12-12.docx))

 1/26/2012 Ratified R 113

 2/1/2012 Signed By Governor

 2/8/2012 Effective date 02/01/12

 2/10/2012 Act No. 106

**VERSIONS OF THIS BILL**

[12/7/2010](file:///p%3A%5Cpprever%5C2011-12%5C3095_20101207.docx)

[1/26/2011](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110126.docx)

[2/2/2011](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110202.docx)

[5/31/2011](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110531.docx)

[6/1/2011](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110601.docx)

[6/1/2011-A](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110601A.docx)

[6/2/2011](file:///p%3A%5Cpprever%5C2011-12%5C3095_20110602.docx)

(A106, R113, H3095)

**AN ACT** **TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑1‑70 SO AS TO PROHIBIT REAL PROPERTY TRANSFER FEE COVENANTS, AND TO PROVIDE RELATED DEFINITIONS AND POLICY FINDINGS.**

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

**Real property transfer fee covenant prohibited, definitions and policy**

SECTION 1. Chapter 1, Title 27 of the 1976 Code is amended by adding:

 “Section 27‑1‑70. (A) As used in this section:

 (1) ‘Association’ means a nonprofit, mandatory membership organization comprised of owners of homes, condominiums, cooperatives, manufactured homes, or any interest in real property, created pursuant to a declaration, covenant, or other applicable law.

 (2) ‘Transfer’ means the sale, gift, grant, conveyance, assignment, inheritance, or other transfer of an interest in real property located in this State.

 (3) ‘Transfer fee’ means a fee or charge imposed by a transfer fee covenant, but does not include any tax, assessment, fee, or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations.

 (4) ‘Transfer fee covenant’ means a provision in a document, whether recorded or not and however denominated, which purports to run with the land or bind current owners or successors in title to specified real property located in this State, and which obligates a transferee or transferor of all or part of the property to pay a fee or charge to a third person upon transfer of an interest in all or part of the property, or in consideration for permitting this transfer. A ‘transfer fee covenant’ does not include:

 (a) a provision of a purchase contract, option, mortgage, security agreement, real property listing agreement, or other agreement which obligates one party to the agreement to pay the other, as full or partial consideration for the agreement or for a waiver of rights under the agreement, an amount determined by the agreement, if that amount:

 (i) is payable on a one‑time basis only upon the next transfer of an interest in the specified real property and, once paid, does not bind successors in title to the property;

 (ii) constitutes a loan assumption or similar fee charged by a lender holding a lien on the property;

 (iii) constitutes a fee or commission paid to a licensed real estate broker for brokerage services rendered in connection with the transfer of the property for which the fee or commission is paid; or

 (iv) is the actual cost to copy governing documents of a community association and is charged by the association to a transferee or transferor for governing documents delivered to a real estate closing, provided cost is not passed through to a third party other than the agent of the association;

 (b) any provision in a deed, memorandum, or other document recorded for the purpose of providing record notice of an agreement described in subsection (A)(4)(a);

 (c) a provision of a document requiring payment of a fee or charge to an association to be used exclusively for purposes authorized in the document if no portion of the fee is required to be passed through to a third party designated or identifiable by description in the document or another document referenced in it;

 (d) a provision of a document requiring payment of a fee or charge to an organization described in Section 501(c)(3), 501(c)(4), or 501(c)(7) of the Internal Revenue Code, to be used exclusively to support cultural, educational, charitable, recreational, environmental, conservation, social, or other similar activities benefiting the real property affected by the provision or the community of which the property is a part; or

 (e) any fee, charge, assessment, or other amount payable in connection with a ‘conservation easement’ as defined in Section 27‑8‑80 in the Conservation Easement Act, or a preservation easement as described in Sections 170 (h)(4)(B) and (C) of the Internal Revenue Code of 1986, as amended, whether the conservation easement or preservation easement is donated or purchased, or part donated and part purchased; whether paid contemporaneously with the recording of the conservation easement or the preservation easement or at some future date during its term and existence; and whether paid by the original grantor or any successor or assign in the legal chain of title to the real property subject to the conservation easement or preservation easement.

 (B) The General Assembly finds:

 (1) the public policy of this State favors the transferability of interests in real property free from unreasonable restraints on alienation and covenants or servitudes that do not touch and concern the property; and

 (2) a transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant or the amount of the transfer fee set forth in the covenant.

 (C) A transfer fee covenant recorded after the effective date of this section, or a lien to the extent that it purports to secure the payment of a transfer fee, is not binding on or enforceable against the affected real property or any subsequent owner, purchaser, or mortgagee of an interest in the property.

 (D) In order for a transfer fee covenant recorded before the effective date of this section to be valid and enforceable, a separate document that complies with the following requirements of this subsection must be filed in each county in which the real property subject to the transfer fee covenant is located within one hundred eighty days of the effective date of this section.

 (1) The title of the document must be ‘Notice of Transfer Fee Covenant’ in at least fourteen‑point boldface type.

 (2) The document must list the amount or basis by which the transfer fee covenant is calculated.

 (3) The actual dollar‑cost examples for a home priced at two hundred fifty thousand dollars, five hundred thousand dollars, and seven hundred fifty thousand dollars must be included in the document.

 (4) The document must contain the date or circumstances under which the transfer fee covenant expires, if any.

 (5) The document must contain instructions and contact information concerning the payment of the fee required by the transfer fee covenant.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 26th day of January, 2012.

Approved the 1st day of February, 2012.

\_\_\_\_\_\_\_\_\_\_