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Indicates New Matter

COMMITTEE REPORT

April 19, 2017

**H. 3647**

Introduced by Reps. Sandifer, Clemmons, Bedingfield, Forrester, Rutherford, Duckworth, Ott, Williams, Atwater, McCravy, Erickson, Jefferson, King, Anderson, Simrill, Hixon, Bowers, Hewitt and Forrest

S. Printed 4/19/17--S.

Read the first time March 23, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3647) to amend Section 27‑32‑10, as amended, Code of Laws of South Carolina, 1976, relating to definitions concerning vacation time sharing plans, so as to, etc., respectfully

**REPORT:**

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

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on March 22, 2017**

**State Expenditure**

This bill amends sections of the Code of Laws related to the sale of vacation time shares. The bill expands the definition of escrow agent to include a licensed South Carolina attorney, real estate broker, or title insurance agent in good standing. The bill adds definitions for resale vacation time sharing interest, resale service provider, vacation time sharing resale service, vacation time sharing association, and consumer vacation time sharing reseller.

Section 27-32-55, which specifies the fees which may and may not be charged by a resale service provider to a consumer reseller, is expanded to include guidelines and restrictions on contracts, escrow management and dispute resolution, unfair trade practices and consumer protection, and penalties for violations of specific provisions. This section, as amended, requires a written contract between a consumer reseller and a time share resale service provider, specifying the information that must be provided by the service provider to the consumer reseller. The bill retains statutory language regarding the types of fees that may be charged to a consumer vacation time sharing reseller, and clarifies the role of the escrow agent and real estate commission in resolving escrow disbursement disputes. The bill requires full disclosure to time share buyers of all assessments and taxes due at the time of transfer of ownership and provides civil penalties for certain violations.

The bill as amended adds vacation time sharing associations, along with purchasers or lessees, as having a right to bring a private action to enforce the provisions of the chapter.

Although the Real Estate Commission is responsible for enforcing this chapter, the bill allows the Department of Consumer Affairs also to enforce Section 27-32-55 and impose penalties that include fines, warning notice of deficiency, cease and desist order, refund of fees, and civil penalties. A person aggrieved by the department’s final administrative order may request a hearing before the Administrative Law Court.

The bill adds that vacation time sharing interests are subject to the protections of the Service members Civil Relief Act (SCRA) which provides for the suspension or postponement of certain military service members’ civil obligations while on active duty.

**Department of Labor, Licensing and Regulation**. This bill as amended requires escrow agents to notify the Real Estate Commission of any disputes involving monetary disbursements or other property held in escrow and authorizes the Commission to audit or examine escrow accounts in order to resolve disputes. The department reports that the additional responsibility to investigate disputes, and audit or examine escrow accounts could be conducted by existing staff. This bill would not have an expenditure impact on the general fund, federal funds, or other funds.

**Department of Consumer Affairs (DCA)**. The department indicates a minimal expenditure impact for vacation time share complaints fielded. Currently, DCA receives vacation time share complaints and engages in voluntary mediation of complaints that do not fall within the jurisdiction of the Department of Labor, Licensing, and Registration. DCA received 336 vacation time share related complaints from 2014-2016 and only four dealt with timeshare resale companies. DCA anticipates the number of vacation time share complaints received may increase due to the department’s contact information being included in the consumer contract for services, however DCA does not anticipate the need for additional resources. Further, the bill’s enforcement authority granted to DCA is voluntary as opposed to mandatory. If resources become an issue, the department would make the appropriate adjustments. This bill would have no expenditure impact on the general fund, federal funds, or other funds.

**Administrative Law Court (ALC)**. The Administrative Law Court already has jurisdiction to hear cases from Consumer Affairs and the Department of Labor, Licensing and Regulation. This bill is not expected to significantly increase the number of cases brought before the ALC. This bill is anticipated to have no expenditure impact on the general fund, federal funds, or other funds.

**State Revenue**

The bill as amended makes a violation of the provisions regulating the resale of timeshare interests an unfair trade practice. The Unfair Trade Practices Act, in Section 39-5-110, allows the Attorney General to recover for the State a civil penalty of no more than $5,000 for each willful use of an unfair trade practice. If a person violates the terms of an injunction on the use of an unfair trade practice, the Attorney General may recover for the State a civil penalty up to $15,000 for each violation. These recoveries would be deposited into a special Litigation Recovery Account for appropriation by the General Assembly. However, because the number of violations of the bill’s timeshare resale provisions and the specific fines that may be imposed cannot be estimated, the revenue impact of these civil penalties is undetermined.

The provisions of the bill may also be enforced by the Department of Labor, Licensing and Regulation’s Real Estate Commission and by the Department of Consumer Affairs. These agencies may enforce the provisions by imposition of a monetary fine, among other measures. The revenue that may be generated from any fines cannot be determined because of the unpredictability of the number of violations that may occur and the specific punishment that may be imposed.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 27‑32‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING VACATION TIME SHARING PLANS, SO AS TO DEFINE AND REDEFINE CERTAIN TERMS; TO AMEND SECTION 27‑32‑55, RELATING TO FEES FOR THE RESALE OF INTERESTS IN VACATION TIMESHARES, SO AS TO PROVIDE REQUIREMENTS OF RESALE VACATION TIMESHARE SERVICES AND PROVIDERS OF THESE SERVICES; AND TO AMEND SECTION 27‑32‑130, RELATING TO ENFORCEMENT AND IMPLEMENTATION PROVISIONS, SO AS TO MAKE THE PROVISIONS APPLICABLE TO VACATION TIME SHARING ASSOCIATIONS.

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

SECTION 1. Section 27‑32‑10 of the 1976 Code, as last amended by Act 310 of 2006, is further amended to read:

“Section 27‑32‑10. For purposes of this chapter:

(1) ‘Accommodations’ means any hotel or motel room, condominium or cooperative unit, cabin, lodge, apartment, or other private or commercial structure designed for occupancy by one or more individuals or a recreational vehicle campsite or campground.

(2) ‘Person’ means any individual, corporation, firm, association, joint venture, partnership, trust estate, business trust, syndicate, fiduciary, and any other group or combination.

(3) ‘Contract’ means the agreement between the seller and a purchaser: (a) setting forth the terms and conditions of the purchase and sale of an ownership interest in a vacation time sharing ownership plan, or (b) setting forth the terms and conditions of the purchase and sale of a lease or other right‑to‑use interest in a vacation time sharing lease plan.

(4) ‘Commission’ means the South Carolina Real Estate Commission.

(5) ‘Facilities’ means a structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use.

(6) ‘Seller’ means a person who creates a vacation time sharing plan or is in the business of selling interests in a vacation timeshare plan, or employs agents to do the same, or a person who succeeds to the interest of a seller by sale, lease, assignment, mortgage, or other transfer; except that, the term includes only a person who offers interests in vacation time sharing plans in the State of South Carolina in the ordinary course of business. The term ‘seller’ does not include the following:

(a) an owner of a time sharing interest who has acquired the time sharing interest for his own use and occupancy and who later offers it for resale on his own behalf or through a real estate broker;

(b) a managing entity or owners’ association of a time sharing plan, not otherwise a seller, that offers on the association’s behalf time sharing interests in the time sharing plan transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer; or

(c) a person who owns or is conveyed, assigned, or transferred time sharing interests, and who subsequently conveys, assigns, or transfers all acquired time sharing interests to a single purchaser in a single transaction, which transaction may occur in stages.

(7) ‘Vacation time sharing ownership plan’ means any arrangement, plan, or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, in which the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than one year. A vacation time sharing ownership plan may be created in a condominium established on a term for years or leasehold interest having an original duration of thirty years or longer. An interest in a vacation time sharing ownership plan is recognized as an interest in real property for all purposes pursuant to the laws of this State.

(8) ‘Vacation time sharing lease plan’ means any arrangement, plan, or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, in which the purchaser receives a right to use accommodations or facilities, or both, but does not receive an ownership interest in real property, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than three years. These lease plans do not include an arrangement or agreement in which a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state, accommodations of companies that operate nationwide in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which an interest in real property is not transferred.

(9) ‘Vacation time sharing plan’ means either a vacation time sharing ownership plan or a vacation time sharing lease plan.

(10) ‘Substantially complete’ means all structural components and mechanical systems of all buildings containing or comprising facilities or accommodations are finished in accordance with the plans or specifications of the vacation time sharing plan, as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect, or engineer.

(11) ‘Unit week’ means a number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time sharing plans by the seller.

(12) ‘Escrow agent’ means a bank or trust company doing business in this State or a bonded trust agent bonded in at least the amount of the trust; except, that nothing contained in this chapter prevents investment of funds escrowed pursuant to this chapter by the bank, trust company, or bonded agent, with payment of all interest and dividends to the seller of vacation time sharing plans. For purposes of Section 27‑32‑55, escrow agent also means a licensed South Carolina attorney in good standing, a licensed South Carolina real estate broker in good standing, or a licensed South Carolina title insurance agent in good standing.

(13) ‘Escrow account’ means funds held or maintained by an escrow agent.

(14) ‘Fund’ and ‘recovery fund’ means the South Carolina Vacation Time Sharing Recovery Fund.

(15) ‘Claim’ means a monetary loss sustained or allegedly sustained by a person due to the wrongdoing of a registrant or licensee.

(16) ‘Real estate broker’s trust account’ means a demand account in a bank or savings institution in this State held by a duly licensed South Carolina real estate broker.

(17) ‘Resale vacation time sharing interest’ means a vacation time sharing interest, including all or substantially all ownership, rights, or interests associated with the vacation time sharing interest that has been previously acquired by an owner for his own use and occupancy and is later offered or advertised for sale or rent, or legal ownership is transferred by or with the assistance of a resale service provider.

(18) ‘Resale service provider’ means any person or entity, including any agent or employee of such person or entity, who, directly or indirectly, offers or uses telemarketing, direct mail, email, or any other forms of communication in connection with offering of vacation time sharing resale services. This term does not include the following:

(a) a newspaper, periodical, or publisher, unless the newspaper, periodical, or publisher derives more than ten percent of its gross revenue from vacation time sharing resale services. For purposes of this chapter, the calculation of gross revenue derived from providing vacation time sharing resale services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation;

(b) a seller, vacation time sharing association, managing entity, or other person responsible for managing or operating the vacation time sharing plan to the extent they offer vacation time sharing resale services to owners of vacation time sharing interests in such a vacation time sharing plan;

(c) a consumer vacation time sharing reseller who, in a given calendar year, sells seven or fewer resale vacation time sharing interests;

(d) a licensed South Carolina attorney in good standing providing only those services provided under Section 27‑32‑410; or

(e) a licensed South Carolina real estate broker in good standing operating within the scope of activities specified in Chapter 57, with respect to the sale of a resale vacation time sharing interest, as long as the real estate broker does not collect a fee in advance. To the extent a real estate broker is engaged in activities outside the scope of activities specified in Chapter 57, collects an advance fee, or is an agent, employee of, or has an affiliated business arrangement with a party to the sale of a resale vacation time sharing interest, this exemption does not apply.

(19) ‘Vacation time sharing resale service’ means:

(a) the advertising of, or an offer to advertise, any resale vacation time sharing interest for resale or rent; or

(b) the transfer or offer to assist in the transfer of legal ownership of any resale vacation time sharing interest.

(20) ‘Vacation time sharing association’ means an association made up of all owners of vacation time sharing interests in a vacation time sharing plan, including sellers and owners of such vacation time sharing plan.

(21) ‘Consumer vacation time sharing reseller’ means an owner of a resale vacation time sharing interest.”

SECTION 2. Section 27‑32‑55 of the 1976 Code is amended to read:

“Section 27‑32‑55. ~~An owner of an interest in a vacation time sharing plan may not be charged an up‑front appraisal fee for the resale of his interest but may be charged only an up‑front marketing fee or commission upon the resale of the interest in an amount stipulated by written agreement between the owner and his sales agent. A person violating the provisions of this section has committed an unfair trade practice pursuant to Section 39‑5‑20 and is subject to all penalties and remedies provided by law for this violation.~~

(A) Before engaging in any vacation time sharing resale services, a resale service provider must provide a written contract to the consumer vacation time sharing reseller that includes:

(1) The name, physical address, telephone number, and website address, if any, of the resale service provider and any other agent or third party who will provide any of the vacation time sharing resale services on behalf of the resale service provider.

(2) The name, physical address, telephone number, and email address of the escrow agent, if applicable, that will be used to hold funds or other property pursuant to this section.

(3) A complete description of the vacation timesharing resale services.

(4) The duration of the contract for vacation time sharing resale services expressed in days, weeks, months or years.

(5) A description of any fees, costs, or other consideration to be paid to the resale service provider or any agent or third party of it. These fees must include marketing and advertising fees or commissions that are paid upon the sale of a resale vacation time sharing interest.

(6) A statement, if applicable, that the resale service provider will deliver to the consumer vacation time sharing reseller all documentation evidencing the transfer of legal ownership of the resale vacation time sharing interest as provided in subsection (B).

(7) A statement, if applicable, that the consumer time sharing reseller shall have five business days from the date they receive the notice of right to dispute the release funds from the escrow agent as referenced in subsection (B).

(8) The internet addresses and telephone numbers for both the Department of Consumer Affairs and the commission.

(9) A statement printed in at least 12‑point boldfaced type immediately preceding the space in the contract provided for the consumer time sharing reseller’s signature in substantially the following form:

‘You have an unwaivable right to cancel this contract for any reason within 5 business days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale service provider) in writing of your intent to cancel. Your notice of cancellation must be effective upon the date sent and must be sent to (resale service provider’s mailing address) or to (resale service provider’s e‑mail address). Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later. You are not obligated to pay (name of resale service provider) any money unless you sign this contract and return it to (name of resale service provider).’

‘Before signing this contract, you should carefully review your original vacation time sharing purchase contract and other project documents to determine whether there are any restrictions or special conditions applicable to the resale or rental of your vacation time sharing interest. You may also wish to contact your resort management company or your vacation time sharing association to learn about resale or rental options that may be available to you.’

(B) With respect to all fees, costs and compensation paid to a resale service provider, the following shall apply:

(1) A consumer vacation time sharing reseller may not be charged an appraisal fee in connection with the sale or rental of a resale vacation time sharing interest.

(2) A consumer vacation time sharing reseller may be charged marketing or advertising fees prior to the sale or rental of a resale vacation time sharing interest.

(3) A consumer vacation time sharing reseller shall not pay any advance fee, cost or compensation for vacation time sharing resale services, except as provided in item (2), unless one hundred percent of all funds are deposited into an escrow account until the vacation time sharing resale service is completed and all other requirements of this section have been met.

(a) The funds or other property required to be escrowed hereunder may only be released from escrow to or on the order of the person providing the vacation time sharing resale services upon completion of all of the following:

(i) Presentation by the vacation time sharing resale services provider of an affidavit by such person to the escrow agent that all promised vacation time sharing resale services have been performed, including delivery to both the consumer vacation time sharing reseller and the vacation time sharing plan association or managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership or of legal title to the resale vacation time sharing interest completed in accordance with Section 27‑32‑40, to the transferee.

(ii) The escrow agent’s submission of the affidavit and a notice of right to dispute the release of funds or property in escrow to the consumer vacation time sharing reseller. The notice shall state the consumer vacation time sharing reseller shall have five business days after receipt of such affidavit to submit a written dispute to the escrow agent that all promised vacation time sharing resale services have in fact not been fully performed by the resale service provider. The consumer vacation time sharing reseller may submit the dispute by electronic mail or regular mail. The dispute is effective upon the date sent.

(iii) Failure of the consumer vacation time sharing reseller to submit a dispute pursuant to subsubitem (ii).

(iv) Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent must immediately notify the commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(b) The commission may audit or examine the escrow account. The resale service provider must make available documents relating to the escrow account or escrow obligation to the commission upon the commission’s request.

(c) The escrow agent must retain all resale transfer agreements, escrow account records, affidavits and notices of dispute received pursuant to this subsection for a period of three years.

(C) No person shall knowingly participate, for consideration or with the expectation of consideration, in any plan or scheme, a purpose of which is to transfer a resale vacation time sharing interest to a person or entity that the person knows or reasonably should know does not have the ability, means, or intent to pay all assessments and taxes associated with ownership of the resale vacation time sharing interest that are due or that come due during the transferee’s ownership. Failure to pay assessments or taxes that are due or that come due within four years after acquisition of a resale vacation time sharing interest by a transferee who acquires the resale vacation time sharing interest for commercial purposes and not for personal use and enjoyment creates a rebuttable presumption of a violation of this subsection. It is considered a violation of this section if there is any transfer, series of transfers, or other action made or taken by any person for the purpose of circumventing this section.

(D) No individual consumer vacation timesharing reseller who sells or transfers five or fewer resale vacation time sharing interests owned by that consumer vacation timesharing reseller in a given calendar year shall be subject to liability under subsection (C) above.

(E) Engagement in any vacation time sharing resale service, or receipt of consideration in connection with, any vacation time sharing resale service without an executed written contract as provided in this section or the transfer of a resale vacation time sharing interest to a person who the resale service provider knows or should have known has demonstrated a pattern of nonpayment of assessments, taxes, or fees associated with the obligations of ownership, creates a rebuttable presumption of this a violation of this section.

(F) Providing vacation time sharing resale services with respect to a consumer resale vacation time sharing interest in a vacation time sharing property located or offered within this State or required to be registered in this State, including acting as an agent or third‑party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.

(G) A contract for vacation time sharing resale services resulting from conduct in violation of this section is voidable by the consumer vacation time sharing reseller and the resale service provider shall return all consideration received pursuant to the contract to the consumer vacation time sharing reseller.

(H) A person violating the provisions of this section has committed an unfair trade practice pursuant to Title 39, Chapter 5 of the Unfair Trade Practices Act and is subject to all civil penalties and remedies provided by law for this violation. The criminal penalty provisions of Title 39, Chapter 5 do not apply to this section.

(I) The Department of Consumer Affairs may enforce this section, and impose penalties, including those provided in Section 27‑32‑120(A), a warning notice of deficiency, a cease and desist order and a refund of fees, costs or compensation assessed and/or received in violation of the section. A person aggrieved by the department’s final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court’s rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1. The criminal penalty provisions of Section 27‑32‑120(B) do not apply to this section.

(J) Vacation time sharing interests are subject to the protections of the Service Members Civil Relief Act.”

SECTION 3. Section 27‑32‑130 of the 1976 Code is amended to read:

“Section 27‑32‑130. The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. The provisions of this section do not limit the right of a purchaser or lessee or a vacation time sharing association to bring a private action to enforce the provisions of this chapter.”

SECTION 4. This act takes effect upon approval by the Governor.

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