

1989

Session Law 89-368

Florida Senate & House of Representatives

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H 1035 GENERAL BILL/CS/1ST ENG by Judiciary; Canady (Identical CS/S 550)

Sale of Time-share Units/Brokers; includes certain persons who promote or sell time-share plans within definition of broker; provides exemptions from licensure requirements; prohibits certain activities. Amends 475.01,.011,.42. Effective Date: 10/01/89.

03/20/89 HOUSE Prefiled
03/24/89 HOUSE Referred to Judiciary; Appropriations
03/30/89 HOUSE Subreferred to Subcommittee on Real Property and Family Law
04/04/89 HOUSE Introduced, referred to Judiciary; Appropriations -HJ 99; Subreferred to Subcommittee on Real Property and Family Law; On subcommittee agenda—Judiciary, 04/05/89, 1:15 pm, 415-HOB—Temporarily passed; On Committee agenda—Judiciary, 04/06/89, 3:30 pm, 413-C—For ratification of referral to subcommittee
04/21/89 HOUSE On subcommittee agenda—Judiciary, 04/25/89, 3:45 pm, 24-HOB
04/25/89 HOUSE Subcommittee Recommendation: Favorable with 2 amendments; On Committee agenda, pending subcommittee action—Judiciary, 04/27/89, 8:30 am, 413-C—Temporarily passed
05/01/89 HOUSE On Committee agenda—Judiciary, 05/03/89, 9:30 am, 413-C
05/03/89 HOUSE Preliminary Committee Action by Judiciary: Favorable as a CS
05/11/89 HOUSE Comm. Report: CS by Judiciary -HJ 481; CS read first time -HJ 479; Now in Appropriations -HJ 481
05/22/89 HOUSE Withdrawn from Appropriations -HJ 556; Placed on Calendar
05/26/89 HOUSE Placed on Consent Calendar; Read second time; Read third time; CS passed; YEAS 110 NAYS 0 -HJ 679
05/26/89 SENATE In Messages
05/29/89 SENATE Received, referred to Regulated Industries -SJ 496; Immediately withdrawn from Regulated Industries; Substituted for CS/SB 550; CS passed as amended; YEAS 38 NAYS 0 -SJ 530
05/29/89 HOUSE In Messages
06/02/89 HOUSE Concurred; CS passed as amended; YEAS 112 NAYS 0 -HJ 1128
06/02/89 Ordered engrossed, then enrolled
06/20/89 Signed by Officers and presented to Governor
07/06/89 Became Law without Governor's Signature; Chapter No. 89-368

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1035f.jud

DATE: June 22, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1035

RELATING TO: Resale of time-share units

SPONSOR(S): Committee on Judiciary and Canady

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW:

CHAPTER #: 89-, Laws of Florida

COMPANION BILL(S): SB 550

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Section 721.20, Florida Statutes, requires sellers of time-share plans to be licensed under the real estate licensing act, Chapter 475, Florida Statutes. Persons who only solicit more than twenty prospective purchasers per year must obtain a time-share occupational license from the Division of Florida Land Sales, Condominiums and Mobile Homes. For purposes of the time-share licensing requirements, both time-share licenses, (right-to-use projects), and time-share estates, (those conveyed by warranty deed), are considered to be interests in real property.

Pursuant to the real estate licensing act, the following activities, among others, constitute operating as a broker, broker-salesman, or salesman: selling, buying, renting, or negotiating the sale, purchase or rental of any real property or any interest in real property for another for compensation or with an intent to receive compensation, or advertising to the public to do any of the foregoing.

It has been alleged that business enterprises are advertising and accepting compensation from the owners of time-share periods for listing their time-share periods for resale. Rules of the Florida Real Estate Commission require that when compensation is received prior to the sale of real estate, it must be placed in escrow and be accounted for strictly. Rule 21V-10.029, F.A.C. Many time-share listing businesses are unlicensed and are not escrowing funds received; in fact, it is alleged that in many

cases they are not even making an effort to sell the time-share periods, but are instead obtaining the right to lease the periods to others and are collecting the rents. To date, the Florida Real Estate Commission has not had the means to pursue enforcement against these businesses.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for HB 1035 addresses two principal concerns. First, it will provide important disclosures to many purchasers of time-share periods who are not the original time-share period owners and who currently would not receive any information regarding such matters as how the time-share plan operates, the responsibilities for assessments, and what might result if the assessments are not paid.

Secondly, the bill provides a means of enforcement against time-share resale brokers who accept fees in advance and then make no effort to sell time-share periods for their clients. The Florida Real Estate Commission would clearly have enforcement authority against such operators.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 475.01(1)(c), F.S., to include in the definition of "broker" for purposes of the real estate licensing act, persons who list, advertise for sale, promote or sell time-share periods on behalf of other persons, noting exceptions in s. 475.011 and chapter 721.

Section 2 amends s. 475.011, F.S., by adding a new subsection (8) which provides an exemption from the requirement to obtain a real estate license to persons who are offering time-share periods acquired for their own use and occupancy for resale; to publishers, broadcasters and telecasters in connection with advertising for resale or other promotion of time-share periods as long as such entity is not under common ownership or control with a broker or does not serve directly or indirectly as the advertising agent or agency for a broker; and to exchange companies.

Section 3 amends s. 475.42(1), F.S., relating to violations of the real estate licensing law, by adding new paragraphs (n) and (o). Paragraph (n) prohibits a person from listing, advertising for sale, promoting or selling time-share periods without being licensed as a real estate broker or salesperson except as provided in s. 475.011 and chapter 721.

Paragraph (o) requires a broker or salesperson listing time-share periods to disclose fully and fairly all material aspects of the listing agreement to the time-share period owner. All contracts for purchase and sale must fully and fairly disclose all material aspects of the time-share plan and the rights and obligations of the buyer and seller.

Section 4 provides that the act is effective October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

The Florida Real Estate Commission estimates that they receive approximately sixty citizen complaints per month regarding time-share resales. If the complaints can be handled in a routine manner, this would not require additional funding. If, however, the complaints will require complex litigation, the Commission would need an additional attorney position and a clerical position, estimated to cost the agency \$44,547.

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Debby Kearney 

Staff Director:

Richard Hixson 

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/SB 550

DATE: May 11, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>George <i>[Signature]</i></u>	<u>Skelton <i>(STS)</i></u>	1. <u>RI _____</u>	<u>Fav/CS _____</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Time-share Resale Brokers

BILL NO. AND SPONSOR:

CS/SB 550 by Regulated Industries & Senator Stuart

I. SUMMARY:

A. Present Situation:

Chapter 721, F.S., is the "Florida Real Estate Time-Sharing Act." This act gives statutory recognition to real property time-sharing in Florida, establishes procedures for the operations of time-share plans, provides for full disclosure to prospective purchasers, and mandates that every time-share plan in Florida be subject to its provisions.

Section 721.20, F.S., requires any seller of a time-share plan to be licensed as provided by chapter 475, F.S., the real estate licensing act. However, s. 721.05(23), F.S., which defines "seller" for the purposes of chapter 723, F.S., specifically excepts a person offering for resale a time-share period acquired for personal occupancy. Time-share resale activities are not presently regulated under chapter 721, F.S.

B. Effect of Proposed Changes:

This bill would amend s. 475.01(1)(c), F.S., to expand the present definition of "broker" to include any individual or entity who undertakes to list, advertise for sale, promote or sell by any means, at least one time-share period per year on behalf of any other persons, with exceptions. A new subsection would be added to s. 475.011, F.S., to extend the present exemptions to chapter 475, F.S., to include any owner of a time-share period, or part of a time-share period, who uses that period for his own use and occupancy and who later offers that period for resale; publishers and broadcasters not in common ownership with a person subject to the license requirement and not operating for the primary purpose of soliciting time-share resales; and exchange companies in compliance with s. 721.18, F.S. Section 475.42 would also be amended to require time-share resale brokers to be licensed, and to require full and fair disclosure of all material aspects of the agreement and the time-share plan.

This bill would place time-share resale broker regulation under the authority of the Florida Real Estate Commission, which is part of the Department of Professional Regulation. The Commission would be authorized to promulgate rules pursuant to chapter 120, F.S., to implement, enforce, and interpret the disclosure requirements.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

This bill would extend additional protections to consumers in the time-share market. The cost to the public would be minimal.

REVISED: _____

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B. Government:

The Florida Real Estate Commission predicts that two additional positions would be required to carry out the regulation of time-share resale brokers as set forth in this bill. These positions would be one senior attorney and one secretary, at an estimated first year cost of \$44,547.10.

III. COMMENTS:

This bill attempts to address certain problems in the time-share industry. The Florida Real Estate Commission has estimated that they receive an average of sixty citizen complaints per month regarding time-share resales.

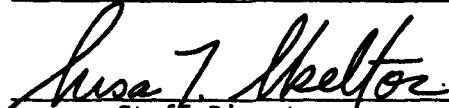
IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 550

This bill would require time-share resale brokers to be licensed under chapter 475, F.S. Exemptions are provided, and the Florida Real Estate Commission is given rule-making authority over disclosure requirements.

Committee on Regulated Industries


Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)