

SUBJECT: Requiring disclosures, governing conduct relating to timeshare interests

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Simmons, Collier, Fletcher, Romero, Villalba

1 nay — Rinaldi

WITNESSES: For — Justin Vermuth, American Resort Development Association;
(*Registered, but did not testify:* Christina Hatfield, Silverleaf Resorts, Inc.)

Against — None

BACKGROUND: Under the Texas Timeshare Act, “timeshare interest” means an arrangement under which the purchaser receives a right to occupy a timeshare property.

The Deceptive Trade Practices-Consumer Protection Act allows a consumer to file a lawsuit when they have suffered economic damages or mental anguish because a person used certain false, misleading, or deceptive acts or practices. The prevailing consumer in these lawsuits may be awarded economic damages, damages for mental anguish, and reasonable and necessary attorneys’ fees.

DIGEST: HB 2261 would require a person entering into an agreement with a timeshare interest owner to facilitate the transfer or termination of that interest to provide certain disclosures and notice to the owner. The bill also would govern the conduct of the person facilitating the transfer or termination.

“Termination” of a timeshare interest would mean either the release of contractual obligations relating to a timeshare interest by the developer, association, or managing entity or the invalidation of a timeshare interest by a judgment or court order. This definition would not include the cancellation of a purchase contract. “Transfer,” with respect to a timeshare interest, would mean the conveyance of all or substantially all of a

timeshare interest.

HB 2261 would require a person who had entered into an agreement with a timeshare interest owner to facilitate the transfer or termination of the interest to provide written disclosures to the owner. The disclosures would contain information regarding the potential transfer or termination, such as the contact information of the person providing services under the agreement and a description of any interest the owner retained after the transfer. The bill also would require the disclosure to contain the name of any person, other than the owner, who could occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement or who was receiving consideration for those uses.

A person who entered into an agreement with a timeshare interest owner to facilitate the transfer of the interest would have to disclose in writing that the owner was not required to pay any consideration under the agreement until the owner received both a written acknowledgment from the managing entity that the person facilitating the transfer complied with all applicable policies governing the interest and a copy of the instrument transferring the interest.

The person entering into the agreement also would have to provide to the owner notices for the transfer or termination. The bill would provide default language for both kinds of notices, including a statement that the owner's responsibility to pay all costs and fees associated with their interest would not stop because the owner had entered into the agreement.

The bill would require that person to act in good faith to accomplish the transfer or termination by the 180th day after the person entered into the agreement with the owner. A person covered by this bill would be considered to have committed a false, misleading, or deceptive act or practice if they failed to disclose information that was required by the bill, made false or misleading statements concerning certain important facts related to the transaction, or encouraged or induced an owner to stop paying the managing entity in violation of the owner's contract before the completion of a transfer or termination.

A person who entered into an agreement with a timeshare interest owner to facilitate the transfer or termination of that interest would have to supervise, manage, and control all aspects of the services provided under the agreement. Any violation of the requirements in this bill that occurred during the provision of services would be considered a violation by the person who entered into the agreement and any affiliate, agent, or third-party representative of that person.

The bill would apply to a timeshare interest if it had been acquired for the purchaser's personal, family, or household use and the timeshare interest was owned by a Texas resident, the property was located in Texas, or the interest was acquired in a multisite timeshare plan required to be registered. The bill would apply to a person who was acting in the ordinary course of business and either directly or indirectly offered or advertised an offer to engage in, for consideration, certain activities. HB 2261 would not apply to:

- a real estate broker or salesperson licensed under the Real Estate License Act;
- a developer, association, or managing entity for a timeshare interest that would be transferred or terminated; or
- an attorney, title agent, title company, or escrow company that provided only closing, settlement, or other specific transaction services related to the transfer or termination of a timeshare interest (and that did not otherwise engage in the activities described above).

The bill would take effect September 1, 2015, and only would apply to an agreement to facilitate the transfer or termination of a timeshare interest entered into, and conduct that occurred on or after that date.

**SUPPORTERS
SAY:**

HB 2261 would protect timeshare interest owners from scammers who falsely represented that they would help the owner transfer or terminate the interest. In January, the Texas Department of Insurance released a consumer alert warning the public about these scams and gave tips on

what to look for when approached by a potential scammer. The bill would require the company soliciting its services to provide important information to the owner. This would allow the owner to verify that the company was legitimate. The bill also would not allow these companies to ask for advance payment before the services had been provided, protecting against the possibility that a company could take the advance money and disappear without completing its promised services.

While some of the conduct regulated under this bill already would be covered by other laws, the point is to prevent the activity from occurring in the first place. This bill would create harsh penalties for certain conduct, subjecting violators to damages available under the Deceptive Trade Practices-Consumer Protection Act. These penalties would deter scammers because the amount of damages an owner could recover from them could be very large.

Additionally, the bill would raise public awareness on the issue of timeshare interest scams and would give timeshare interest owners information on what to look for if approached by a company. The bill would not prevent legitimate companies from conducting their business — it would require only that those companies provide important information to their customers.

**OPPONENTS
SAY:**

HB 2261 unnecessarily would burden timeshare transfer companies with disclosure requirements, regulations, and penalties. This could increase the workload for legitimate companies by requiring them to make cumbersome disclosures and provide written notices to each of their customers.

The bill would not be needed because the conduct regulated by the bill already is covered by other laws, such as those for conspiracy to commit mail fraud, wire fraud, telemarketing fraud, and aiding and abetting. If the penalties associated with those laws did not deter scammers then the penalties provided by this bill may not either, and the bill could burden legitimate businesses.