

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating advertisements and solicitations for time shares.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGULATING ADVERTISEMENTS AND SOLICITATIONS FOR TIME SHARES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 183B of the General Laws is hereby amended by deleting Section 52 thereof, and adding in its place the
2 following section:—

3 Section 52. (a) For purposes of this section, all terms which contain the words “time-share” shall be defined in
4 Section 2 and shall include: “time-sharing, quarter-sharing, interval ownership, campgrounds, vacation clubs,
5 membership plans, or any other similar enterprise. The term “prize” shall include prize, gift, award, inducement or
6 other benefit. The term “consumer” shall mean any person who receives or responds to a time-share solicitation, or
7 who enters into a time-share contract.

8 (b) Any advertisement or solicitation by or on behalf of a time-share which includes the offering of a prize, gift,
9 award, or other inducement shall clearly and conspicuously state on its face that it is a time-share promotion. Said
10 advertisement or solicitation shall clearly and conspicuously include a detailed description of each item, the brand
11 name if any, the current actual fair market value of each item, the number of items to be awarded, the odds of
12 winning each item, the criteria to qualify for each item, and any other details which if disclosed might induce a
13 consumer not to participate in the offer. No advertisement or solicitation by or on behalf of a time-share may contain
14 any representation which has the tendency, capacity or effect of deceiving consumers in any way including creating
15 the impression through clever wording, layout, or otherwise, that the consumer has won or has a greater chance of
16 winning a prize more valuable than the odds or facts indicate.

17 Any gift, prize, award, or other inducement must be completely free of any charge to receive or use by the
18 consumer, with no redemption fee, handling fee, deposit, reservation fee, postage, purchase requirements, or any
19 other charge whatsoever imposed.

20 Immediately upon the consumer’s arrival on the time-share developer’s or agent’s premises, the consumer is to be
21 shown the actual prizes that he or she has actually won. If the time-share promotion fails to clearly and
22 conspicuously state on its face that in order to receive such prizes the consumer must first be subject to a sales
23 presentation of a specified length, or if the prizes shown are not as represented in the time-share promotion as

24 understood by the consumer, the consumer shall receive said prizes immediately and shall have no obligation to
25 remain for any sales presentation.

26 If the gift, prize, award, or other inducement is a tangible object, such object, and not a certificate therefor, must be
27 presented to the consumer at the time of consumer's initial visit. Should the gift, prize, award, or other inducement
28 not be available or not given to the consumer at such time, the consumer shall immediately be given the fair market
29 value of the item in cash or certified check as represented in the advertisement or solicitation.

30 A consumer who signs a contract for the purchase of a time-share shall have a three-business-day right-to-cancel
31 said contract as provided in Section 38.

32 The time-share developer, its agents, and the suppliers of its promotions and promotional materials shall be jointly
33 and severally liable for solicitations and promotions which do not conform to the requirements of this section.

34 The Secretary of Consumer Affairs and Business Regulation may promulgate regulations to further regulate time-
35 share promotions, sales presentations, and the consumer's right to cancel time-share contracts. Such regulations may
36 provide for additional protections for consumers, which may include imposition of fines of not more than \$1,000 for
37 each violation of this act payable to the state within 30 days of issuance. Each consumer deceived or injured by any
38 violation of this act shall constitute a separate violation. Violations of any of the provisions of this section or the
39 regulations promulgated hereunder shall constitute an unfair or deceptive act or practice under the provisions of
40 chapter ninety-three A. Any waiver of the provisions of this section shall be void and unenforceable.

41 (c) The district court, small claims division, shall have original jurisdiction to hear claims brought by consumers
42 under this section provided the loss suffered by the consumers is within the limits established for said court,
43 provided further, however, the amount of any additional damages, multiple damages or attorney's fees sought shall
44 not be included in determining whether said limit has been exceeded. Nothing provided herein shall prevent a claim
45 from being filed in any other court of competent jurisdiction if the plaintiff so chooses.

46 (d) Notwithstanding any provisions to the contrary, the solicitation of a resident of the Commonwealth, whether by
47 mail or otherwise, shall confer personal jurisdiction over time-share developers and their agents and suppliers
48 wherever they may be located.

49 (e) A consumer who prevails in a claim brought under this section shall receive damages in the amount of the fair
50 market value of the gift in question as stated in the solicitation, in the amount of all the payments made and not
51 returned in a timely manner under a valid cancellation of any time-share contract, in the amount of any payments
52 made and owed in connection with the purchase of a time-share if such purchase was secured through
53 misrepresentation or as a result of a promotion not in compliance with this section, and in the amount of any other
54 justifiable claims. In addition, any prevailing consumer shall be awarded not less than \$500 as additional damages.
55 If the court finds that the time-share developer or agent or supplier knew or should have known that the act or
56 practice in question violated this section, the consumer shall be awarded reasonable attorney's fees. The rights and
57 remedies contained herein shall be in addition to, and not in lieu of any others provided by law including those
58 contained in chapter ninety-three A. The Attorney General may enforce the provisions of this section directly or
59 pursuant to chapter ninety-three A, against the time-share developer, its agents, or the suppliers of its promotional
60 materials.