

By Mr. Giordano of Methuen, petition of Larry F. Giordano and Christopher J. Hodgkins for legislation to regulate advertisements and solicitations for time-shares. Housing and Urban Development.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

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
2 deleting section 52 thereof, and adding in its place the following
3 section:

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

12 (b) Any advertisement or solicitation by or on behalf of a time-
13 share which includes the offering of a prize, gift, award or other
14 inducement shall clearly and conspicuously state on its face that
15 it is a time-share promotion. Said advertisement or solicitation
16 shall clearly and conspicuously include a detailed description of
17 each item, the brand name if any, the current actual fair market
18 value of each item, the number of such items to be awarded, the
19 odds of winning each item, the criteria to qualify for each item,
20 and any other details which if disclosed might induce a consumer
21 not to participate in the offer. No advertisement or solicitation
22 by or on behalf of a time-share may contain any representation
23 which has the tendency, capacity or effect of deceiving consumers

24 in any way including creating the impression through clever
25 wording, layout, or otherwise, that the consumer has won or has
26 a greater chance of winning a prize more valuable than the odds
27 or facts indicate.

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

32 Immediately upon the consumer's arrival on the time-share
33 developer's or agent's premises, the consumer is to be shown the
34 actual prizes that he or she has actually won. If the time-share
35 promotion fails to clearly and conspicuously state on its face that
36 in order to receive such prizes the consumer must first be subject
37 to a sales presentation of a specified length, or if the prizes shown
38 are not as represented in the time-share promotion as understood
39 by the consumer, the consumer shall receive said prizes
40 immediately and shall have no obligation to remain for any sales
41 presentation.

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

50 A consumer who signs a contract for the purchase of a time-
51 share shall have a three-business-day right-to-cancel said contract
52 as provided in section 38.

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

57 The Secretary of Consumer Affairs and Business Regulation
58 may promulgate regulations to further regulate time-share
59 promotions, sales presentations, and the consumer's right to
60 cancel time-share contracts. Such regulations may provide for
61 additional protections for consumers, which may include

62 imposition of fines of not more than \$1,000 for each violation of
63 this act payable to the state within 30 days of issuance. Each
64 consumer deceived or injured by any violation of this act shall
65 constitute a separate violation. Violations of any of the provisions
66 of this section or the regulations promulgated hereunder shall
67 constitute an unfair or deceptive act or practice under the
68 provisions of chapter ninety-three A. Any waiver of the provisions
69 of this section shall be void and unenforceable.

70 (c) The district court, small claims division, shall have original
71 jurisdiction to hear claims brought by consumers under this
72 section provided the loss suffered by the consumer is within the
73 limits established for said court, provided further, however, the
74 amount of any additional damages, multiple damages or attorneys
75 fees sought shall not be included in determining whether said limit
76 has been exceeded. Nothing provided herein shall prevent a claim
77 from being filed in any other court of competent jurisdiction if
78 the plaintiff so chooses.

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

84 (e) A consumer who prevails in a claim brought under this
85 section shall receive damages in the amount of the fair market
86 value of the gift in question as stated in the solicitation, in the
87 amount of all the payments made and not returned in a timely
88 manner under a valid cancellation of any time-share contract, in
89 the amount of any payments made and owed in connection with
90 the purchase of a time-share if such purchase was secured through
91 misrepresentation or as a result of a promotion not in compliance
92 with this section, and in the amount of any other justifiable claims.
93 In addition, any prevailing consumer shall be awarded not less
94 than \$500 as additional damages. If the court finds that the time-
95 share developer or agent or supplier knew or should have known
96 that the act or practice in question violated this section, the
97 consumer shall be awarded reasonable attorney's fees. The rights
98 and remedies contained herein shall be in addition to, and not
99 in lieu of any others provided by law including those contained

100 in chapter ninety-three A. The Attorney General may enforce the
101 provisions of this section directly or pursuant to chapter ninety-
102 three A, against the time-share developer, its agents, or the
103 suppliers of its promotional materials.