

HOUSE No. 263

By Mr. Kennedy of Brockton, petition of Thomas P. Kennedy relative to regulating advertisements and solicitations for time-shares. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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 defined in Section 2 and
6 shall include: “time-sharing, quarter-sharing, interval ownership,
7 campgrounds, vacation clubs, membership plans, or any other
8 similar enterprise. The term “prize” shall include prize, gift,
9 award, inducement or other benefit. The term “consumer” shall
10 mean any person who receives or responds to a time-share solici-
11 tation, 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 it
15 is a time-share promotion. Said advertisement or solicitation shall
16 clearly and conspicuously include a detailed description of each
17 item, the brand name if any, the current actual fair market value of
18 each item, the number of items to be awarded, the odds of win-
19 ning each item, the criteria to qualify for each item, and any other
20 details which if disclosed might induce a consumer not to partici-
21 pate in the offer. No advertisement or solicitation by or on behalf
22 of a time-share may contain any representation which has the ten-
23 dency, capacity or effect of deceiving consumers in any way

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

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

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

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

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

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

55 The Secretary of Consumer Affairs and Business Regulation
56 may promulgate regulations to further regulate time-share promo-
57 tions, sales presentations, and the consumer's right to cancel time-
58 share contracts. Such regulations may provide for additional
59 protections for consumers, which may include imposition of fines
60 of not more than \$1,000 for each violation of this act payable to
61 the state within 30 days of issuance. Each consumer deceived or
62 injured by any violation of this act shall constitute a separate vio-

63 lation. Violations of any of the provisions of this section or the
64 regulations promulgated hereunder shall constitute an unfair or
65 deceptive act or practice under the provisions of chapter ninety-
66 three A. Any waiver of the provisions of this section shall be void
67 and unenforceable.

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

77 (d) Notwithstanding any provisions to the contrary, the sollicita-
78 tion of a resident of the Commonwealth, whether by mail or other-
79 wise, shall confer personal jurisdiction over time-share developers
80 and their agents and suppliers wherever they may be located.

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