

**SENATE . . . . . No. 117**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Thomas P. Kennedy***

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*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 adoption of the accompanying bill:

An Act regulating advertisements and solicitations for time shares.

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PETITION OF:

NAME:

*Thomas P. Kennedy*

DISTRICT/ADDRESS:

*Second Plymouth and Bristol*

**SENATE . . . . . No. 117**

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 117) of Thomas P. Kennedy for legislation to regulate advertisements and solicitations for time. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 118 OF 2011-2012.]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

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

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

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

18 layout, or otherwise, that the consumer has won or has a greater chance of winning a prize more  
19 valuable than the odds or facts indicate.

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

23 Immediately upon the consumer's arrival on the time-share developer's or agent's  
24 premises, the consumer is to be shown the actual prizes that he or she has actually won. If the  
25 time-share promotion fails to clearly and conspicuously state on its face that in order to receive  
26 such prizes the consumer must first be subject to a sales presentation of a specified length, or if  
27 the prizes shown are not as represented in the time-share promotion as understood by the  
28 consumer, the consumer shall receive said prizes immediately and shall have no obligation to  
29 remain for any sales presentation.

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

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

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

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

49 (c) The district court, small claims division, shall have original jurisdiction to hear  
50 claims brought by consumers under this section provided the loss suffered by the consumers is  
51 within the limits established for said court, provided further, however, the amount of any  
52 additional damages, multiple damages or attorney's fees sought shall not be included in

53 determining whether said limit has been exceeded. Nothing provided herein shall prevent a claim  
54 from being filed in any other court of competent jurisdiction if the plaintiff so chooses.

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

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

72 The first paragraph of section 3A of chapter 143 of the General Laws, as appearing in the  
73 1994 Official Edition, is hereby amended by adding the following sentence:— In addition to the  
74 foregoing, the local inspector shall, at least annually, perform inspections and safety tests on all  
75 power-operated doors within the city or town from which he is appointed.

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