

SENATE No. 144

The Commonwealth of Massachusetts

In the Year Two Thousand 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
2 adding in its place the following section:— Section 52. (a) For purposes of this section, all terms
3 which contain the words “time-share” shall be defined in Section 2 and shall include: “time-
4 sharing, quarter-sharing, interval ownership, campgrounds, vacation clubs, membership plans, or
5 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-
7 share solicitation, or who enters into a time-share contract.(b) Any advertisement or solicitation
8 by or on behalf of a time-share which includes the offering of a prize, gift, award, or other
9 inducement shall clearly and conspicuously state on its face that it is a time-share promotion.
10 Said advertisement or solicitation shall clearly and conspicuously include a detailed description
11 of each item, the brand name if any, the current actual fair market value of each item, the number
12 of items to be awarded, the odds of winning each item, the criteria to qualify for each item, and
13 any other details which if disclosed might induce a consumer not to participate in the offer. No
14 advertisement or solicitation by or on behalf of a time-share may contain any representation

15 which has the tendency, capacity or effect of deceiving consumers in any way including creating
16 the impression through clever wording, layout, or otherwise, that the consumer has won or has a
17 greater chance of winning a prize more valuable than the odds or facts indicate. Any gift, prize,
18 award, or other inducement must be completely free of any charge to receive or use by the
19 consumer, with no redemption fee, handling fee, deposit, reservation fee, postage, purchase
20 requirements, or any other charge whatsoever imposed. Immediately upon the consumer's arrival
21 on the time-share developer's or agent's premises, the consumer is to be shown the actual prizes
22 that he or she has actually won. If the time-share promotion fails to clearly and conspicuously
23 state on its face that in order to receive such prizes the consumer must first be subject to a sales
24 presentation of a specified length, or if the prizes shown are not as represented in the time-share
25 promotion as understood by the consumer, the consumer shall receive said prizes immediately
26 and shall have no obligation to remain for any sales presentation. If the gift, prize, award, or other
27 inducement is a tangible object, such object, and not a certificate therefor, must be presented to
28 the consumer at the time of consumer's initial visit. Should the gift, prize, award, or other
29 inducement not be available or not given to the consumer at such time, the consumer shall
30 immediately be given the fair market value of the item in cash or certified check as represented
31 in the advertisement or solicitation. A consumer who signs a contract for the purchase of a time-
32 share shall have a three-business-day right-to-cancel said contract as provided in Section 38. The
33 time-share developer, its agents, and the suppliers of its promotions and promotional materials
34 shall be jointly and severally liable for solicitations and promotions which do not conform to the
35 requirements of this section. The Secretary of Consumer Affairs and Business Regulation may
36 promulgate regulations to further regulate time-share promotions, sales presentations, and the
37 consumer's right to cancel time-share contracts. Such regulations may provide for additional

38 protections for consumers, which may include imposition of fines of not more than \$1,000 for
39 each violation of this act payable to the state within 30 days of issuance. Each consumer
40 deceived or injured by any violation of this act shall constitute a separate violation. Violations of
41 any of the provisions of this section or the regulations promulgated hereunder shall constitute an
42 unfair or deceptive act or practice under the provisions of chapter ninety-three A. Any waiver of
43 the provisions of this section shall be void and unenforceable.(c) The district court, small claims
44 division, shall have original jurisdiction to hear claims brought by consumers under this section
45 provided the loss suffered by the consumers is within the limits established for said court,
46 provided further, however, the amount of any additional damages, multiple damages or
47 attorney's fees sought shall not be included in determining whether said limit has been exceeded.
48 Nothing provided herein shall prevent a claim from being filed in any other court of competent
49 jurisdiction if the plaintiff so chooses.(d) Notwithstanding any provisions to the contrary, the
50 solicitation of a resident of the Commonwealth, whether by mail or otherwise, shall confer
51 personal jurisdiction over time-share developers and their agents and suppliers wherever they
52 may be located.(e) A consumer who prevails in a claim brought under this section shall receive
53 damages in the amount of the fair market value of the gift in question as stated in the solicitation,
54 in the amount of all the payments made and not returned in a timely manner under a valid
55 cancellation of any time-share contract, in the amount of any payments made and owed in
56 connection with the purchase of a time-share if such purchase was secured through
57 misrepresentation or as a result of a promotion not in compliance with this section, and in the
58 amount of any other justifiable claims. In addition, any prevailing consumer shall be awarded not
59 less than \$500 as additional damages. If the court finds that the time-share developer or agent or
60 supplier knew or should have known that the act or practice in question violated this section, the

61 consumer shall be awarded reasonable attorney's fees. The rights and remedies contained herein
62 shall be in addition to, and not in lieu of any others provided by law including those contained in
63 chapter ninety-three A. The Attorney General may enforce the provisions of this section directly
64 or pursuant to chapter ninety-three A, against the time-share developer, its agents, or the
65 suppliers of its promotional materials.