SENATE DOCKET, NO. 743 FILED ON: 1/20/2011

SENATE . . . . . No. 118

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 adoption of the accompanying bill:

An Act regulating advertisements and solicitations for time shares.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	

SENATE DOCKET, NO. 743 FILED ON: 1/20/2011

SENATE . . . . . No. 118

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 118) 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. *144* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

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

(b) Any advertisement or solicitation by or on behalf of a time-share which includes the offering of a prize, gift, award, or other inducement shall clearly and conspicuously state on its

11 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 claims
50 brought by consumers under this section provided the loss suffered by the consumers is within
51 the limits established for said court, provided further, however, the amount of any additional
52 damages, multiple damages or attorney's fees sought shall not be included in determining
53 whether said limit has been exceeded. Nothing provided herein shall prevent a claim from being
54 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 the
56 Commonwealth, whether by mail or otherwise, shall confer personal jurisdiction over time-share
57 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 damages
59 in the amount of the fair market value of the gift in question as stated in the solicitation, in the
60 amount of all the payments made and not returned in a timely manner under a valid cancellation
61 of any time-share contract, in the amount of any payments made and owed in connection with
62 the purchase of a time-share if such purchase was secured through misrepresentation or as a
63 result of a promotion not in compliance with this section, and in the amount of any other
64 justifiable claims. In addition, any prevailing consumer shall be awarded not less than $500 as
65 additional damages. If the court finds that the time-share developer or agent or supplier knew or
66 should have known that the act or practice in question violated this section, the consumer shall
67 be awarded reasonable attorney's fees. The rights and remedies contained herein shall be in
68 addition to, and not in lieu of any others provided by law including those contained in chapter
69 ninety-three A. The Attorney General may enforce the provisions of this section directly or
70 pursuant to chapter ninety-three A, against the time-share developer, its agents, or the suppliers
71 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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