HOUSE DOCKET, NO. 1392 FILED ON: 1/16/2013

HOUSE . . . . . No. 266

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

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 relative to time share resale and transfer service providers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Sarah K. Peake	*4th Barnstable*	*1/16/2013*
Benjamin B. Downing	*Berkshire, Hampshire, Franklin and Hampden*	*1/28/2013*
Cory Atkins	*14th Middlesex*	*1/16/2013*

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HOUSE . . . . . No. 266

By Ms. Peake of Provincetown, a petition (accompanied by bill, House, No. 266) of Sarah K. Peake, Benjamin B. Downing and Cory Atkins relative to time share resale and transfer service providers. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to time share resale and transfer service providers.

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. Section 2 of Chapter 183B of the General Laws is hereby amended by inserting the following new definitions:-

"Resale service provider", any resale advertiser, or other person or entity, including any agent or employee of such person or entity, who offers or uses telemarketing, direct mail, e-mail, or any other means of communication in connection with the offering of resale brokerage or resale advertising services to consumer time-share resellers. The term does not include developers or managing entities to the extent they offer resale brokerage or resale advertising services to owners of time-shares in their own time-share plans; resale brokers to the extent that resale advertising services are offered in connection with resale brokerage services and no fee for the advertising service is collected in advance; or a consumer time-share reseller who acquires a time-share or time-shares for his or her own use and occupancy and who later offers the timeshare or time-shares for rent or offers for resale in a given calendar year seven or fewer of the time-shares that he or she acquired for his or her own use and occupancy.

"Consumer resale time-share", means:

(a) A time-share owned by a purchaser;

(b) One or more reserved occupancy rights relating to a time-share owned by a purchaser; or

(c) One or more reserved occupancy rights relating to, or arranged through, an exchange program in which a purchaser is a member.

"Consumer time-share reseller", a purchaser who acquires a time-share for his or her own use and occupancy and later offers the time-share for resale or rental.

"Resale broker", any person, or any agent or employee of such person, who is licensed to pursuant to section eighty-seven RR of chapter one hundred twelve and who offers or provides resale brokerage services to consumer time-share resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication.

"Resale brokerage services", with respect to a consumer resale time-share in a time-share property located or offered within this commonwealth, any activity that directly or indirectly consists of any of the activities described in sections eighty-seven PP and eighty-seven RR of chapter one hundred twelve.

"Resale advertiser", any person who offers, personally or through an agent, resale advertising services to consumer time-share resellers for compensation or valuable consideration, regardless of whether the offer is made in person, by mail, by telephone, through the Internet, or by any other medium of communication. The term does not include:

(a) A resale broker to the extent that resale advertising services are offered in connection with time-share resale brokerage services and no fee for the resale advertising service is collected in advance;

(b) A developer or managing entity to the extent that either of them offers resale advertising services to owners of time-shares in their own time-share plans; or

(c) A newspaper, periodical, or website owner, operator, or publisher, unless the newspaper, periodical, or website owner, operator, or publisher derives more than 10 percent of its gross revenue from providing resale advertising services. For purposes of this paragraph, the calculation of gross revenue derived from providing resale advertising services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or website owner, operator, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation.

"Resale advertising service", any good or service relating to, or a promise of assistance in connection with, advertising or promoting the resale or rental of a consumer resale time-share located or offered within this Commonwealth of Massachusetts, including any offer to advertise or promote the sale or purchase of any such interest.

SECTION 2. Chapter 183B of the General Laws is hereby further amended by inserting after Section 42 the following:

Section 42A. Resale service providers; disclosure obligations.

(a)(1) Before engaging in resale advertising services, a resale service provider must provide to the consumer time-share reseller:

i. A description of any fees or costs related to such services that the consumer time-share reseller, or any other person, is required pay to the resale service provider or to any third party.

ii. A description of when such fees or costs are due.

(2) A resale service provider may not engage in those activities described in sections eighty-seven PP and eighty-seven RR of chapter one hundred twelve without being the holder of a valid and current active license in accordance with section eighty-seven RR of chapter one hundred twelve.

(b) In the course of offering resale advertising services, a resale advertiser may not:

(1) State or imply that the resale advertiser will provide or assist in providing any type of direct sales or resale brokerage services other than the advertising of the consumer resale time-share for sale or rent by the consumer timeshare reseller.

(2) State or imply to a consumer time-share reseller that the time-share has a specific resale value.

(3) Engage in any resale advertising services for compensation or valuable consideration without first obtaining a written contract to provide such services signed by the consumer timeshare reseller. Notwithstanding any other law, the contract must be printed in at least 12-point type and must contain the following information:

i. The name, address, telephone number, and web address, if any, of the resale advertiser and a mailing address and e-mail address to which a contract cancellation notice may be delivered at the consumer time-share reseller’s election.

ii. A complete description of all resale advertising services to be provided, including, but not limited to, details regarding the publications, Internet sites, and other media in or on which the consumer resale time-share will be advertised; the dates or time intervals for such advertising or the minimum number of times such advertising will be run in each specific medium; the itemized cost to the consumer time-share reseller of each resale advertising service to be provided; and a statement of the total cost to the consumer time-share reseller of all resale advertising services to be provided.

iii. A statement printed in at least 12-point boldfaced type immediately preceding the space in the contract provided for the consumer time-share reseller’s signature in substantially the following form:

TIME-SHARE OWNER’S RIGHT OF CANCELLATION

(Name of resale advertiser) will provide resale advertising services pursuant to this contract. You have an unwaivable right to cancel this contract for any reason within 10 days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale advertiser) in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (resale advertiser's physical address) or to (resale advertiser's e-mail address). Your refund will be made within 20 days after receipt of notice of cancellation or within 5 days after receipt of funds from your cleared check, whichever is later. You are not obligated to pay (name of resale advertiser) any money unless you sign this contract and return it to (name of resale advertiser).

(4) Make or submit any charge to a consumer time-share reseller's credit card account; make or cause to be made any electronic transfer of consumer time-share reseller funds; or collect any payment from a consumer time-share reseller in an aggregate amount totaling less than $75 in any 12-month period unless the consumer time-share reseller has been provided a copy of the terms and conditions of the contract provided for in paragraph (4) and the consumer time-share reseller has agreed to such terms and conditions by mail or electronic transmission.

(5) Fail to honor any cancellation notice sent by the consumer time-share reseller within ten (10) days after the date the consumer time-share reseller signs the contract for resale advertising services in compliance with subparagraph (4)(iii).

(6) Fail to provide a full refund of all money paid by a consumer time-share reseller within twenty (20) days after receipt of notice of cancellation or within five (5) days after receipt of funds from a cleared check, whichever is later.

(c) If a resale service provider uses a contract for resale advertising services that fails to comply with subsection (b), such contract shall be voidable at the option of the consumer timeshare reseller for a period of one (1) year after the date it is executed by the consumer time-share reseller.

(d) Notwithstanding obligations placed upon any other persons by this section, it is the duty of a resale service provider to supervise, manage, and control all aspects of the offering of resale advertising services by any agent or employee of the resale service provider. Any violation of this section that occurs during such offering shall be deemed a violation by the resale service provider as well as by the person actually committing the violation.

(e) Providing resale advertising services with respect to a consumer resale time-share in a timeshare property located or offered within this commonwealth, or in a multi-location plan registered or required to be registered to be offered in this commonwealth, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this state for the purposes of chapter two hundred twenty-three A.

(f) The use of any unfair or deceptive act or practice by any person in connection with resale advertising services is a violation of this section.

(g) Notwithstanding any other penalties provided for in this section, any violation of this section is subject to a civil penalty of not more than $15,000 per violation. In addition, a person who violates any provision of this section commits an unfair and deceptive act or practice, under chapter ninety-three A.

SECTION 3. Section 20 of Chapter 183B of the General Laws is hereby further amended by inserting at the end thereof, the following new subsection:

(e) Notwithstanding any contrary language in G.L. c. 183B, and in addition to the powers stated in subsection (a) of this Section 20, the association of any time-share property that operates pursuant to said c. 183B, shall have the power to enact rules and regulations providing that the association of the time-share property may require additional financial assurances regarding the transfer of a time-share to a prospective purchaser based upon the determination of the association that the prospective purchaser may not meet the financial obligations of ownership. In the event the association enacts rules and regulations as provided herein, said rules and regulations shall be recorded with the registry of deeds and distributed to all time-share owners. In making a determination that a prospective purchaser may not meet the financial obligations of ownership, the association may consider the fact that the prospective purchaser or any person or entity having any control of the prospective purchaser has demonstrated a pattern of nonpayment of financial obligations regarding time-share ownership or if the prospective purchaser or any person or entity having any control of the prospective purchaser has no physical or financial assets. If, in the determination of the association, the prospective purchaser or any person or entity having any control of the prospective purchaser may not meet the financial obligations of ownership, the association, as a condition of approval of the prospective transfer, may require advance payment of time-share expenses provided that the total shall not exceed an amount equal to three (3) years of time-share expenses. Any prepaid time-share expenses shall be maintained by the association in an escrow account and only used for the payment of time-share expenses as due. Not more than fifteen (15) days after receipt of prepaid time-share expenses required under this subsection, the association shall notify the prospective purchaser that the time-share transfer has been approved.

The failure to pay such required advance time-share expenses as a condition of transfer shall be grounds for an association to deny approval of the transfer to a prospective purchaser. Any attempted transfer without compliance with any advance payment requirement shall also be deemed an unfair or deceptive practice or act, under chapter ninety-three A, by all parties to the transfer, except, the foregoing shall not apply to the association or manager of the time-share property.