

SENATE No. 144

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 passage of the accompanying bill:

An Act regulating advertisements and solicitations for time shares.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	Second Plymouth and Bristol
Michael Brady	9th Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and 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.

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

16 deceiving consumers in any way including creating the impression through clever wording,
17 layout, or otherwise, that the consumer has won or has a greater chance of winning a prize more
18 valuable than the odds or facts indicate.

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

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

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

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

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

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

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

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

57 (e) A consumer who prevails in a claim brought under this section shall receive damages in the
58 amount of the fair market value of the gift in question as stated in the solicitation, in the amount
59 of all the payments made and not returned in a timely manner under a valid cancellation of any
60 time-share contract, in the amount of any payments made and owed in connection with the
61 purchase of a time-share if such purchase was secured through misrepresentation or as a result of

62 a promotion not in compliance with this section, and in the amount of any other justifiable
63 claims. In addition, any prevailing consumer shall be awarded not less than \$500 as additional
64 damages. If the court finds that the time-share developer or agent or supplier knew or should
65 have known that the act or practice in question violated this section, the consumer shall be
66 awarded reasonable attorney's fees. The rights and remedies contained herein shall be in addition
67 to, and not in lieu of any others provided by law including those contained in chapter ninety-
68 three A. The Attorney General may enforce the provisions of this section directly or pursuant to
69 chapter ninety-three A, against the time-share developer, its agents, or the suppliers of its
70 promotional materials.