

FIRST REGULAR SESSION

HOUSE BILL NO. 697

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KELLEY (127).

1564H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 407.600, 407.610, 407.620, 407.625, and 407.630, RSMo, and to enact in lieu thereof five new sections relating to timeshares, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.600, 407.610, 407.620, 407.625, and 407.630, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 407.600, 407.610, 407.620, 407.625, and 407.630, to read as follows:

407.600. As used in sections 407.600 to 407.630, the following terms shall mean:

(1) "Accommodations", any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or any other private or commercial structure which is situated on real property and designed for occupancy by one or more individuals, which is made available to the purchasers of a ~~[time-share]~~ **timeshare** plan;

(2) "Enrolled", paid membership in an exchange program or membership in an exchange program evidenced by written acceptance or confirmation of membership;

(3) "Exchange company", the person operating an exchange program;

(4) "Exchange program", any opportunity or procedure for the assignment or exchange of ~~[time-share]~~ **timeshare** periods among purchasers in the same or other ~~[time-share]~~ **timeshare** plans;

(5) "Facilities", any structure, service, improvement, campground, recreational vehicle park or real property, improved or unimproved, which is made available to the purchasers of a ~~[time-share]~~ **timeshare** plan;

(6) "Person", any natural person or his legal representative, partnership, domestic or foreign corporation, company, trust, business entity or association, and any agent, employee,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust
18 thereof;

19 (7) "Promotion", any advertisement, whether by mail, radio, television or personal sales,
20 in which a ~~[time-share]~~ **timeshare** property is offered for sale by use of a sweepstakes;

21 (8) "Sweepstakes", a method of promoting the sale of ~~[time-share]~~ **timeshare** plans
22 which involves the offering, giving, or awarding of prizes which have odds associated with the
23 actual delivery of the prize or gift;

24 (9) "~~[Time-share]~~ **Timeshare** periods", all periods of time when a purchaser of a
25 ~~[time-share]~~ **timeshare** plan is entitled to the possession and use of the accommodations or
26 facilities, or both, of a ~~[time-share]~~ **timeshare** plan regardless of whether such periods are
27 designated as one or more specific days, weeks or months;

28 (10) "~~[Time-share]~~ **Timeshare** developments", a single specific parcel of real property
29 from which only ~~[time-share]~~ **timeshare** plans are offered for sale or sold;

30 (11) "~~[Time-share]~~ **Timeshare** plan", any arrangement, plan, scheme or similar device,
31 other than an exchange program, whether by membership, agreement, tenancy in common, sale,
32 lease, deed, rental agreement, license, right-to-use agreement or any other means, whereby a
33 purchaser, in exchange for a consideration, receives one or more ~~[time-share]~~ **timeshare** periods,
34 or any type of interval or joint ownership in, or a right-to-use, any accommodation or facility for
35 a period of time which is less than a full continuous and uninterrupted year during any given
36 year, and which extends for a period of more than three years, as to each individual ~~[time-share]~~
37 **timeshare** development subject to the purchase;

38 (12) "~~[Time-share]~~ **Timeshare** unit", an accommodation or facility of a ~~[time-share]~~
39 **timeshare** plan which is divided into ~~[time-share]~~ **timeshare** periods, or is otherwise subject to
40 interval or joint ownership or use by the purchaser of the ~~[time-share]~~ **timeshare** plans;

41 (13) "Prize/gift", any merchandise offered in any ~~[time-share]~~ **timeshare** promotional
42 device, sweepstakes, drawing or display booth which is used to induce or encourage the
43 attendance of any ~~[time-share]~~ **timeshare** sales solicitation or presentation.

44 407.610. 1. Any person who intends to use any promotional device or promotional
45 program, including any sweepstakes, gift award, drawing or display booth, or any other such
46 award or prize inducement items, to advertise, solicit sales or sell any ~~[time-share]~~ **timeshare**
47 period, ~~[time-share]~~ **timeshare** plan, or ~~[time-share]~~ **timeshare** property in the state of Missouri
48 or sell any tourist-related services as defined pursuant to subsection 9 of this section where a
49 consumer is required to provide any consideration other than monetary for such tourist-related
50 services, shall notify the Missouri attorney general in writing of this intention not less than
51 fourteen days prior to release of such materials to the public. Included with such notice shall be
52 an exact copy of each promotional device and promotional program to be used. Each

53 promotional device, promotional program, and the notice thereof shall include the following
54 information:

55 (1) A statement that the promotional device or promotional program is being used for
56 the purpose of soliciting sales of a ~~[time-share]~~ **timeshare** period, ~~[time-share]~~ **timeshare** plan
57 or ~~[time-share]~~ **timeshare** property;

58 (2) The date by which all such awards or other prize inducement items will be awarded;

59 (3) The method by which all such items will be awarded;

60 (4) The odds of being awarded such items;

61 (5) The manufacturer's suggested retail price of such items; and

62 (6) The names and addresses of each ~~[time-share]~~ **timeshare** plan or business entity
63 participating in the promotional device or promotional program.

64 2. In the case of any promotional device or promotional program to advertise, solicit
65 sales, or sell any ~~[time-share]~~ **timeshare** period, ~~[time-share]~~ **timeshare** plan, or ~~[time-share]~~
66 **timeshare** property in this state, the information required under subsection 1 of this section for
67 each promotional device or promotional program, and the notice thereof, shall be provided in
68 writing or electronically to the prospective purchaser at least once within a reasonable time
69 period before a scheduled sales presentation to ensure that the prospective purchaser receives the
70 information prior to attending such presentation. The required information need not be included
71 in every advertisement or other written, oral or electronic communication provided or made to
72 a prospective purchaser before a scheduled sales presentation.

73 3. Any material change in a promotional device or promotional program previously
74 submitted to the attorney general shall constitute a new promotional device or promotional
75 program and shall be resubmitted to the attorney general with the notice thereof.

76 4. It shall be a violation of section 407.020 for any person to:

77 (1) Fail to comply with the provisions of the notice requirements of this section;

78 (2) Provide to the attorney general in the notice required by this section any information
79 that is false or misleading in a material manner;

80 (3) Represent to any person that the filing of the notice of the promotional device or the
81 promotional program constitute an endorsement or approval of the promotional device or
82 promotional program by the attorney general;

83 (4) Engage in any act or practice declared to be unlawful by section 407.020 in
84 connection with the use of any promotional device or promotional program or any advertisement,
85 or sale of ~~[time-share]~~ **timeshare** plans, ~~[time-share]~~ **timeshare** periods or ~~[time-share]~~
86 **timeshare** property.

87 5. At least one of each prize featured in a promotional program shall be awarded by the
88 day and year specified in the promotion. When a promotion promises the award of a certain

89 number of each prize, such number of prizes shall be awarded by the date and year specified in
90 the promotion. A record shall be maintained containing the names and addresses of winners of
91 the prizes and the record shall be made available, upon request, to the public, upon the payment
92 of reasonable reproduction costs. If a seller for any reason does not provide, at the time of a site
93 visitation or visitation to a ~~[time-share]~~ **timeshare** sales office, the inducement gift which was
94 promised, the seller shall deliver the gift, or an acceptable substitute therefor agreed upon in
95 writing, to the prospective purchaser or purchaser no later than ten days following such
96 visitation, or shall deliver instead of such gift cash in an amount equal to the retail value of the
97 gift.

98 6. If a prospective purchaser or purchaser does not receive the gift or the cash as
99 provided in subsection 5 of this section, he may bring an action under the provisions of section
100 407.025. For purposes of actions brought pursuant to this section, the term "actual damages",
101 as used in section 407.025, shall mean at least five times the cash retail value of the most
102 expensive gift offered, but shall not exceed one thousand dollars, in addition to such other actual
103 damages as may be determined by the evidence.

104 7. The provisions of sections 407.600 to 407.630 shall not apply to a person who has
105 acquired a ~~[time-share]~~ **timeshare** period for his own occupancy and later offers it for resale.

106 8. If the sale of a ~~[time-share]~~ **timeshare** plan or of ~~[time-share]~~ **timeshare** property is
107 subject to the provisions of sections 407.600 to 407.630, such sale shall not be subject to the
108 provisions of chapter 339.

109 9. For the purposes of this section, the term "tourist-related services" includes, but is not
110 limited to, selling or entering into contracts or other arrangements under which a purchaser
111 receives a premium, coupon or contract for car rentals, lodging, transfers, entertainment,
112 sightseeing or any service reasonably related to air, sea, rail, motor coach or other medium of
113 transportation directly to the consumer.

407.620. 1. In addition to any other remedy by which such an agreement may be
2 rescinded or otherwise voided, a purchaser of a ~~[time-share]~~ **timeshare** plan or ~~[time-share]~~
3 **timeshare** property has five days after the day of purchase to cancel the purchase. Printed notice
4 of this right to cancel shall be given to the purchaser in writing with the use of 18-point boldface
5 type in the following manner:

6 NOTICE

7 YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHIN FIVE DAYS
8 AFTER THE DATE OF THIS AGREEMENT. CANCELLATION MUST BE IN
9 WRITING AND IF SENT BY MAIL, ADDRESSED TO THE OTHER
10 CONTRACTING PARTY AS SHOWN ON THIS AGREEMENT, CANCELLATION
11 WILL BE ACCOMPLISHED AT THE MOMENT THE LETTER IS POSTMARKED.

12 IF SENT BY MAIL, THE LETTER MAY BE CERTIFIED WITH A RETURN
13 RECEIPT REQUESTED. YOUR RIGHT TO CANCEL CANNOT BE WAIVED.

14 **2. If at any time an agreement is modified without prior consent from the purchaser**
15 **and the modification substantially reduces the purchaser's use of the timeshare plan or**
16 **timeshare property, the purchaser may elect to rescind or otherwise void the agreement**
17 **and receive a full refund for the retail value of the agreement, or, alternatively, the**
18 **modification shall be reversed so that the purchaser's use of the timeshare plan or**
19 **timeshare property is restored to the terms of the original agreement.**

407.625. 1. If a purchaser is offered the opportunity to subscribe to any exchange
2 program, the developer shall, except as provided in subsection 2 of this section, deliver to the
3 purchaser, prior to the execution of any contract between the purchaser and the exchange
4 company and the sales contract, at least the following information regarding such exchange
5 program, and the purchaser shall certify, in writing, to the receipt of such written information:

- 6 (1) The name and address of the exchange company;
- 7 (2) The names of all officers, directors, and shareholders owning five percent or more
8 of the outstanding stock of the exchange company;
- 9 (3) Whether the exchange company or any of its officers or directors has any legal or
10 beneficial interest in any developer or managing agent for any ~~[time-share]~~ **timeshare** plan
11 participating in the exchange program and, if so, the name and location of the ~~[time-share]~~
12 **timeshare** plan and the nature of the interest;
- 13 (4) Unless the exchange company is also the developer or an affiliate, a statement that
14 the purchaser's contract with the exchange company is a contract separate and distinct from the
15 sales contract;
- 16 (5) Whether the purchaser's participation in the exchange program is dependent upon the
17 continued affiliation of the ~~[time-share]~~ **timeshare** plan with the exchange program;
- 18 (6) Whether the purchaser's membership or participation, or both, in the exchange
19 program is voluntary or mandatory;
- 20 (7) A complete and accurate description of the terms and conditions of the purchaser's
21 contractual relationship with the exchange company and the procedure by which changes thereto
22 may be made;
- 23 (8) A complete and accurate description of the procedure to qualify for and effectuate
24 exchanges;
- 25 (9) A complete and accurate description of all limitations, restrictions, or priorities
26 employed in the operation of the exchange program, including, but not limited to, limitations on
27 exchanges based on seasonality, unit size, or levels of occupancy, expressed in boldfaced type,

28 and, in the event that such limitations, restrictions, or priorities are not uniformly applied by the
29 exchange program, a clear description of the manner in which they are applied;

30 (10) Whether exchanges are arranged on a space available basis and whether any
31 guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

32 (11) Whether and under what circumstances an owner, in dealing with the exchange
33 company, may lose the use and occupancy of his ~~[time-share]~~ **timeshare** in any properly applied
34 for exchange without his being provided with substitute accommodations by the exchange
35 company;

36 (12) The fees or range of fees for participation by owners in the exchange program, a
37 statement whether any such fees may be altered by the exchange company, and the circumstances
38 under which alterations may be made;

39 (13) The name and address of the site of each ~~[time-share]~~ **timeshare** property,
40 accommodation or facility which is participating in the exchange program;

41 (14) The number of units in each property participating in the exchange program which
42 are available for occupancy and which qualify for participation in the exchange program,
43 expressed within the following numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

44 (15) The number of owners with respect to each ~~[time-share]~~ **timeshare** plan or other
45 property which are eligible to participate in the exchange program expressed within the following
46 numerical groupings: 1-100, 101-249, 250-499, 500-999, and 1,000 and over; and a statement
47 of the criteria used to determine those owners who are currently eligible to participate in the
48 exchange program;

49 (16) The disposition made by the exchange company of ~~[time-shares]~~ **timeshares**
50 deposited with the exchange program by owners eligible to participate in the exchange program
51 and not used by the exchange company in effecting exchanges;

52 (17) The following information, which, except as provided in subsection 2 of this
53 section, shall be independently audited by a certified public accountant or accounting firm in
54 accordance with the standards of the Accounting Standards Board of the American Institute of
55 Certified Public Accountants and reported for each year no later than July first of the succeeding
56 year, beginning no later than July 1, 1986:

57 (a) The number of owners enrolled in the exchange program. Such numbers shall
58 disclose the relationship between the exchange company and owners as being either fee paying
59 or gratuitous in nature;

60 (b) The number of ~~[time-share]~~ **timeshare** properties, accommodations or facilities
61 eligible to participate in the exchange program categorized by those having a contractual
62 relationship between the developer or the association and the exchange company and those
63 having solely a contractual relationship between the exchange company and owners directly;

64 (c) The percentage of confirmed exchanges, which shall be the number of exchanges
65 confirmed by the exchange company divided by the number of exchanges properly applied for,
66 together with a complete and accurate statement of the criteria used to determine whether an
67 exchange request was properly applied for;

68 (d) The number of ~~[time-shares]~~ **timeshares** for which the exchange company has an
69 outstanding obligation to provide an exchange to an owner who relinquished a ~~[time-share]~~
70 **timeshare** during the year in exchange for a ~~[time-share]~~ **timeshare** in any future year;

71 (e) The number of exchanges confirmed by the exchange company during the year;

72 (18) A statement in boldfaced type to the effect that the percentage described in
73 paragraph (c) of subdivision (17) of this subsection is a summary of the exchange requests
74 entered with the exchange company in the period reported and that the percentage does not
75 indicate a purchaser's/owner's probabilities of being confirmed to any specific choice or range
76 of choices, since availability at individual locations may vary.

77 2. The information required by subsection 1 of this section shall be accurate as of a date
78 which is no more than thirty days prior to the date on which the information is delivered to the
79 purchaser; except that, the information required by subdivisions (2), (3), (13), (14), (15) and (17)
80 of subsection 1 of this section shall be accurate as of December thirty-first of the preceding year
81 if the information is delivered between July first and December thirty-first of any year;
82 information delivered between January first and June thirtieth of any year shall be accurate as
83 of December thirty-first of the year prior to the preceding year. At no time shall such
84 information be accurate as of a date which is more than eighteen months prior to the date of
85 delivery. All references in this subsection to the word "year" shall mean calendar year.

86 3. In the event an exchange company offers an exchange program directly to the
87 purchaser or owner, the exchange company shall deliver to each purchaser or owner,
88 simultaneously with such offering and prior to the execution of any contract between the
89 purchaser or owner and the exchange company, the information set forth in subsection 1 of this
90 section. The requirements of this subsection shall not apply to any renewal of a contract between
91 an owner and an exchange company.

92 4. Each exchange company shall include the statement set forth in subdivision (18) of
93 subsection 1 of this section on all promotional brochures, pamphlets, advertisements, or other
94 materials disseminated by the exchange company which also contain the percentage of confirmed
95 exchanges described in paragraph (c) of subdivision (17) of subsection 1 of this section.

96 5. An exchange company shall, on or before July first of each year, file with the attorney
97 general and secretary of the association for the ~~[time-share]~~ **timeshare** plan in which the
98 ~~[time-shares]~~ **timeshares** are offered or disposed, the information required by subsection 1 of
99 this section with respect to the preceding year. If the attorney general determines that any of the

100 information supplied fails to meet the requirements of this section, the attorney general may
101 undertake enforcement action against the exchange company in accordance with the provisions
102 of sections 407.600 to 407.630. No developer shall have any liability arising out of the use,
103 delivery or publication by the developer of written information provided to it by the exchange
104 company pursuant to this section. Except for written information provided to the developer by
105 the exchange company, no exchange company shall have any liability with respect to any
106 representation made by the developer relating to the exchange program or exchange company;
107 or the use, delivery or publication by the developer of any information relating to the exchange
108 program or exchange company. The failure of the exchange company to observe the
109 requirements of this section, or the use by it of any unfair or deceptive act or practice in
110 connection with the operation of the exchange program, shall be a violation of sections 407.600
111 to 407.630.

112 6. The offering of an exchange program in this state in conjunction with the offer or sale
113 of ~~[time-shares]~~ **timeshares** in this state shall not constitute a security under the laws of this
114 state.

407.630. 1. A ~~[time-share]~~ **timeshare** plan or ~~[time-share]~~ **timeshare** property is
2 merchandise under the provisions of this chapter and the sale or offering for sale of such plans
3 or property shall be subject to the provisions of sections 407.010 to 407.140, unless otherwise
4 specifically provided in sections 407.600 to 407.630.

5 2. Violation of any provision of sections 407.600 to 407.620 is a class A misdemeanor.

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