

SENATE BILL NO. 213

INTRODUCED BY MAZUREK

BY REQUEST OF THE BOARD OF REALTY REGULATION

IN THE SENATE

JANUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
FEBRUARY 16, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1987	PRINTING REPORT.
FEBRUARY 18, 1987	SECOND READING, DO PASS. ON MOTION, SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT.
FEBRUARY 19, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1987	ENGROSSING REPORT.
FEBRUARY 21, 1987	THIRD READING, PASSED. AYES, 49; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 18, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. STATEMENT OF INTENT ADOPTED.
MARCH 27, 1987	SECOND READING, CONCURRED IN.

MARCH 28, 1987

THIRD READING, CONCURRED IN.
AYES, 86; NOES, 6.

RETURNED TO SENATE WITH AMENDMENTS
AND STATEMENT OF INTENT.

IN THE SENATE

APRIL 1, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

SECOND READING, STATEMENT OF
INTENT ADOPTED.

APRIL 2, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

THIRD READING, STATEMENT OF
INTENT ADOPTED.

SENT TO ENROLLING.

1 *Senate* BILL NO. *312*
 2 INTRODUCED BY *J. Naguib*
 3 BY REQUEST OF THE BOARD OF REALTY REGULATION
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE OFFERING
 6 AND SALE OF TIMESHARES; PROVIDING FOR REGISTRATION OF
 7 OFFERINGS AND LICENSURE OF SALESPERSONS; PROVIDING REMEDIES
 8 AND PENALTIES FOR VIOLATIONS; AND PROVIDING EFFECTIVE DATES
 9 AND AN APPLICABILITY DATE."
 10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. [This act] may be cited as the
 13 "Montana Timeshare Act".

14 Section 2. Definitions. As used in [this act], unless
 15 the context requires otherwise, the following definitions
 16 apply:

17 (1) "Advertisement" means a written, printed, audio,
 18 or visual communication that is published in whole or in
 19 part to sell, offer to sell, or solicit an offer for a
 20 timeshare.

21 (2) "Affiliate" means a person who controls, is
 22 controlled by, or is under the control of a developer.

23 (3) "Association" or "owners' association" means the
 24 association of owners created by the timeshare instruments
 25 for purposes of managing and maintaining the project for the

1 benefit of all timeshare owners.

2 (4) "Board" means the board of realty regulation
 3 provided for in 2-15-1867.

4 (5) "Developer" means:

5 (a) a person creating timeshares or engaged in the
 6 business of selling his own timeshares;

7 (b) a person who controls, is controlled by, or is in
 8 common control with the person engaged in creating or
 9 selling timeshares; or

10 (c) any successor or assignee of a person referred to
 11 in subsections (5)(a) or (5)(b).

12 (6) "Managing entity" means a person hired by the
 13 timeshare association or developer to manage the timeshare
 14 plan or the timeshare property.

15 (7) "Offer" or "offering" means an inducement,
 16 solicitation, or attempt to encourage a person to acquire a
 17 timeshare. An offer is made in this state if the offer
 18 originates in this state or if the principal timeshare
 19 property is located in this state.

20 (8) "Person" means a natural person, corporation,
 21 business trust, estate, trust, partnership, association,
 22 joint venture, or other legal or commercial entity.

23 (9) "Prize and gift promotional offer" means
 24 advertising material stating that a prospective purchaser
 25 may receive goods or services other than the timeshare plan

1 itself, either free or at a discount, including but not
2 limited to the use of a prize, gift, award, premium, or
3 lodging or vacation certificate.

4 (10) "Project" means the real property or real estate,
5 that must contain more than one unit, in which timeshares
6 are created by a single instrument or set of instruments.

7 (11) "Promoter" means any person who initiates the
8 inducement, solicitation, or encouragement of another
9 person, by any means, of the review or acquisition of a
10 timeshare interval.

11 (12) "Purchaser" means a person, other than a
12 developer, who by means of a voluntary transfer acquires a
13 legal or equitable interest in a timeshare, other than as
14 security for an obligation.

15 (13) "Real estate" means real estate as defined in
16 37-51-102.

17 (14) "Sale" or "sell" includes each contract of sale
18 of, contract to sell, or disposition of a timeshare for
19 value.

20 (15) "Timeshare broker" means a natural person who
21 supervises a timeshare sales operation and one or more
22 timeshare salespersons.

23 (16) "Timeshare expenses" means expenditures, fees,
24 charges, or liabilities:

25 (a) incurred with respect to the timeshares by or on

1 behalf of all timeshare owners in one timeshare property;
2 and

3 (b) imposed on the timeshare by the entity governing a
4 project of which the timeshare is a part, together with any
5 allocations to reserve. The term does not include purchase
6 money payable for timeshares.

7 (17) "Timeshare instrument" means one or more
8 documents, by whatever name denominated, creating or
9 regulating timeshares.

10 (18) "Timeshare interval" or "timeshare interest" means
11 the right, however evidenced or documented, to use and
12 occupy one or more timeshare units on a periodic basis
13 according to an arrangement allocating such use and
14 occupancy rights between similar users.

15 (19) "Timeshare owner" means a person, other than a
16 developer, who is an owner or co-owner of a timeshare. If
17 title to a timeshare is held in trust, timeshare owner means
18 the beneficiary of the trust.

19 (20) "Timeshare salesperson" means a person who for a
20 salary, commission, or compensation of any kind is
21 associated, either directly or indirectly, regularly or
22 occasionally, with a timeshare broker to sell, purchase, or
23 negotiate for sale, purchase, lease, or exchange of the
24 timeshare interests in real estate and who, on behalf of a
25 developer, sells or offers to sell a timeshare to a

1 purchaser.

2 (21) "Timeshare unit" or "unit" means the real property
3 or portion thereof in which the timeshare exists and that is
4 designated for separate use including campgrounds,
5 campsites, and outdoor recreation sites with spaces designed
6 or promoted for the purpose of locating a trailer, tent,
7 tent trailer, camper, or similar device for land-based
8 portable housing.

9 Section 3. Registration of timeshare offering
10 required. A timeshare offering may not be advertised,
11 offered, or sold in this state unless it is registered as
12 provided in [this act].

13 Section 4. Application for registration. An
14 application for registration of a timeshare offering must be
15 in a form developed by the board in conjunction with input
16 from the timeshare industry. The application must be signed
17 by the applicant and accompanied by the registration fee.
18 Except as provided in [section 6], the application must
19 contain:

20 (1) financial statements showing the financial
21 condition of the developer and any affiliate, including:

22 (a) a balance sheet dated within 4 months before the
23 filing of the application for registration; and

24 (b) statements of income, shareholder's equity, and
25 material changes in financial position as of the end of the

1 prior fiscal year and for any period between the end of the
2 prior fiscal year and the date of the last balance sheet;

3 (2) a projected budget for the timeshare project for 2
4 years after the offering being made, including but not
5 limited to source of revenues and expenses of construction,
6 development, management, maintenance, advertisement,
7 operating reserves, interest, and any other necessary
8 reserves;

9 (3) a description of the background of the developer
10 for the previous 10 years, including information about the
11 business experience of the developer and any relevant
12 criminal convictions, civil law suits, or administrative
13 actions related to any offering during that period;

14 (4) a statement disclosing any fees in excess of the
15 stated price per unit to be charged to the purchasers, a
16 description of their purpose, and the method of calculation;

17 (5) a statement disclosing when and where the
18 developer or an affiliate has previously sold timeshares;

19 (6) a statement of any liens, defects, or encumbrances
20 on or affecting the title to the timeshare units;

21 (7) copies of all timeshare instruments;

22 (8) a copy of the disclosure document provided for in
23 [section 14], signed by the applicant;

24 (9) an irrevocable consent to service of process
25 signed by the applicant; and

1 (10) any other information that the board may by rule
2 require in the protection of the public interest or
3 necessary to describe the risks involved.

4 Section 5. Registration period -- renewal. (1) A
5 timeshare offering registration is effective for 1 year from
6 the date of approval of the registration application.

7 (2) Registration of a timeshare offering may be
8 renewed for an additional 1-year period by filing a renewal
9 application with the board no later than 30 days before the
10 expiration of the registration period and paying the
11 prescribed fee. A renewal application must contain any
12 information the board requires to indicate any substantial
13 changes in the information contained in the original
14 application.

15 (3) If a materially adverse change in the condition of
16 the developer or an affiliate occurs during any year, an
17 amendment to the documents filed under [section 4] must be
18 filed, along with the prescribed fee.

19 Section 6. Alternative filing documents. (1) In lieu
20 of the documents required to be filed with an application
21 under [section 4], the board may accept:

22 (a) a disclosure document filed with an agency of the
23 United States or any other state; or

24 (b) a disclosure document compiled in accordance with
25 a rule of an agency of the United States or any other state.

1 (2) The board shall prescribe by rule those documents
2 acceptable under subsection (1).

3 Section 7. Exemption from registration. The
4 registration requirements of [this act] do not apply to:

5 (1) an offer, sale, or transfer of not more than one
6 timeshare interest by a timeshare owner in a 12-month
7 period;

8 (2) a gratuitous transfer of a timeshare;

9 (3) a sale under court order;

10 (4) a sale by any government or a governmental agency;

11 (5) a sale by forfeiture, foreclosure, or deed in lieu
12 of foreclosure; or

13 (6) a sale of a project or all timeshare units therein
14 to any one purchaser.

15 Section 8. Approval or disapproval of application or
16 registration. (1) Registration of a timeshare offering is
17 effective upon written notice of approval of the application
18 by the board or upon the passage of 30 calendar days after
19 filing of a completed application if not approved or denied
20 prior to that time.

21 (2) The board may issue an order, subject to [section
22 25], denying, suspending, or revoking any application or
23 registration if the board finds that the order is in the
24 public interest and that:

25 (a) the application or registration is incomplete or

1 contains a statement that is false or misleading with
2 respect to any material fact;

3 (b) any provision of [this act] or any rule or order
4 lawfully issued under [this act] has been violated;

5 (c) the activities of the developer include or would
6 include activities that are illegal; or

7 (d) the timeshare offering has worked or would tend to
8 work a fraud on purchasers.

9 (3) The board shall promptly notify the applicant or
10 registrant of any order denying, suspending, or revoking
11 registration and of the applicant's or registrant's right to
12 request a hearing within 20 days of receipt of notification.
13 IF the applicant or registrant does not request a hearing,
14 the order remains in effect until the board modifies or
15 vacates it.

16 Section 9. Conditions upon registration. To protect
17 the public interest, the board may require as a condition of
18 registration that the registrant establish an independent
19 trust, escrow, or similar arrangement that assures a
20 purchaser quiet enjoyment of the timeshare unit.

21 Section 10. Waiver of liability. The fact that an
22 application for registration has been filed or that a
23 timeshare offering has been registered does not constitute a
24 finding by the board that any document filed under [this
25 act] is complete, true, and not misleading. The filing or

1 registration does not mean that the board has given approval
2 to, recommended, or determined the merits or qualifications
3 of any person, timeshare, or transaction.

4 Section 11. Approval of advertising. (1) No person
5 may publish an advertisement in this state offering a
6 timeshare that is subject to the registration requirements
7 of [section 3] unless a true copy of the advertisement has
8 first been filed in the office of the board at least 7 days
9 before publication or such other period as the board may
10 establish by rule.

11 (2) Nothing in [this act] applies to any radio or
12 television station or any publisher, printer, or distributor
13 of any newspaper, magazine, billboard, or other advertising
14 medium that accepts advertising in good faith without
15 reasonable knowledge of its violation of any provision of
16 [this act].

17 Section 12. Licensure of timeshare brokers and
18 timeshare salespersons. A person offering timeshare units
19 for his own account or for the account of others must be
20 licensed as a timeshare salesperson or timeshare broker
21 unless the offering is exempt under [section 7]. Licensure
22 may be obtained upon completion of an application and
23 personal disclosure statement and passage of an examination
24 prescribed by the board demonstrating knowledge of the
25 timeshare industry and [this act].

1 Section 13. Denial, suspension, or revocation of
 2 license or application. The board may by an order, subject
 3 to [section 25], deny, suspend, or revoke a timeshare
 4 salesperson's or timeshare broker's license or application
 5 for license if the board finds that the order is in the
 6 public interest and that the applicant or licensee:

7 (1) has filed an application for licensure and
 8 personal disclosure statement as a timeshare salesperson or
 9 timeshare broker that is incomplete in any material respect
 10 or contains any statement that is, in the light of the
 11 circumstances under which it was made, false or misleading
 12 with respect to any material fact;

13 (2) has violated or failed to comply with any
 14 provision of [this act], rules adopted under [this act], or
 15 Title 37, chapter 51;

16 (3) has been convicted of a felony involving theft,
 17 fraud, or any consumer protection statute or a felony
 18 involving moral turpitude and related to the occupation of
 19 timeshare salesperson or timeshare broker;

20 (4) is permanently or temporarily enjoined by a court
 21 from engaging in or continuing any conduct or practice
 22 involving an aspect of the timeshare business;

23 (5) has engaged in dishonest or unethical practices in
 24 the timeshare business; or

25 (6) has not complied with an condition imposed by the

1 board or is not qualified on the basis of knowledge of the
 2 timeshare industry or [this act].

3 Section 14. Disclosure document. A person who offers
 4 or sells a timeshare shall provide the prospective purchaser
 5 with a written disclosure document before the prospective
 6 purchaser signs an agreement for the purchase of a
 7 timeshare. The disclosure document must include:

8 (1) the official name and address of the developer,
 9 its parent or affiliates, and the names and addresses of the
 10 director and officers of each;

11 (2) the location of the timeshare property;

12 (3) a general description of the timeshare property
 13 and the timeshare units;

14 (4) a list of all units offered by the promoter in the
 15 same project, including:

16 (a) the types, current prices, and number of units;

17 (b) the types and durations of the timeshares;

18 (c) the maximum number of units that may become part
 19 of the timeshare property;

20 (d) a statement of the maximum number of timeshares
 21 that may be created or a statement that there is no maximum;

22 (5) a description of the types of financing offered by
 23 the promoter;

24 (6) a statement of ownership of all properties
 25 included in the timeshare offering, including any liens or

1 encumbrances affecting the property;

2 (7) copies of any agreements or leases to be signed by
3 purchasers at closing and a copy of the timeshare
4 instrument;

5 (8) the identity of the managing entity and the name,
6 address, and telephone number of the person or persons in
7 charge, and the manner, if any, whereby the developer may
8 change the managing entity;

9 (9) a true copy of the current or projected budget of
10 the owners' association along with a description of the
11 nature and purpose of all charges, dues, maintenance fees,
12 and other expenses that may be assessed, including the
13 formula for payment of charges if all timeshares are not
14 sold and a statement of who pays additional costs;

15 (10) a statement in boldface type on the cover page of
16 the disclosure document that, within 3 days after receipt of
17 a disclosure document or the signing of the timeshare
18 purchase agreement, whichever is later, a purchaser may
19 cancel any agreement for the purchase of a timeshare from a
20 developer or salesperson and that the cancellation must be
21 in writing and be delivered either in person or by certified
22 mail to the developer or the developer's agent;

23 (11) any restrictions on transfers of a timeshare or
24 portion thereof;

25 (12) a description of any insurance coverage provided

1 for the benefit of timeshare owners by the managing entity
2 or the timeshare owners' association;

3 (13) a full and accurate disclosure of whether the
4 timeshare owners are permitted or required to become members
5 of or participate in any program for the exchange of
6 property rights among themselves or with the timeshare
7 owners of other timeshare units, or both, and a complete
8 description of the program; and

9 (14) any additional information the board finds
10 necessary to fully inform prospective purchasers, including
11 but not limited to the financial and background information
12 required by [section 4].

13 Section 15. Disclosure to purchaser -- cancellation of
14 agreement. The developer or any person offering a timeshare
15 shall provide a prospective purchaser with a copy of the
16 disclosure document described in [section 14] before the
17 execution of any agreement for the purchase of a timeshare.
18 A purchaser may, within 3 days following receipt of a
19 disclosure document or signing of a timeshare purchase
20 agreement, whichever is later, cancel the agreement and
21 receive a refund of any consideration paid by providing
22 written notice of the cancellation to the promoter or
23 promoter's agent either by certified mail or personal
24 delivery. If the purchaser does not receive the disclosure
25 document, the agreement is violated by the purchaser until

1 the purchaser receives the document and for 3 days
2 thereafter. The provisions of this section may not be
3 waived.

4 Section 16. Transfer of developer's interest. A
5 developer may not sell, lease, assign, or otherwise transfer
6 his interest in a project unless the transferee agrees in
7 writing to honor the purchaser's right to use and occupy the
8 timeshare unit, to honor the purchaser's right to cancel,
9 and to comply with [this act]. Each purchaser whose contract
10 may be affected must be given written notice of a transfer
11 immediately after the transfer is made.

12 Section 17. Good faith requirement -- prohibited
13 provisions. (1) The parties to a timeshare agreement shall
14 deal with each other in good faith.

15 (2) A developer may not require a purchaser to agree
16 to a release, assignment, novation, waiver, or any other
17 provision that relieves a person from a duty imposed by
18 [this act].

19 (3) Any provision in a timeshare instrument that
20 designates jurisdiction or venue in a forum outside this
21 state or the state or other jurisdiction where the project
22 is located is void with respect to any cause of action that
23 is enforceable in this state.

24 Section 18. Illegal practices. (1) It is unlawful for
25 any person in connection with the offer, sale, or lease of a

1 timeshare interest in this state to:

2 (a) make any false or misleading statement of a
3 material fact or to omit a material fact;

4 (b) employ any device, scheme, or artifice to defraud;

5 (c) engage in any act, practice, or course of business
6 that operates or would operate as a fraud or deceit upon any
7 person;

8 (d) file or cause to be filed with the board any
9 document that contains false or misleading information; or

10 (e) violate any provision of [this act] or rule
11 adopted under [this act] or any applicable provision of
12 Title 37, chapter 51.

13 (2) A violation of this section is a misdemeanor
14 punishable as provided in 46-18-212.

15 Section 19. Civil liability. Any person who offers,
16 sells, or materially aids in the offer or sale of a
17 timeshare in violation of [this act] is liable to the person
18 buying the timeshare, who may sue to recover the
19 consideration paid for the timeshare, together with interest
20 at the current legal rate from date of payment and costs,
21 upon the tender of the timeshare or for damages if the
22 person no longer owns the timeshare.

23 Section 20. Prize and gift promotional offers --
24 filing. (1) A separate filing for each prize and gift
25 promotional offer to be used in the sale of timeshare

1 intervals must be made with the board at least 14 days prior
 2 to the use of such offer by the developer. No advertising
 3 material related to a prize and gift promotional offer may
 4 be distributed unless it is first filed with the board. If
 5 the board determines that any prize or gift has been
 6 misrepresented by the developer and if upon notification
 7 thereof the developer fails to correct such
 8 misrepresentation, the board may revoke or suspend the
 9 application or registration of the developer.

10 (2) Each filing of a prize and gift promotional offer
 11 with the board must include, when applicable:

12 (a) a copy of all advertising material to be used in
 13 connection with the prize and gift promotional offer;

14 (b) the name, address, and telephone number, including
 15 area code, of the supplier or manufacturer from whom each
 16 prize, gift, or other item is obtained;

17 (c) the manufacturer's model number or other
 18 description of such item;

19 (d) the information on which the developer relies in
 20 determining the verifiable retail value;

21 (e) the name, address, and telephone number, including
 22 area code, of the promotional entity responsible for
 23 overseeing and operating the prize and gift promotional
 24 offer; and

25 (f) the name and address of the registered agent in

1 the state of the promotional entity for service of process
 2 purposes.

3 (3) Each developer shall file with the board by March
 4 1 of each year the name, address, and telephone number,
 5 including area code, of each person who actually received a
 6 prize, gift, or other item that had a verifiable retail
 7 value or manufacturer's suggested retail price in excess of
 8 \$150.

9 Section 21. Prize and gift promotional offer
 10 advertising content. All advertising material to be
 11 distributed in connection with a prize and gift promotional
 12 offer must contain:

13 (1) a description of the prize, gift, or other item
 14 that the prospective purchaser will actually receive,
 15 including the manufacturer's retail price or, if none is
 16 available, the verifiable retail value;

17 (2) all rules, terms, requirements, and preconditions
 18 that must be fulfilled or met before a prospective purchaser
 19 may claim any prize, gift, or other item involved in the
 20 prize and gift promotional plan, including whether the
 21 prospective purchaser is required to attend a sales
 22 presentation in order to receive the prize, gift, or other
 23 item;

24 (3) the date the offer expires;

25 (4) a statement of the number of items that will be

1 awarded if the number of prizes, gifts, or other items to be
2 awarded is limited; and

3 (5) the method by which prizes, gifts, or other items
4 are to be awarded.

5 Section 22. Awarding of gifts and prizes. (1) Any
6 prize, gift, or other item offered pursuant to a prize and
7 gift promotional offer must be delivered to the prospective
8 purchaser on the day he appears to claim it whether or not
9 he purchases a timeshare interval. If the prize is not
10 available it must be presented or mailed at the developer's
11 expense, postage prepaid within 30 days thereafter.

12 (2) All prizes, gifts, or other items represented by
13 the developer to be awarded in connection with any prize and
14 gift promotional offer must be awarded by the date
15 referenced in the advertising material used in connection
16 with such offer.

17 Section 23. Investigations by board. (1) The board
18 may:

19 (a) conduct public or private investigations within or
20 outside the state to:

21 (i) determine whether any registration should be
22 granted, denied, or revoked;

23 (ii) determine whether a person has violated or is
24 about to violate a provision of [this act]; or

25 (iii) aid in the enforcement of [this act] and rules

1 issued under [this act];

2 (b) administer oaths and affirmations, subpoena
3 witnesses and compel their attendance, take evidence, and
4 require the production of any books, papers, correspondence,
5 memoranda, agreements, or other documents or records that
6 the board considers relevant to the inquiry; and

7 (c) publish information concerning a violation of
8 [this act] or rule or order issued under [this act].

9 (2) If a person fails to comply with a lawful
10 subpoena, refuses to testify under lawful interrogation, or
11 refuses to produce documents and records, the board may
12 apply to the district court of any county for relief. After
13 satisfactory evidence of willful disobedience, the court may
14 compel obedience by proceedings for contempt.

15 Section 24. Cease and desist orders. The board may by
16 summary order, subject to [section 25], require any person
17 to cease and desist from an act or practice if it appears
18 that the person is violating or is about to violate a
19 provision of [this act] or rule or order issued under [this
20 act].

21 Section 25. Hearing procedure -- orders. (1) Upon the
22 entry of an order under [section 8], [section 13], or
23 [section 24], the board shall promptly notify the applicant
24 or registrant that the order has been entered and the
25 reasons therefor and that it will become effective 20 days

1 after receipt of the board's notification unless a hearing
 2 is requested under this section, in which case it will
 3 become effective on the date the board issues its final
 4 order. If a hearing is requested in writing by the
 5 applicant, the matter will be scheduled for hearing in
 6 accordance with subsection (2).

7 (2) If entry of the order results in denial of an
 8 application under [section 8] or [section 13], the hearing
 9 must be held within a reasonable time and in accordance with
 10 Title 2, chapter 4.

11 Section 26. Attorney general to act as attorney for
 12 board. The attorney general shall act as attorney for the
 13 board in actions and proceedings brought by or against it
 14 under [this act]. Fees and expenses of the attorney general
 15 acting in this capacity must be paid out of board money in
 16 the state special revenue fund.

17 Section 27. Injunctions. (1) The attorney general, in
 18 the name of the state or the board, may bring an action to
 19 enjoin a person from violating a provision of [this act].
 20 Upon a proper showing, the district court shall grant a
 21 permanent or temporary injunction, restraining order, or
 22 writ of mandamus. The court may make any additional order of
 23 judgment necessary to restore to a person any interest in
 24 money or property, real or personal, that may have been
 25 acquired by an act prohibited or declared to be unlawful

1 under [this act]. The prevailing party may recover costs of
 2 the action, including a reasonable attorney fee.

3 (2) The district court issuing an injunction shall
 4 retain jurisdiction. A person who violates the terms of an
 5 injunction shall pay a civil penalty as set by the court,
 6 but not to exceed \$25,000.

7 (3) The attorney general, in the name of the state or
 8 the board, may apply to the district court to appoint a
 9 receiver or conservator for any person or the assets of any
 10 person who is subject to a cease and desist order, permanent
 11 or temporary injunction, restraining order, or writ of
 12 mandamus.

13 Section 28. Criminal proceedings. The board may refer
 14 evidence concerning violations of [this act] to the attorney
 15 general or the proper prosecuting attorney, who may
 16 institute appropriate criminal proceedings.

17 Section 29. Fees. (1) The board shall charge and
 18 collect fees fixed by this section. All fees collected under
 19 [this act] must be deposited into the state special revenue
 20 fund for the use of the board and are not refundable except
 21 as provided in [this act].

22 (2) The initial fee for filing an application for
 23 registration for sale of a timeshare is \$500. Any filing
 24 containing over 400 intervals must be accompanied by a fee
 25 of \$5 for each additional interval.

1 (3) A fee for amendment of registration for the
2 purpose of adding additional intervals during a registration
3 period is \$200 plus \$5 for each interval in excess of 50
4 added by such amendment.

5 (4) The fee for an application for renewal of
6 registration is \$200.

7 (5) The fee for an initial application for or renewal
8 of a license as a timeshare salesperson is \$15.

9 (6) The fee for an initial application for or renewal
10 of a license as a timeshare broker is \$35.

11 (7) The fee for an amendment of registration, other
12 than the addition of units, as required in [section 5(3)],
13 is \$200.

14 Section 30. Rulemaking authority. The board shall
15 adopt rules to carry out the provisions of [this act]. The
16 rules may include but are not limited to:

17 (1) format of forms for applications and renewal of
18 registration and prescribing any additional information to
19 be supplied;

20 (2) documents acceptable in lieu of registration
21 documents under [section 6];

22 (3) conditions that may be placed upon registration
23 under [section 9];

24 (4) the subject matter of the examination for license
25 as a timeshare salesperson or timeshare broker; and

1 (5) additional information included in a disclosure
2 document.

3 Section 31. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

9 Section 32. Effective dates -- applicability.
10 (1) Except as provided in subsection (2), this act is
11 effective January 1, 1988.

12 (2) Section 30 and this section are effective on
13 passage and approval, but rules adopted pursuant to section
14 30 are not effective before January 1, 1988.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 213

INTRODUCED BY MAZUREK

BY REQUEST OF THE BOARD OF REALTY REGULATION

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE OFFERING AND SALE OF TIMESHARES; PROVIDING FOR REGISTRATION OF OFFERINGS AND LICENSURE OF SALESPERSONS; PROVIDING REMEDIES AND PENALTIES FOR VIOLATIONS; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [This act] may be cited as the "Montana Timeshare Act".

Section 2. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the

benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1867.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsections (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan



1 itself, either free or at a discount, including but not
2 limited to the use of a prize, gift, award, premium, or
3 lodging or vacation certificate.

4 (10) "Project" means the real property or real estate,
5 that must contain more than one unit, in which timeshares
6 are created by a single instrument or set of instruments.

7 (11) "Promoter" means any person who initiates the
8 inducement, solicitation, or encouragement of another
9 person, by any means, of the review or acquisition of a
10 timeshare interval.

11 (12) "Purchaser" means a person, other than a
12 developer, who by means of a voluntary transfer acquires a
13 legal or equitable interest in a timeshare, other than as
14 security for an obligation.

15 (13) "Real estate" means real estate as defined in
16 37-51-102.

17 (14) "Sale" or "sell" includes each contract of sale
18 of, contract to sell, or disposition of a timeshare for
19 value.

20 (15) "Timeshare broker" means a natural person who
21 supervises a timeshare sales operation and one or more
22 timeshare salespersons.

23 (16) "Timeshare expenses" means expenditures, fees,
24 charges, or liabilities:

25 (a) incurred with respect to the timeshares by or on

1 behalf of all timeshare owners in one timeshare property;
2 and

3 (b) imposed on the timeshare by the entity governing a
4 project of which the timeshare is a part, together with any
5 allocations to reserve. The term does not include purchase
6 money payable for timeshares.

7 (17) "Timeshare instrument" means one or more
8 documents, by whatever name denominated, creating or
9 regulating timeshares.

10 (18) "Timeshare interval" or "timeshare interest" means
11 the right, however evidenced or documented, to use and
12 occupy one or more timeshare units on a periodic basis
13 according to an arrangement allocating such use and
14 occupancy rights between similar users.

15 (19) "Timeshare owner" means a person, other than a
16 developer, who is an owner or co-owner of a timeshare. If
17 title to a timeshare is held in trust, timeshare owner means
18 the beneficiary of the trust.

19 (20) "Timeshare salesperson" means a person who for a
20 salary, commission, or compensation of any kind is
21 associated, either directly or indirectly, regularly or
22 occasionally, with a timeshare broker to sell, purchase, or
23 negotiate for sale, purchase, lease, or exchange of the
24 timeshare interests in real estate and who, on behalf of a
25 developer, sells or offers to sell a timeshare to a

1 purchaser.

2 (21) "Timeshare unit" or "unit" means the real property
3 or portion thereof in which the timeshare exists and that is
4 designated for separate use including campgrounds,
5 campsites, and outdoor recreation sites with spaces designed
6 or promoted for the purpose of locating a trailer, tent,
7 tent trailer, camper, or similar device for land-based
8 portable housing.

9 Section 3. Registration of timeshare offering
10 required. A timeshare offering may not be advertised,
11 offered, or sold in this state unless it is registered as
12 provided in [this act].

13 Section 4. Application for registration. An
14 application for registration of a timeshare offering must be
15 in a form developed by the board in conjunction with input
16 from the timeshare industry. The application must be signed
17 by the applicant and accompanied by the registration fee.
18 Except as provided in [section 6], the application must
19 contain:

20 (1) financial statements showing the financial
21 condition of the developer and any affiliate, including:

22 (a) a balance sheet dated within 4 months before the
23 filing of the application for registration; and

24 (b) statements of income, shareholder's equity, and
25 material changes in financial position as of the end of the

1 prior fiscal year and for any period between the end of the
2 prior fiscal year and the date of the last balance sheet;

3 (2) a projected budget for the timeshare project for 2
4 years after the offering being made, including but not
5 limited to source of revenues and expenses of construction,
6 development, management, maintenance, advertisement,
7 operating reserves, interest, and any other necessary
8 reserves;

9 (3) a description of the background of the developer
10 for the previous 10 years, including information about the
11 business experience of the developer and any relevant
12 criminal convictions, civil law suits, or administrative
13 actions related to any offering during that period;

14 (4) a statement disclosing any fees in excess of the
15 stated price per unit to be charged to the purchasers, a
16 description of their purpose, and the method of calculation;

17 (5) a statement disclosing when and where the
18 developer or an affiliate has previously sold timeshares;

19 (6) a statement of any liens, defects, or encumbrances
20 on or affecting the title to the timeshare units;

21 (7) copies of all timeshare instruments;

22 (8) a copy of the disclosure document provided for in
23 [section 14], signed by the applicant;

24 (9) an irrevocable consent to service of process
25 signed by the applicant; and

1 (10) any other information that the board may by rule
2 require in the protection of the public interest or
3 necessary to describe the risks involved.

4 Section 5. Registration period -- renewal. (1) A
5 timeshare offering registration is effective for 1 year from
6 the date of approval of the registration application.

7 (2) Registration of a timeshare offering may be
8 renewed for an additional 1-year period by filing a renewal
9 application with the board no later than 30 days before the
10 expiration of the registration period and paying the
11 prescribed fee. A renewal application must contain any
12 information the board requires to indicate any substantial
13 changes in the information contained in the original
14 application.

15 (3) If a materially adverse change in the condition of
16 the developer or an affiliate occurs during any year, an
17 amendment to the documents filed under [section 4] must be
18 filed, along with the prescribed fee.

19 Section 6. Alternative filing documents. (1) In lieu
20 of the documents required to be filed with an application
21 under [section 4], the board may accept:

22 (a) a disclosure document filed with an agency of the
23 United States or any other state; or

24 (b) a disclosure document compiled in accordance with
25 a rule of an agency of the United States or any other state.

1 (2) The board shall prescribe by rule those documents
2 acceptable under subsection (1).

3 Section 7. Exemption from registration. The
4 registration requirements of [this act] do not apply to:

5 (1) an offer, sale, or transfer of not more than one
6 timeshare interest by a timeshare owner in a 12-month
7 period;

8 (2) a gratuitous transfer of a timeshare;

9 (3) a sale under court order;

10 (4) a sale by any government or a governmental agency;

11 (5) a sale by forfeiture, foreclosure, or deed in lieu
12 of foreclosure; or

13 (6) a sale of a project or all timeshare units therein
14 to any one purchaser.

15 Section 8. Approval or disapproval of application or
16 registration. (1) Registration of a timeshare offering is
17 effective upon written notice of approval of the application
18 by the board or upon the passage of 30 calendar days after
19 filing of a completed application if not approved or denied
20 prior to that time.

21 (2) The board may issue an order, subject to [section
22 25], denying, suspending, or revoking any application or
23 registration if the board finds that the order is in the
24 public interest and that:

25 (a) the application or registration is incomplete or

1 contains a statement that is false or misleading with
2 respect to any material fact;

3 (b) any provision of [this act] or any rule or order
4 lawfully issued under [this act] has been violated;

5 (c) the activities of the developer include or would
6 include activities that are illegal; or

7 (d) the timeshare offering has worked or would tend to
8 work a fraud on purchasers.

9 (3) The board shall promptly notify the applicant or
10 registrant of any order denying, suspending, or revoking
11 registration and of the applicant's or registrant's right to
12 request a hearing within 20 days of receipt of notification.
13 If the applicant or registrant does not request a hearing,
14 the order remains in effect until the board modifies or
15 vacates it.

16 Section 9. Conditions upon registration. To protect
17 the public interest, the board may require as a condition of
18 registration that the registrant establish an independent
19 trust, escrow, or similar arrangement that assures a
20 purchaser quiet enjoyment of the timeshare unit.

21 Section 10. Waiver of liability. The fact that an
22 application for registration has been filed or that a
23 timeshare offering has been registered does not constitute a
24 finding by the board that any document filed under [this
25 act] is complete, true, and not misleading. The filing or

1 registration does not mean that the board has given approval
2 to, recommended, or determined the merits or qualifications
3 of any person, timeshare, or transaction.

4 Section 11. Approval of advertising. (1) No person
5 may publish an advertisement in this state offering a
6 timeshare that is subject to the registration requirements
7 of [section 3] unless a true copy of the advertisement has
8 first been filed in the office of the board at least 7 days
9 before publication or such other period as the board may
10 establish by rule.

11 (2) Nothing in [this act] applies to any radio or
12 television station or any publisher, printer, or distributor
13 of any newspaper, magazine, billboard, or other advertising
14 medium that accepts advertising in good faith without
15 reasonable knowledge of its violation of any provision of
16 [this act].

17 Section 12. Licensure of timeshare brokers and
18 timeshare salespersons. A person offering timeshare units
19 for his own account or for the account of others must be
20 licensed as a timeshare salesperson or timeshare broker
21 unless the offering is exempt under [section 7]. Licensure
22 may be obtained upon completion of an application and
23 personal disclosure statement and passage of an examination
24 prescribed by the board demonstrating knowledge of the
25 timeshare industry and [this act].

1 Section 13. Denial, suspension, or revocation of
 2 license or application. The board may by an order, subject
 3 to [section 25], deny, suspend, or revoke a timeshare
 4 salesperson's or timeshare broker's license or application
 5 for license if the board finds that the order is in the
 6 public interest and that the applicant or licensee:

7 (1) has filed an application for licensure and
 8 personal disclosure statement as a timeshare salesperson or
 9 timeshare broker that is incomplete in any material respect
 10 or contains any statement that is, in the light of the
 11 circumstances under which it was made, false or misleading
 12 with respect to any material fact;

13 (2) has violated or failed to comply with any
 14 provision of [this act], rules adopted under [this act], or
 15 Title 37, chapter 51;

16 (3) has been convicted of a felony involving theft,
 17 fraud, or any consumer protection statute or a felony
 18 involving moral turpitude and related to the occupation of
 19 timeshare salesperson or timeshare broker;

20 (4) is permanently or temporarily enjoined by a court
 21 from engaging in or continuing any conduct or practice
 22 involving an aspect of the timeshare business;

23 (5) has engaged in dishonest or unethical practices in
 24 the timeshare business; or

25 (6) has not complied with any condition imposed by the

1 board or is not qualified on the basis of knowledge of the
 2 timeshare industry or [this act].

3 Section 14. Disclosure document. A person who offers
 4 or sells a timeshare shall provide the prospective purchaser
 5 with a written disclosure document before the prospective
 6 purchaser signs an agreement for the purchase of a
 7 timeshare. The disclosure document must include:

8 (1) the official name and address of the developer,
 9 its parent or affiliates, and the names and addresses of the
 10 director and officers of each;

11 (2) the location of the timeshare property;

12 (3) a general description of the timeshare property
 13 and the timeshare units;

14 (4) a list of all units offered by the promoter in the
 15 same project, including:

16 (a) the types, current prices, and number of units;

17 (b) the types and durations of the timeshares;

18 (c) the maximum number of units that may become part
 19 of the timeshare property;

20 (d) a statement of the maximum number of timeshares
 21 that may be created or a statement that there is no maximum;

22 (5) a description of the types of financing offered by
 23 the promoter;

24 (6) a statement of ownership of all properties
 25 included in the timeshare offering, including any liens or

1 encumbrances affecting the property;

2 (7) copies of any agreements or leases to be signed by
3 purchasers at closing and a copy of the timeshare
4 instrument;

5 (8) the identity of the managing entity and the name,
6 address, and telephone number of the person or persons in
7 charge, and the manner, if any, whereby the developer may
8 change the managing entity;

9 (9) a true copy of the current or projected budget of
10 the owners' association along with a description of the
11 nature and purpose of all charges, dues, maintenance fees,
12 and other expenses that may be assessed, including the
13 formula for payment of charges if all timeshares are not
14 sold and a statement of who pays additional costs;

15 (10) a statement in boldface type on the cover page of
16 the disclosure document that, within 3 days after receipt of
17 a disclosure document or the signing of the timeshare
18 purchase agreement, whichever is later, a purchaser may
19 cancel any agreement for the purchase of a timeshare from a
20 developer or salesperson and that the cancellation must be
21 in writing and be delivered either in person or by certified
22 mail to the developer or the developer's agent;

23 (11) any restrictions on transfers of a timeshare or
24 portion thereof;

25 (12) a description of any insurance coverage provided

1 for the benefit of timeshare owners by the managing entity
2 or the timeshare owners' association;

3 (13) a full and accurate disclosure of whether the
4 timeshare owners are permitted or required to become members
5 of or participate in any program for the exchange of
6 property rights among themselves or with the timeshare
7 owners of other timeshare units, or both, and a complete
8 description of the program; and

9 (14) any additional information the board finds
10 necessary to fully inform prospective purchasers, including
11 but not limited to the financial and background information
12 required by [section 4].

13 Section 15. Disclosure to purchaser -- cancellation of
14 agreement. The developer or any person offering a timeshare
15 shall provide a prospective purchaser with a copy of the
16 disclosure document described in [section 14] before the
17 execution of any agreement for the purchase of a timeshare.
18 A purchaser may, within 3 days following receipt of a
19 disclosure document or signing of a timeshare purchase
20 agreement, whichever is later, cancel the agreement and
21 receive a refund of any consideration paid by providing
22 written notice of the cancellation to the promoter or
23 promoter's agent either by certified mail or personal
24 delivery. If the purchaser does not receive the disclosure
25 document, the agreement is ~~violated~~ VOIDABLE by the

1 purchaser until the purchaser receives the document and for
2 3 days thereafter. The provisions of this section may not be
3 waived.

4 Section 16. Transfer of developer's interest. A
5 developer may not sell, lease, assign, or otherwise transfer
6 his interest in a project unless the transferee agrees in
7 writing to honor the purchaser's right to use and occupy the
8 timeshare unit, to honor the purchaser's right to cancel,
9 and to comply with [this act]. Each purchaser whose contract
10 may be affected must be given written notice of a transfer
11 immediately after the transfer is made.

12 Section 17. Good faith requirement -- prohibited
13 provisions. (1) The parties to a timeshare agreement shall
14 deal with each other in good faith.

15 (2) A developer may not require a purchaser to agree
16 to a release, assignment, novation, waiver, or any other
17 provision that relieves a person from a duty imposed by
18 [this act].

19 (3) Any provision in a timeshare instrument that
20 designates jurisdiction or venue in a forum outside this
21 state or the state or other jurisdiction where the project
22 is located is void with respect to any cause of action that
23 is enforceable in this state.

24 Section 18. Illegal practices. (1) It is unlawful for
25 any person in connection with the offer, sale, or lease of a

1 timeshare interest in this state to:

2 (a) make any false or misleading statement of a
3 material fact or to omit a material fact;

4 (b) employ any device, scheme, or artifice to defraud;
5 (c) engage in any act, practice, or course of business
6 that operates or would operate as a fraud or deceit upon any
7 person;

8 (d) file or cause to be filed with the board any
9 document that contains false or misleading information; or

10 (e) violate any provision of [this act] or rule
11 adopted under [this act] or any applicable provision of
12 Title 37, chapter 51.

13 (2) A violation of this section is a misdemeanor
14 punishable as provided in 46-18-212.

15 Section 19. Civil liability. Any person who offers,
16 sells, or materially aids in the offer or sale of a
17 timeshare in violation of [this act] is liable to the person
18 buying the timeshare, who may sue to recover the
19 consideration paid for the timeshare, together with interest
20 at the current legal rate from date of payment and costs,
21 upon the tender of the timeshare or for damages if the
22 person no longer owns the timeshare.

23 Section 20. Prize and gift promotional offers --
24 filing. (1) A separate filing for each prize and gift
25 promotional offer to be used in the sale of timeshare

1 intervals must be made with the board at least 14 days prior
 2 to the use of such offer by the developer. No advertising
 3 material related to a prize and gift promotional offer may
 4 be distributed unless it is first filed with the board. If
 5 the board determines that any prize or gift has been
 6 misrepresented by the developer and if upon notification
 7 thereof the developer fails to correct such
 8 misrepresentation, the board may revoke or suspend the
 9 application or registration of the developer.

10 (2) Each filing of a prize and gift promotional offer
 11 with the board must include, when applicable:

12 (a) a copy of all advertising material to be used in
 13 connection with the prize and gift promotional offer;

14 (b) the name, address, and telephone number, including
 15 area code, of the supplier or manufacturer from whom each
 16 prize, gift, or other item is obtained;

17 (c) the manufacturer's model number or other
 18 description of such item;

19 (d) the information on which the developer relies in
 20 determining the verifiable retail value;

21 (e) the name, address, and telephone number, including
 22 area code, of the promotional entity responsible for
 23 overseeing and operating the prize and gift promotional
 24 offer; and

25 (f) the name and address of the registered agent in

1 the state of the promotional entity for service of process
 2 purposes.

3 (3) Each developer shall file with the board by March
 4 1 of each year the name, address, and telephone number,
 5 including area code, of each person who actually received a
 6 prize, gift, or other item that had a verifiable retail
 7 value or manufacturer's suggested retail price in excess of
 8 \$150.

9 Section 21. Prize and gift promotional offer
 10 advertising content. All advertising material to be
 11 distributed in connection with a prize and gift promotional
 12 offer must contain:

13 (1) a description of the prize, gift, or other item
 14 that the prospective purchaser will actually receive,
 15 including the manufacturer's retail price or, if none is
 16 available, the verifiable retail value;

17 (2) all rules, terms, requirements, and preconditions
 18 that must be fulfilled or met before a prospective purchaser
 19 may claim any prize, gift, or other item involved in the
 20 prize and gift promotional plan, including whether the
 21 prospective purchaser is required to attend a sales
 22 presentation in order to receive the prize, gift, or other
 23 item;

24 (3) the date the offer expires;

25 (4) a statement of the number of items that will be

1 awarded if the number of prizes, gifts, or other items to be
2 awarded is limited; and

3 (5) the method by which prizes, gifts, or other items
4 are to be awarded.

5 Section 22. Awarding of gifts and prizes. (1) Any
6 prize, gift, or other item offered pursuant to a prize and
7 gift promotional offer must be delivered to the prospective
8 purchaser on the day he appears to claim it whether or not
9 he purchases a timeshare interval. If the prize is not
10 available it must be presented or mailed at the developer's
11 expense, postage prepaid within 30 days thereafter.

12 (2) All prizes, gifts, or other items represented by
13 the developer to be awarded in connection with any prize and
14 gift promotional offer must be awarded by the date
15 referenced in the advertising material used in connection
16 with such offer.

17 Section 23. Investigations by board. (1) The board
18 may:

19 (a) conduct public or private investigations within or
20 outside the state to:

21 (i) determine whether any registration should be
22 granted, denied, or revoked;

23 (ii) determine whether a person has violated or is
24 about to violate a provision of [this act]; or

25 (iii) aid in the enforcement of [this act] and rules

1 issued under [this act];

2 (b) administer oaths and affirmations, subpoena
3 witnesses and compel their attendance, take evidence, and
4 require the production of any books, papers, correspondence,
5 memoranda, agreements, or other documents or records that
6 the board considers relevant to the inquiry; and

7 (c) publish information concerning a violation of
8 [this act] or rule or order issued under [this act].

9 (2) If a person fails to comply with a lawful
10 subpoena, refuses to testify under lawful interrogation, or
11 refuses to produce documents and records, the board may
12 apply to the district court of any county for relief. After
13 satisfactory evidence of willful disobedience, the court may
14 compel obedience by proceedings for contempt.

15 Section 24. Cease and desist orders. The board may by
16 summary order, subject to [section 25], require any person
17 to cease and desist from an act or practice if it appears
18 that the person is violating or is about to violate a
19 provision of [this act] or rule or order issued under [this
20 act].

21 Section 25. Hearing procedure -- orders. (1) Upon the
22 entry of an order under [section 8], [section 13], or
23 [section 24], the board shall promptly notify the applicant
24 or registrant that the order has been entered and the
25 reasons therefor and that it will become effective 20 days

1 after receipt of the board's notification unless a hearing
 2 is requested under this section, in which case it will
 3 become effective on the date the board issues its final
 4 order. If a hearing is requested in writing by the
 5 applicant, the matter will be scheduled for hearing in
 6 accordance with subsection (2).

7 (2) If entry of the order results in denial of an
 8 application under [section 8] or [section 13], the hearing
 9 must be held within a reasonable time and in accordance with
 10 Title 2, chapter 4.

11 Section 26. Attorney general to act as attorney for
 12 board. The attorney general shall act as attorney for the
 13 board in actions and proceedings brought by or against it
 14 under [this act]. Fees and expenses of the attorney general
 15 acting in this capacity must be paid out of board money in
 16 the state special revenue fund.

17 Section 27. Injunctions. (1) The attorney general, in
 18 the name of the state or the board, may bring an action to
 19 enjoin a person from violating a provision of [this act].
 20 Upon a proper showing, the district court shall grant a
 21 permanent or temporary injunction, restraining order, or
 22 writ of mandamus. The court may make any additional order of
 23 judgment necessary to restore to a person any interest in
 24 money or property, real or personal, that may have been
 25 acquired by an act prohibited or declared to be unlawful

1 under [this act]. The prevailing party may recover costs of
 2 the action, including a reasonable attorney fee.

3 (2) The district court issuing an injunction shall
 4 retain jurisdiction. A person who violates the terms of an
 5 injunction shall pay a civil penalty as set by the court,
 6 but not to exceed \$25,000.

7 (3) The attorney general, in the name of the state or
 8 the board, may apply to the district court to appoint a
 9 receiver or conservator for any person or the assets of any
 10 person who is subject to a cease and desist order, permanent
 11 or temporary injunction, restraining order, or writ of
 12 mandamus.

13 Section 28. Criminal proceedings. The board may refer
 14 evidence concerning violations of [this act] to the attorney
 15 general or the proper prosecuting attorney, who may
 16 institute appropriate criminal proceedings.

17 Section 29. Fees. (1) The board shall charge and
 18 collect fees fixed by this section. All fees collected under
 19 [this act] must be deposited into the state special revenue
 20 fund for the use of the board and are not refundable except
 21 as provided in [this act].

22 (2) The initial fee for filing an application for
 23 registration for sale of a timeshare is \$500. Any filing
 24 containing over 400 intervals must be accompanied by a fee
 25 of \$5 for each additional interval.

1 (3) A fee for amendment of registration for the
2 purpose of adding additional intervals during a registration
3 period is \$200 plus \$5 for each interval in excess of 50
4 added by such amendment.

5 (4) The fee for an application for renewal of
6 registration is \$200.

7 (5) The fee for an initial application for or renewal
8 of a license as a timeshare salesperson is \$15.

9 (6) The fee for an initial application for or renewal
10 of a license as a timeshare broker is \$35.

11 (7) The fee for an amendment of registration, other
12 than the addition of units, as required in [section 5(3)],
13 is \$200.

14 Section 30. Rulemaking authority. The board shall
15 adopt rules to carry out the provisions of [this act]. The
16 rules may include but are not limited to:

17 (1) format of forms for applications and renewal of
18 registration and prescribing any additional information to
19 be supplied;

20 (2) documents acceptable in lieu of registration
21 documents under [section 6];

22 (3) conditions that may be placed upon registration
23 under [section 9];

24 (4) the subject matter of the examination for license
25 as a timeshare salesperson or timeshare broker; and

1 (5) additional information included in a disclosure
2 document.

3 Section 31. Severability. If a part of this act is
4 invalid, all valid parts that are severable from the invalid
5 part remain in effect. If a part of this act is invalid in
6 one or more of its applications, the part remains in effect
7 in all valid applications that are severable from the
8 invalid applications.

9 Section 32. Effective dates -- applicability.

10 (1) Except as provided in subsection (2), this act is
11 effective January 1, 1988.

12 (2) Section 30 and this section are effective on
13 passage and approval, but rules adopted pursuant to section
14 30 are not effective before January 1, 1988.

-End-

1 SENATE BILL NO. 213

2 INTRODUCED BY MAZUREK

3 BY REQUEST OF THE BOARD OF REALTY REGULATION

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE OFFERING
6 AND SALE OF TIMESHARES; PROVIDING FOR REGISTRATION OF
7 OFFERINGS AND LICENSURE OF SALESPERSONS; PROVIDING REMEDIES
8 AND PENALTIES FOR VIOLATIONS; AND PROVIDING EFFECTIVE DATES
9 AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. [This act] may be cited as the
13 "Montana Timeshare Act".

14 Section 2. Definitions. As used in [this act], unless
15 the context requires otherwise, the following definitions
16 apply:

17 (1) "Advertisement" means a written, printed, audio,
18 or visual communication that is published in whole or in
19 part to sell, offer to sell, or solicit an offer for a
20 timeshare.

21 (2) "Affiliate" means a person who controls, is
22 controlled by, or is under the control of a developer.

23 (3) "Association" or "owners' association" means the
24 association of owners created by the timeshare instruments
25 for purposes of managing and maintaining the project for the

1 benefit of all timeshare owners.

2 (4) "Board" means the board of realty regulation
3 provided for in 2-15-1867.

4 (5) "Developer" means:

5 (a) a person creating timeshares or engaged in the
6 business of selling his own timeshares;

7 (b) a person who controls, is controlled by, or is in
8 common control with the person engaged in creating or
9 selling timeshares; or

10 (c) any successor or assignee of a person referred to
11 in subsections (5)(a) or (5)(b).

12 (6) "Managing entity" means a person hired by the
13 timeshare association or developer to manage the timeshare
14 plan or the timeshare property.

15 (7) "Offer" or "offering" means an inducement,
16 solicitation, or attempt to encourage a person to acquire a
17 timeshare. An offer is made in this state if the offer
18 originates in this state or if the principal timeshare
19 property is located in this state.

20 (8) "Person" means a natural person, corporation,
21 business trust, estate, trust, partnership, association,
22 joint venture, or other legal or commercial entity.

23 (9) "Prize and gift promotional offer" means
24 advertising material stating that a prospective purchaser
25 may receive goods or services other than the timeshare plan

1 itself, either free or at a discount, including but not
2 limited to the use of a prize, gift, award, premium, or
3 lodging or vacation certificate.

4 (10) "Project" means the real property or real estate,
5 that must contain more than one unit, in which timeshares
6 are created by a single instrument or set of instruments.

7 (11) "Promoter" means any person who initiates the
8 inducement, solicitation, or encouragement of another
9 person, by any means, of the review or acquisition of a
10 timeshare interval.

11 (12) "Purchaser" means a person, other than a
12 developer, who by means of a voluntary transfer acquires a
13 legal or equitable interest in a timeshare, other than as
14 security for an obligation.

15 (13) "Real estate" means real estate as defined in
16 37-51-102.

17 (14) "Sale" or "sell" includes each contract of sale
18 of, contract to sell, or disposition of a timeshare for
19 value.

20 (15) "Timeshare broker" means a natural person who
21 supervises a timeshare sales operation and one or more
22 timeshare salespersons.

23 (16) "Timeshare expenses" means expenditures, fees,
24 charges, or liabilities:

25 (a) incurred with respect to the timeshares by or on

1 behalf of all timeshare owners in one timeshare property;
2 and

3 (b) imposed on the timeshare by the entity governing a
4 project of which the timeshare is a part, together with any
5 allocations to reserve. The term does not include purchase
6 money payable for timeshares.

7 (17) "Timeshare instrument" means one or more
8 documents, by whatever name denominated, creating or
9 regulating timeshare.

10 (18) "Timeshare interval" or "timeshare interest" means
11 the right, however evidenced or documented, to use and
12 occupy one or more timeshare units on a periodic basis
13 according to an arrangement allocating such use and
14 occupancy rights between similar users.

15 (19) "Timeshare owner" means a person, other than a
16 developer, who is an owner or co-owner of a timeshare. If
17 title to a timeshare is held in trust, timeshare owner means
18 the beneficiary of the trust.

19 (20) "Timeshare salesperson" means a person who for a
20 salary, commission, or compensation of any kind is
21 associated, either directly or indirectly, regularly or
22 occasionally, with a timeshare broker to sell, purchase, or
23 negotiate for sale, purchase, lease, or exchange of the
24 timeshare interests in real estate and who, on behalf of a
25 developer, sells or offers to sell a timeshare to a

1 purchaser.

2 (21) "Timeshare unit" or "unit" means the real property
3 or portion thereof in which the timeshare exists and that is
4 designated for separate use including campgrounds,
5 campsites, and outdoor recreation sites with spaces designed
6 or promoted for the purpose of locating a trailer, tent,
7 tent trailer, camper, or similar device for land-based
8 portable housing.

9 Section 3. Registration of timeshare offering
10 required. A timeshare offering may not be advertised,
11 offered, or sold in this state unless it is registered as
12 provided in [this act].

13 Section 4. Application for registration. An
14 application for registration of a timeshare offering must be
15 in a form developed by the board in conjunction with input
16 from the timeshare industry. The application must be signed
17 by the applicant and accompanied by the registration fee.
18 Except as provided in [section 6], the application must
19 contain:

20 (1) financial statements showing the financial
21 condition of the developer and any affiliate, including:

22 (a) a balance sheet dated within 4 months before the
23 filing of the application for registration; and

24 (b) statements of income, shareholder's equity, and
25 material changes in financial position as of the end of the

1 prior fiscal year and for any period between the end of the
2 prior fiscal year and the date of the last balance sheet;

3 (2) a projected budget for the timeshare project for 2
4 years after the offering being made, including but not
5 limited to source of revenues and expenses of construction,
6 development, management, maintenance, advertisement,
7 operating reserves, interest, and any other necessary
8 reserves;

9 (3) a description of the background of the developer
10 for the previous 10 years, including information about the
11 business experience of the developer and any relevant
12 criminal convictions, civil law suits, or administrative
13 actions related to any offering during that period;

14 (4) a statement disclosing any fees in excess of the
15 stated price per unit to be charged to the purchasers, a
16 description of their purpose, and the method of calculation;

17 (5) a statement disclosing when and where the
18 developer or an affiliate has previously sold timeshares;

19 (6) a statement of any liens, defects, or encumbrances
20 on or affecting the title to the timeshare units;

21 (7) copies of all timeshare instruments;

22 (8) a copy of the disclosure document provided for in
23 [section 14], signed by the applicant;

24 (9) an irrevocable consent to service of process
25 signed by the applicant; and

1 (10) any other information that the board may by rule
2 require in the protection of the public interest or
3 necessary to describe the risks involved.

4 Section 5. Registration period -- renewal. (1) A
5 timeshare offering registration is effective for 1 year from
6 the date of approval of the registration application.

7 (2) Registration of a timeshare offering may be
8 renewed for an additional 1-year period by filing a renewal
9 application with the board no later than 30 days before the
10 expiration of the registration period and paying the
11 prescribed fee. A renewal application must contain any
12 information the board requires to indicate any substantial
13 changes in the information contained in the original
14 application.

15 (3) If a materially adverse change in the condition of
16 the developer or an affiliate occurs during any year, an
17 amendment to the documents filed under [section 4] must be
18 filed, along with the prescribed fee.

19 Section 6. Alternative filing documents. (1) In lieu
20 of the documents required to be filed with an application
21 under [section 4], the board may accept:

22 (a) a disclosure document filed with an agency of the
23 United States or any other state; or

24 (b) a disclosure document compiled in accordance with
25 a rule of an agency of the United States or any other state.

1 (2) The board shall prescribe by rule those documents
2 acceptable under subsection (1).

3 Section 7. Exemption from registration. The
4 registration requirements of [this act] do not apply to:

5 (1) an offer, sale, or transfer of not more than one
6 timeshare interest by a timeshare owner in a 12-month
7 period;

8 (2) a gratuitous transfer of a timeshare;

9 (3) a sale under court order;

10 (4) a sale by any government or a governmental agency;

11 (5) a sale by forfeiture, foreclosure, or deed in lieu
12 of foreclosure; or

13 (6) a sale of a project or all timeshare units therein
14 to any one purchaser.

15 Section 8. Approval or disapproval of application or
16 registration. (1) Registration of a timeshare offering is
17 effective upon written notice of approval of the application
18 by the board or upon the passage of 30 calendar days after
19 filing of a completed application if not approved or denied
20 prior to that time.

21 (2) The board may issue an order, subject to [section
22 25], denying, suspending, or revoking any application or
23 registration if the board finds that the order is in the
24 public interest and that:

25 (a) the application or registration is incomplete or

1 contains a statement that is false or misleading with
2 respect to any material fact;

3 (b) any provision of [this act] or any rule or order
4 lawfully issued under [this act] has been violated;

5 (c) the activities of the developer include or would
6 include activities that are illegal; or

7 (d) the timeshare offering has worked or would tend to
8 work a fraud on purchasers.

9 (3) The board shall promptly notify the applicant or
10 registrant of any order denying, suspending, or revoking
11 registration and of the applicant's or registrant's right to
12 request a hearing within 20 days of receipt of notification.
13 If the applicant or registrant does not request a hearing,
14 the order remains in effect until the board modifies or
15 vacates it.

16 Section 9. Conditions upon registration. To protect
17 the public interest, the board may require as a condition of
18 registration that the registrant establish an independent
19 trust, escrow, or similar arrangement that assures a
20 purchaser quiet enjoyment of the timeshare unit.

21 Section 10. Waiver of liability. The fact that an
22 application for registration has been filed or that a
23 timeshare offering has been registered does not constitute a
24 finding by the board that any document filed under [this
25 act] is complete, true, and not misleading. The filing or

1 registration does not mean that the board has given approval
2 to, recommended, or determined the merits or qualifications
3 of any person, timeshare, or transaction.

4 Section 11. Approval of advertising. (1) No person
5 may publish an advertisement in this state offering a
6 timeshare that is subject to the registration requirements
7 of [section 3] unless a true copy of the advertisement has
8 first been filed in the office of the board at least 7 days
9 before publication or such other period as the board may
10 establish by rule.

11 (2) Nothing in [this act] applies to any radio or
12 television station or any publisher, printer, or distributor
13 of any newspaper, magazine, billboard, or other advertising
14 medium that accepts advertising in good faith without
15 reasonable knowledge of its violation of any provision of
16 [this act].

17 Section 12. Licensure of timeshare brokers and
18 timeshare salespersons. (1) A person offering timeshare
19 units for his own account or for the account of others must
20 be licensed as a timeshare salesperson or timeshare broker
21 unless the offering is exempt under [section 7]. Licensure
22 may be obtained;

23 (A) upon completion of an application and personal
24 disclosure statement and passage of an examination
25 prescribed by the board demonstrating knowledge of the

1 timeshare industry and [this act]; AND

2 (B) UPON SUCCESSFUL COMPLETION OF A COURSE OF
3 EDUCATION RELATED TO THE TIMESHARE INDUSTRY THAT HAS BEEN
4 APPROVED BY THE BOARD. THE BOARD SHALL THEN ISSUE A
5 CERTIFICATE OF COMPLETION TO THE APPLICANT.

6 (2) A PERSON LICENSED UNDER TITLE 37, CHAPTER 51, MAY
7 BECOME LICENSED AS A TIMESHARE SALESPERSON OR TIMESHARE
8 BROKER UPON SUCCESSFUL COMPLETION OF A COURSE OF EDUCATION
9 RELATED TO THE TIMESHARE INDUSTRY THAT HAS BEEN APPROVED BY
10 THE BOARD. THE BOARD SHALL THEN ISSUE A CERTIFICATE OF
11 COMPLETION TO THE APPLICANT.

12 Section 13. Denial, suspension, or revocation of
13 license or application. The board may by an order, subject
14 to [section 25], deny, suspend, or revoke a timeshare
15 salesperson's or timeshare broker's license or application
16 for license if the board finds that the order is in the
17 public interest and that the applicant or licensee:

18 (1) has filed an application for licensure and
19 personal disclosure statement as a timeshare salesperson or
20 timeshare broker that is incomplete in any material respect
21 or contains any statement that is, in the light of the
22 circumstances under which it was made, false or misleading
23 with respect to any material fact;

24 (2) has violated or failed to comply with any
25 provision of [this act], rules adopted under [this act], or

1 Title 37, chapter 51;

2 (3) has been convicted of a felony involving theft,
3 fraud, or any consumer protection statute or a felony
4 involving moral turpitude and related to the occupation of
5 timeshare salesperson or timeshare broker;

6 (4) is permanently or temporarily enjoined by a court
7 from engaging in or continuing any conduct or practice
8 involving an aspect of the timeshare business;

9 (5) has engaged in dishonest or unethical practices in
10 the timeshare business; or

11 (6) has not complied with any condition imposed by the
12 board or is not qualified on the basis of knowledge of the
13 timeshare industry or [this act].

14 Section 14. Disclosure document. A person who offers
15 or sells a timeshare shall provide the prospective purchaser
16 with a written disclosure document before the prospective
17 purchaser signs an agreement for the purchase of a
18 timeshare. The disclosure document must include:

19 (1) the official name and address of the developer,
20 its parent or affiliates, and the names and addresses of the
21 director and officers of each;

22 (2) the location of the timeshare property;

23 (3) a general description of the timeshare property
24 and the timeshare units;

25 (4) a list of all units offered by the promoter in the

1 same project, including:

- 2 (a) the types, current prices, and number of units;
- 3 (b) the types and durations of the timeshares;
- 4 (c) the maximum number of units that may become part
5 of the timeshare property;
- 6 (d) a statement of the maximum number of timeshares
7 that may be created or a statement that there is no maximum;
- 8 (5) a description of the types of financing offered by
9 the promoter;
- 10 (6) a statement of ownership of all properties
11 included in the timeshare offering, including any liens or
12 encumbrances affecting the property;
- 13 (7) copies of any agreements or leases to be signed by
14 purchasers at closing and a copy of the timeshare
15 instrument;
- 16 (8) the identity of the managing entity and the name,
17 address, and telephone number of the person or persons in
18 charge, and the manner, if any, whereby the developer may
19 change the managing entity;
- 20 (9) a true copy of the current or projected budget of
21 the owners' association along with a description of the
22 nature and purpose of all charges, dues, maintenance fees,
23 and other expenses that may be assessed, including the
24 formula for payment of charges if all timeshares are not
25 sold and a statement of who pays additional costs;

1 (10) a statement in boldface type on the cover page of
2 the disclosure document that, within 3 days after receipt of
3 a disclosure document or the signing of the timeshare
4 purchase agreement, whichever is later, a purchaser may
5 cancel any agreement for the purchase of a timeshare from a
6 developer or salesperson and that the cancellation must be
7 in writing and be delivered either in person or by certified
8 mail to the developer or the developer's agent;

9 (11) any restrictions on transfers of a timeshare or
10 portion thereof;

11 (12) a description of any insurance coverage provided
12 for the benefit of timeshare owners by the managing entity
13 or the timeshare owners' association;

14 (13) a full and accurate disclosure of whether the
15 timeshare owners are permitted or required to become members
16 of or participate in any program for the exchange of
17 property rights among themselves or with the timeshare
18 owners of other timeshare units, or both, and a complete
19 description of the program; and

20 (14) any additional information the board finds
21 necessary to fully inform prospective purchasers, including
22 but not limited to the financial and background information
23 required by [section 4].

24 Section 15. Disclosure to purchaser -- cancellation of
25 agreement. The developer or any person offering a timeshare

1 shall provide a prospective purchaser with a copy of the
 2 disclosure document described in [section 14] before the
 3 execution of any agreement for the purchase of a timeshare.
 4 A purchaser may, within 3 days following receipt of a
 5 disclosure document or signing of a timeshare purchase
 6 agreement, whichever is later, cancel the agreement and
 7 receive a refund of any consideration paid by providing
 8 written notice of the cancellation to the promoter or
 9 promoter's agent either by certified mail or personal
 10 delivery. If the purchaser does not receive the disclosure
 11 document, the agreement is violated VOIDABLE by the
 12 purchaser until the purchaser receives the document and for
 13 3 days thereafter. The provisions of this section may not be
 14 waived.

15 Section 16. Transfer of developer's interest. A
 16 developer may not sell, lease, assign, or otherwise transfer
 17 his interest in a project unless the transferee agrees in
 18 writing to honor the purchaser's right to use and occupy the
 19 timeshare unit, to honor the purchaser's right to cancel,
 20 and to comply with [this act]. Each purchaser whose contract
 21 may be affected must be given written notice of a transfer
 22 immediately after the transfer is made.

23 Section 17. Good faith requirement -- prohibited
 24 provisions. (1) The parties to a timeshare agreement shall
 25 deal with each other in good faith.

1 (2) A developer may not require a purchaser to agree
 2 to a release, assignment, novation, waiver, or any other
 3 provision that relieves a person from a duty imposed by
 4 [this act].

5 (3) Any provision in a timeshare instrument that
 6 designates jurisdiction or venue in a forum outside this
 7 state or the state or other jurisdiction where the project
 8 is located is void with respect to any cause of action that
 9 is enforceable in this state.

10 Section 18. Illegal practices. (1) It is unlawful for
 11 any person in connection with the offer, sale, or lease of a
 12 timeshare interest in this state to:

13 (a) make any false or misleading statement of a
 14 material fact or to omit a material fact;

15 (b) employ any device, scheme, or artifice to defraud;

16 (c) engage in any act, practice, or course of business
 17 that operates or would operate as a fraud or deceit upon any
 18 person;

19 (d) file or cause to be filed with the board any
 20 document that contains false or misleading information; or

21 (e) violate any provision of [this act] or rule
 22 adopted under [this act] or any applicable provision of
 23 Title 37, chapter 51.

24 (2) A violation of this section is a misdemeanor
 25 punishable as provided in 46-18-212.

1 Section 19. Civil liability. Any person who offers,
 2 sells, or materially aids in the offer or sale of a
 3 timeshare in violation of [this act] is liable to the person
 4 buying the timeshare, who may sue to recover the
 5 consideration paid for the timeshare, together with interest
 6 at the current legal rate from date of payment and costs,
 7 upon the tender of the timeshare or for damages if the
 8 person no longer owns the timeshare.

9 Section 20. Prize and gift promotional offers --
 10 filing. (1) A separate filing for each prize and gift
 11 promotional offer to be used in the sale of timeshare
 12 intervals must be made with the board at least 14 days prior
 13 to the use of such offer by the developer. No advertising
 14 material related to a prize and gift promotional offer may
 15 be distributed unless it is first filed with the board. If
 16 the board determines that any prize or gift has been
 17 misrepresented by the developer and if upon notification
 18 thereof the developer fails to correct such
 19 misrepresentation, the board may revoke or suspend the
 20 application or registration of the developer.

21 (2) Each filing of a prize and gift promotional offer
 22 with the board must include, when applicable:

23 (a) a copy of all advertising material to be used in
 24 connection with the prize and gift promotional offer;

25 (b) the name, address, and telephone number, including

1 area code, of the supplier or manufacturer from whom each
 2 prize, gift, or other item is obtained;

3 (c) the manufacturer's model number or other
 4 description of such item;

5 (d) the information on which the developer relies in
 6 determining the verifiable retail value;

7 (e) the name, address, and telephone number, including
 8 area code, of the promotional entity responsible for
 9 overseeing and operating the prize and gift promotional
 10 offer; and

11 (f) the name and address of the registered agent in
 12 the state of the promotional entity for service of process
 13 purposes.

14 (3) Each developer shall file with the board by March
 15 1 of each year the name, address, and telephone number,
 16 including area code, of each person who actually received a
 17 prize, gift, or other item that had a verifiable retail
 18 value or manufacturer's suggested retail price in excess of
 19 \$150.

20 Section 21. Prize and gift promotional offer
 21 advertising content. All advertising material to be
 22 distributed in connection with a prize and gift promotional
 23 offer must contain:

24 (1) a description of the prize, gift, or other item
 25 that the prospective purchaser will actually receive,

1 including the manufacturer's retail price or, if none is
2 available, the verifiable retail value;

3 (2) all rules, terms, requirements, and preconditions
4 that must be fulfilled or met before a prospective purchaser
5 may claim any prize, gift, or other item involved in the
6 prize and gift promotional plan, including whether the
7 prospective purchaser is required to attend a sales
8 presentation in order to receive the prize, gift, or other
9 item;

10 (3) the date the offer expires;

11 (4) a statement of the number of items that will be
12 awarded if the number of prizes, gifts, or other items to be
13 awarded is limited; and

14 (5) the method by which prizes, gifts, or other items
15 are to be awarded.

16 Section 22. Awarding of gifts and prizes. (1) Any
17 prize, gift, or other item offered pursuant to a prize and
18 gift promotional offer must be delivered to the prospective
19 purchaser on the day he appears to claim it whether or not
20 he purchases a timeshare interval. If the prize is not
21 available it must be presented or mailed at the developer's
22 expense, postage prepaid within 30 days thereafter.

23 (2) All prizes, gifts, or other items represented by
24 the developer to be awarded in connection with any prize and
25 gift promotional offer must be awarded by the date

1 referenced in the advertising material used in connection
2 with such offer.

3 Section 23. Investigations by board. (1) The board
4 may:

5 (a) conduct public or private investigations within or
6 outside the state to:

7 (i) determine whether any registration should be
8 granted, denied, or revoked;

9 (ii) determine whether a person has violated or is
10 about to violate a provision of [this act]; or

11 (iii) aid in the enforcement of [this act] and rules
12 issued under [this act];

13 (b) administer oaths and affirmations, subpoena
14 witnesses and compel their attendance, take evidence, and
15 require the production of any books, papers, correspondence,
16 memoranda, agreements, or other documents or records that
17 the board considers relevant to the inquiry; and

18 (c) publish information concerning a violation of
19 [this act] or rule or order issued under [this act].

20 (2) If a person fails to comply with a lawful
21 subpoena, refuses to testify under lawful interrogation, or
22 refuses to produce documents and records, the board may
23 apply to the district court of any county for relief. After
24 satisfactory evidence of willful disobedience, the court may
25 compel obedience by proceedings for contempt.

1 Section 24. Cease and desist orders. The board may by
 2 summary order, subject to [section 25], require any person
 3 to cease and desist from an act or practice if it appears
 4 that the person is violating or is about to violate a
 5 provision of [this act] or rule or order issued under [this
 6 act].

7 Section 25. Hearing procedure -- orders. (1) Upon the
 8 entry of an order under [section 8], [section 13], or
 9 [section 24], the board shall promptly notify the applicant
 10 or registrant that the order has been entered and the
 11 reasons therefor and that it will become effective 20 days
 12 after receipt of the board's notification unless a hearing
 13 is requested under this section, in which case it will
 14 become effective on the date the board issues its final
 15 order. If a hearing is requested in writing by the
 16 applicant, the matter will be scheduled for hearing in
 17 accordance with subsection (2).

18 (2) If entry of the order results in denial of an
 19 application under [section 8] or [section 13], the hearing
 20 must be held within a reasonable time and in accordance with
 21 Title 2, chapter 4.

22 Section 26. Attorney general to act as attorney for
 23 board. The attorney general shall act as attorney for the
 24 board in actions and proceedings brought by or against it
 25 under [this act]. Fees and expenses of the attorney general

1 acting in this capacity must be paid out of board money in
 2 the state special revenue fund.

3 Section 27. Injunctions. (1) The attorney general, in
 4 the name of the state or the board, may bring an action to
 5 enjoin a person from violating a provision of [this act].
 6 Upon a proper showing, the district court shall grant a
 7 permanent or temporary injunction, restraining order, or
 8 writ of mandamus. The court may make any additional order of
 9 judgment necessary to restore to a person any interest in
 10 money or property, real or personal, that may have been
 11 acquired by an act prohibited or declared to be unlawful
 12 under [this act]. The prevailing party may recover costs of
 13 the action, including a reasonable attorney fee.

14 (2) The district court issuing an injunction shall
 15 retain jurisdiction. A person who violates the terms of an
 16 injunction shall pay a civil penalty as set by the court,
 17 but not to exceed \$25,000.

18 (3) The attorney general, in the name of the state or
 19 the board, may apply to the district court to appoint a
 20 receiver or conservator for any person or the assets of any
 21 person who is subject to a cease and desist order, permanent
 22 or temporary injunction, restraining order, or writ of
 23 mandamus.

24 Section 28. Criminal proceedings. The board may refer
 25 evidence concerning violations of [this act] to the attorney

1 general or the proper prosecuting attorney, who may
2 institute appropriate criminal proceedings.

3 Section 29. Fees. (1) The board shall charge and
4 collect fees fixed by this section. All fees collected under
5 [this act] must be deposited into the state special revenue
6 fund for the use of the board and are not refundable except
7 as provided in [this act].

8 (2) The initial fee for filing an application for
9 registration for sale of a timeshare is \$500. Any filing
10 containing over 400 intervals must be accompanied by a fee
11 of \$5 for each additional interval.

12 (3) A fee for amendment of registration for the
13 purpose of adding additional intervals during a registration
14 period is \$200 plus \$5 for each interval in excess of 50
15 added by such amendment.

16 (4) The fee for an application for renewal of
17 registration is \$200.

18 (5) The fee for an initial application for or renewal
19 of a license as a timeshare salesperson is \$15.

20 (6) The fee for an initial application for or renewal
21 of a license as a timeshare broker is \$35.

22 (7) The fee for an amendment of registration, other
23 than the addition of units, as required in [section 5(3)],
24 is \$200.

25 Section 30. Rulemaking authority. The board shall

1 adopt rules to carry out the provisions of [this act]. The
2 rules may include but are not limited to:

3 (1) format of forms for applications and renewal of
4 registration and prescribing any additional information to
5 be supplied;

6 (2) documents acceptable in lieu of registration
7 documents under [section 6];

8 (3) conditions that may be placed upon registration
9 under [section 9];

10 (4) the subject matter of the examination OR
11 CONTINUING EDUCATION REQUIREMENT for license as a timeshare
12 salesperson or timeshare broker; and

13 (5) additional information included in a disclosure
14 document.

15 Section 31. Severability. If a part of this act is
16 invalid, all valid parts that are severable from the invalid
17 part remain in effect. If a part of this act is invalid in
18 one or more of its applications, the part remains in effect
19 in all valid applications that are severable from the
20 invalid applications.

21 Section 32. Effective dates -- applicability.

22 (1) Except as provided in subsection (2), this act is
23 effective January 1, 1988.

24 (2) Section 30 and this section are effective on
25 passage and approval, but rules adopted pursuant to section

SB 0213/03

1 30 are not effective before January 1, 1988.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 213

3 House Business and Labor Committee

4

5 A statement of intent is required for this act because
6 it delegates rulemaking authority to the board of realty
7 regulation. The board is authorized to adopt rules
8 concerning:

9 (1) licensing of timeshare brokers and timeshare
10 salespersons;

11 (2) information contained in applications for
12 registration of timeshare offerings;

13 (3) documents acceptable in lieu of registration
14 documents;

15 (4) conditions upon registration;

16 (5) gift and promotional activities; and

17 (6) disciplinary proceedings.

18 It is the intent of the legislature that the board use
19 as guidelines for these rules the rules of the board of
20 realty regulation implemented pursuant to the real estate
21 licensing laws and the rules of other states governing the
22 timeshare industry. The board may also use as guidelines
23 for these rules the rules of the securities division of the
24 state auditor's office.

REFERENCE BILL
SB 213



1 SENATE BILL NO. 213
 2 INTRODUCED BY MAZUREK
 3 BY REQUEST OF THE BOARD OF REALTY REGULATION
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE OFFERING
 6 AND SALE OF TIMESHARES; PROVIDING FOR REGISTRATION OF
 7 OFFERINGS AND LICENSURE OF SALESPERSONS; PROVIDING REMEDIES
 8 AND PENALTIES FOR VIOLATIONS; AND PROVIDING EFFECTIVE DATES
 9 AND AN APPLICABILITY DATE."
 10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Short title. [This act] may be cited as the
 13 "Montana Timeshare Act".

14 Section 2. Definitions. As used in [this act], unless
 15 the context requires otherwise, the following definitions
 16 apply:

17 (1) "Advertisement" means a written, printed, audio,
 18 or visual communication that is published in whole or in
 19 part to sell, offer to sell, or solicit an offer for a
 20 timeshare.

21 (2) "Affiliate" means a person who controls, is
 22 controlled by, or is under the control of a developer.

23 (3) "Association" or "owners' association" means the
 24 association of owners created by the timeshare instruments
 25 for purposes of managing and maintaining the project for the

1 benefit of all timeshare owners.

2 (4) "Board" means the board of realty regulation
 3 provided for in 2-15-1867.

4 (5) "Developer" means:

5 (a) a person creating timeshares or engaged in the
 6 business of selling his own timeshares;

7 (b) a person who controls, is controlled by, or is in
 8 common control with the person engaged in creating or
 9 selling timeshares; or

10 (c) any successor or assignee of a person referred to
 11 in subsections (5)(a) or (5)(b).

12 (6) "Managing entity" means a person hired by the
 13 timeshare association or developer to manage the timeshare
 14 plan or the timeshare property.

15 (7) "Offer" or "offering" means an inducement,
 16 solicitation, or attempt to encourage a person to acquire a
 17 timeshare. An offer is made in this state if the offer
 18 originates in this state or if the principal timeshare
 19 property is located in this state.

20 (8) "Person" means a natural person, corporation,
 21 business trust, estate, trust, partnership, association,
 22 joint venture, or other legal or commercial entity.

23 (9) "Prize and gift promotional offer" means
 24 advertising material stating that a prospective purchaser
 25 may receive goods or services other than the timeshare plan

1 itself, either free or at a discount, including but not
2 limited to the use of a prize, gift, award, premium, or
3 lodging or vacation certificate.

4 (10) "Project" means the real property or real estate,
5 that must contain more than one unit, in which timeshares
6 are created by a single instrument or set of instruments.

7 (11) "Promoter" means any person who initiates the
8 inducement, solicitation, or encouragement of another
9 person, by any means, of the review or acquisition of a
10 timeshare interval.

11 (12) "Purchaser" means a person, other than a
12 developer, who by means of a voluntary transfer acquires a
13 legal or equitable interest in a timeshare, other than as
14 security for an obligation.

15 (13) "Real estate" means real estate as defined in
16 37-51-102.

17 (14) "Sale" or "sell" includes each contract of sale
18 of, contract to sell, or disposition of a timeshare for
19 value.

20 (15) "Timeshare broker" means a natural person who
21 supervises a timeshare sales operation and one or more
22 timeshare salespersons.

23 (16) "Timeshare expenses" means expenditures, fees,
24 charges, or liabilities:

25 (a) incurred with respect to the timeshares by or on

1 behalf of all timeshare owners in one timeshare property;
2 and

3 (b) imposed on the timeshare by the entity governing a
4 project of which the timeshare is a part, together with any
5 allocations to reserve. The term does not include purchase
6 money payable for timeshares.

7 (17) "Timeshare instrument" means one or more
8 documents, by whatever name denominated, creating or
9 regulating timeshares.

10 (18) "Timeshare interval" or "timeshare interest" means
11 the right, however evidenced or documented, to use and
12 occupy one or more timeshare units on a periodic basis
13 according to an arrangement allocating such use and
14 occupancy rights between similar users.

15 (19) "Timeshare owner" means a person, other than a
16 developer, who is an owner or co-owner of a timeshare. If
17 title to a timeshare is held in trust, timeshare owner means
18 the beneficiary of the trust.

19 (20) "Timeshare salesperson" means a person who for a
20 salary, commission, or compensation of any kind is
21 associated, either directly or indirectly, regularly or
22 occasionally, with a timeshare broker to sell, purchase, or
23 negotiate for sale, purchase, lease, or exchange of the
24 timeshare interests in real estate and who, on behalf of a
25 developer, sells or offers to sell a timeshare to a

1 purchaser.

2 (21) "Timeshare unit" or "unit" means the real property
3 or portion thereof in which the timeshare exists and that is
4 designated for separate use including campgrounds,
5 campsites, and outdoor recreation sites with spaces designed
6 or promoted for the purpose of locating a trailer, tent,
7 tent trailer, camper, or similar device for land-based
8 portable housing.

9 Section 3. Registration of timeshare offering
10 required. A timeshare offering may not be advertised,
11 offered, or sold in this state unless it is registered as
12 provided in [this act].

13 Section 4. Application for registration. An
14 application for registration of a timeshare offering must be
15 in a form developed by the board in conjunction with input
16 from the timeshare industry. The application must be signed
17 by the applicant and accompanied by the registration fee.
18 Except as provided in [section 6], the application must
19 contain:

20 (1) financial statements showing the financial
21 condition of the developer and any affiliate, including:

22 (a) a balance sheet dated within 4 months before the
23 filing of the application for registration; and

24 (b) statements of income, shareholder's equity, and
25 material changes in financial position as of the end of the

1 prior fiscal year and for any period between the end of the
2 prior fiscal year and the date of the last balance sheet;

3 (2) a projected budget for the timeshare project for 2
4 years after the offering being made, including but not
5 limited to source of revenues and expenses of construction,
6 development, management, maintenance, advertisement,
7 operating reserves, interest, and any other necessary
8 reserves;

9 (3) a description of the background of the developer
10 for the previous 10 years, including information about the
11 business experience of the developer and any relevant
12 criminal convictions, civil law suits, or administrative
13 actions related to any offering during that period;

14 (4) a statement disclosing any fees in excess of the
15 stated price per unit to be charged to the purchasers, a
16 description of their purpose, and the method of calculation;

17 (5) a statement disclosing when and where the
18 developer or an affiliate has previously sold timeshares;

19 (6) a statement of any liens, defects, or encumbrances
20 on or affecting the title to the timeshare units;

21 (7) copies of all timeshare instruments;

22 (8) a copy of the disclosure document provided for in
23 [section 14], signed by the applicant;

24 (9) an irrevocable consent to service of process
25 signed by the applicant; and

1 (10) any other information that the board may by rule
2 require in the protection of the public interest or
3 necessary to describe the risks involved.

4 Section 5. Registration period -- renewal. (1) A
5 timeshare offering registration is effective for 1 year from
6 the date of approval of the registration application.

7 (2) Registration of a timeshare offering may be
8 renewed for an additional 1-year period by filing a renewal
9 application with the board no later than 30 days before the
10 expiration of the registration period and paying the
11 prescribed fee. A renewal application must contain any
12 information the board requires to indicate any substantial
13 changes in the information contained in the original
14 application.

15 (3) If a materially adverse change in the condition of
16 the developer or an affiliate occurs during any year, an
17 amendment to the documents filed under [section 4] must be
18 filed, along with the prescribed fee.

19 Section 6. Alternative filing documents. (1) In lieu
20 of the documents required to be filed with an application
21 under [section 4], the board may accept:

22 (a) a disclosure document filed with an agency of the
23 United States or any other state; or

24 (b) a disclosure document compiled in accordance with
25 a rule of an agency of the United States or any other state.

1 (2) The board shall prescribe by rule those documents
2 acceptable under subsection (1).

3 Section 7. Exemption from registration. The
4 registration requirements of [this act] do not apply to:

5 (1) an offer, sale, or transfer of not more than one
6 TWO timeshare interest INTERESTS by a timeshare owner in a
7 12-month period;

8 (2) a gratuitous transfer of a timeshare;

9 (3) a sale under court order;

10 (4) a sale by any government or a governmental agency;

11 (5) a sale by forfeiture, foreclosure, or deed in lieu
12 of foreclosure; or

13 (6) a sale of a project or all timeshare units therein
14 to any one purchaser.

15 Section 8. Approval or disapproval of application or
16 registration. (1) Registration of a timeshare offering is
17 effective upon written notice of approval of the application
18 by the board or upon the passage of 30 calendar days after
19 filing of a completed application if not approved or denied
20 prior to that time.

21 (2) The board may issue an order, subject to [section
22 25], denying, suspending, or revoking any application or
23 registration if the board finds that the order is in the
24 public interest and that:

25 (a) the application or registration is incomplete or

1 contains a statement that is false or misleading with
2 respect to any material fact;

3 (b) any provision of [this act] or any rule or order
4 lawfully issued under [this act] has been violated;

5 (c) the activities of the developer include or would
6 include activities that are illegal; or

7 (d) the timeshare offering has worked or would tend to
8 work a fraud on purchasers.

9 (3) The board shall promptly notify the applicant or
10 registrant of any order denying, suspending, or revoking
11 registration and of the applicant's or registrant's right to
12 request a hearing within 20 days of receipt of notification.
13 If the applicant or registrant does not request a hearing,
14 the order remains in effect until the board modifies or
15 vacates it.

16 Section 9. Conditions upon registration. To protect
17 the public interest, the board may require as a condition of
18 registration that the registrant establish an independent
19 trust, escrow, or similar arrangement that assures a
20 purchaser quiet enjoyment of the timeshare unit.

21 Section 10. Waiver of liability. The fact that an
22 application for registration has been filed or that a
23 timeshare offering has been registered does not constitute a
24 finding by the board that any document filed under [this
25 act] is complete, true, and not misleading. The filing or

1 registration does not mean that the board has given approval
2 to, recommended, or determined the merits or qualifications
3 of any person, timeshare, or transaction.

4 Section 11. Approval of advertising. (1) No person
5 may publish an advertisement in this state offering a
6 timeshare that is subject to the registration requirements
7 of [section 3] unless a true copy of the advertisement has
8 first been filed in the office of the board at least 7 days
9 before publication or such other period as the board may
10 establish by rule.

11 (2) Nothing in [this act] applies to any radio or
12 television station or any publisher, printer, or distributor
13 of any newspaper, magazine, billboard, or other advertising
14 medium that accepts advertising in good faith without
15 reasonable knowledge of its violation of any provision of
16 [this act].

17 Section 12. Licensure of timeshare brokers and
18 timeshare salespersons. (1) A person offering timeshare
19 units for his own account or for the account of others must
20 be licensed as a timeshare salesperson or timeshare broker
21 unless the offering is exempt under [section 7]. Licensure
22 may be obtained;

23 (A) upon completion of an application and personal
24 disclosure statement and passage of an examination
25 prescribed by the board demonstrating knowledge of the

1 timeshare industry and [this act]; AND
 2 (B) UPON SUCCESSFUL COMPLETION OF A COURSE OF
 3 EDUCATION RELATED TO THE TIMESHARE INDUSTRY THAT HAS BEEN
 4 APPROVED BY THE BOARD. THE BOARD SHALL THEN ISSUE A
 5 CERTIFICATE OF COMPLETION TO THE APPLICANT.
 6 (2) A PERSON LICENSED AS A REAL ESTATE BROKER OR
 7 SALESPERSON UNDER TITLE 37, CHAPTER 51, MAY BECOME-LICENSED
 8 ACT AS A TIMESHARE SALESPERSON OR TIMESHARE BROKER UPON
 9 SUCCESSFUL COMPLETION OF A COURSE OF EDUCATION RELATED TO
 10 THE TIMESHARE INDUSTRY THAT HAS BEEN APPROVED BY THE BOARD.
 11 THE BOARD SHALL THEN ISSUE A CERTIFICATE OF COMPLETION TO
 12 THE APPLICANT. NO LICENSE OTHER THAN THAT ISSUED PURSUANT TO
 13 TITLE 37, CHAPTER 51, IS REQUIRED.

14 Section 13. Denial, suspension, or revocation of
 15 license or application. The board may by an order, subject
 16 to [section 25], deny, suspend, or revoke a timeshare
 17 salesperson's or timeshare broker's license or application
 18 for license if the board finds that the order is in the
 19 public interest and that the applicant or licensee:

20 (1) has filed an application for licensure and
 21 personal disclosure statement as a timeshare salesperson or
 22 timeshare broker that is incomplete in any material respect
 23 or contains any statement that is, in the light of the
 24 circumstances under which it was made, false or misleading
 25 with respect to any material fact;

1 (2) has violated or failed to comply with any
 2 provision of [this act], rules adopted under [this act], or
 3 Title 37, chapter 51;

4 (3) has been convicted of a felony involving theft,
 5 fraud, or any consumer protection statute or a felony
 6 involving moral turpitude and related to the occupation of
 7 timeshare salesperson or timeshare broker;

8 (4) is permanently or temporarily enjoined by a court
 9 from engaging in or continuing any conduct or practice
 10 involving an aspect of the timeshare business;

11 (5) has engaged in dishonest or unethical practices in
 12 the timeshare business; or

13 (6) has not complied with any condition imposed by the
 14 board or is not qualified on the basis of knowledge of the
 15 timeshare industry or [this act].

16 Section 14. Disclosure document. A person who offers
 17 or sells a timeshare shall provide the prospective purchaser
 18 with a written disclosure document before the prospective
 19 purchaser signs an agreement for the purchase of a
 20 timeshare. The disclosure document must include:

21 (1) the official name and address of the developer,
 22 its parent or affiliates, and the names and addresses of the
 23 director and officers of each;

24 (2) the location of the timeshare property;

25 (3) a general description of the timeshare property

1 and the timeshare units;

2 (4) a list of all units offered by the promoter in the
3 same project, including:

4 (a) the types, current prices, and number of units;

5 (b) the types and durations of the timeshares;

6 (c) the maximum number of units that may become part
7 of the timeshare property;

8 (d) a statement of the maximum number of timeshares
9 that may be created or a statement that there is no maximum;

10 (5) a description of the types of financing offered by
11 the promoter;

12 (6) a statement of ownership of all properties
13 included in the timeshare offering, including any liens or
14 encumbrances affecting the property;

15 (7) copies of any agreements or leases to be signed by
16 purchasers at closing and a copy of the timeshare
17 instrument;

18 (8) the identity of the managing entity and the name,
19 address, and telephone number of the person or persons in
20 charge, and the manner, if any, whereby the developer may
21 change the managing entity;

22 (9) a true copy of the current or projected budget of
23 the owners' association along with a description of the
24 nature and purpose of all charges, dues, maintenance fees,
25 and other expenses that may be assessed, including the

1 formula for payment of charges if all timeshares are not
2 sold and a statement of who pays additional costs;

3 (10) a statement in boldface type on the cover page of
4 the disclosure document that, within 3 days after receipt of
5 a disclosure document or the signing of the timeshare
6 purchase agreement, whichever is later, a purchaser may
7 cancel any agreement for the purchase of a timeshare from a
8 developer or salesperson and that the cancellation must be
9 in writing and be delivered either in person or by certified
10 mail to the developer or the developer's agent;

11 (11) any restrictions on transfers of a timeshare or
12 portion thereof;

13 (12) a description of any insurance coverage provided
14 for the benefit of timeshare owners by the managing entity
15 or the timeshare owners' association;

16 (13) a full and accurate disclosure of whether the
17 timeshare owners are permitted or required to become members
18 of or participate in any program for the exchange of
19 property rights among themselves or with the timeshare
20 owners of other timeshare units, or both, and a complete
21 description of the program; and

22 (14) any additional information the board finds
23 necessary to fully inform prospective purchasers, including
24 but not limited to the financial and background information
25 required by [section 4].

1 Section 15. Disclosure to purchaser -- cancellation of
 2 agreement. The developer or any person offering a timeshare
 3 shall provide a prospective purchaser with a copy of the
 4 disclosure document described in [section 14] before the
 5 execution of any agreement for the purchase of a timeshare.
 6 A purchaser may, within 3 days following receipt of a
 7 disclosure document or signing of a timeshare purchase
 8 agreement, whichever is later, cancel the agreement and
 9 receive a refund of any consideration paid by providing
 10 written notice of the cancellation to the promoter or
 11 promoter's agent either by certified mail or personal
 12 delivery. If the purchaser does not receive the disclosure
 13 document, the agreement is violated VOIDABLE by the
 14 purchaser until the purchaser receives the document and for
 15 3 days thereafter. The provisions of this section may not be
 16 waived.

17 Section 16. Transfer of developer's interest. A
 18 developer may not sell, lease, assign, or otherwise transfer
 19 his interest in a project unless the transferee agrees in
 20 writing to honor the purchaser's right to use and occupy the
 21 timeshare unit, to honor the purchaser's right to cancel,
 22 and to comply with [this act]. Each purchaser whose contract
 23 may be affected must be given written notice of a transfer
 24 immediately after the transfer is made.

25 Section 17. Good faith requirement -- prohibited

1 provisions. (1) The parties to a timeshare agreement shall
 2 deal with each other in good faith.

3 (2) A developer may not require a purchaser to agree
 4 to a release, assignment, novation, waiver, or any other
 5 provision that relieves a person from a duty imposed by
 6 [this act].

7 (3) Any provision in a timeshare instrument that
 8 designates jurisdiction or venue in a forum outside this
 9 state or the state or other jurisdiction where the project
 10 is located is void with respect to any cause of action that
 11 is enforceable in this state.

12 Section 18. Illegal practices. (1) It is unlawful for
 13 any person in connection with the offer, sale, or lease of a
 14 timeshare interest in this state to:

15 (a) make any false or misleading statement of a
 16 material fact or to omit a material fact;

17 (b) employ any device, scheme, or artifice to defraud;

18 (c) engage in any act, practice, or course of business
 19 that operates or would operate as a fraud or deceit upon any
 20 person;

21 (d) file or cause to be filed with the board any
 22 document that contains false or misleading information; or

23 (e) violate any provision of [this act] or rule
 24 adopted under [this act] or any applicable provision of
 25 Title 37, chapter 51.

1 (2) A violation of this section is a misdemeanor
2 punishable as provided in 46-18-212.

3 Section 19. Civil liability. Any person who offers,
4 sells, or materially aids in the offer or sale of a
5 timeshare in violation of [this act] is liable to the person
6 buying the timeshare, who may sue to recover the
7 consideration paid for the timeshare, together with interest
8 at the current legal rate from date of payment and costs,
9 upon the tender of the timeshare or for damages if the
10 person no longer owns the timeshare.

11 Section 20. Prize and gift promotional offers --
12 filing. (1) A separate filing for each prize and gift
13 promotional offer to be used in the sale of timeshare
14 intervals must be made with the board at least 14 days prior
15 to the use of such offer by the developer. No advertising
16 material related to a prize and gift promotional offer may
17 be distributed unless it is first filed with the board. If
18 the board determines that any prize or gift has been
19 misrepresented by the developer and if upon notification
20 thereof the developer fails to correct such
21 misrepresentation, the board may revoke or suspend the
22 application or registration of the developer.

23 (2) Each filing of a prize and gift promotional offer
24 with the board must include, when applicable:

25 (a) a copy of all advertising material to be used in

1 connection with the prize and gift promotional offer;

2 (b) the name, address, and telephone number, including
3 area code, of the supplier or manufacturer from whom each
4 prize, gift, or other item is obtained;

5 (c) the manufacturer's model number or other
6 description of such item;

7 (d) the information on which the developer relies in
8 determining the verifiable retail value;

9 (e) the name, address, and telephone number, including
10 area code, of the promotional entity responsible for
11 overseeing and operating the prize and gift promotional
12 offer; and

13 (f) the name and address of the registered agent in
14 the state of the promotional entity for service of process
15 purposes.

16 (3) Each developer shall file with the board by March
17 1 of each year the name, address, and telephone number,
18 including area code, of each person who actually received a
19 prize, gift, or other item that had a verifiable retail
20 value or manufacturer's suggested retail price in excess of
21 \$150.

22 Section 21. Prize and gift promotional offer
23 advertising content. All advertising material to be
24 distributed in connection with a prize and gift promotional
25 offer must contain:

1 (1) a description of the prize, gift, or other item
2 that the prospective purchaser will actually receive,
3 including the manufacturer's retail price or, if none is
4 available, the verifiable retail value;

5 (2) all rules, terms, requirements, and preconditions
6 that must be fulfilled or met before a prospective purchaser
7 may claim any prize, gift, or other item involved in the
8 prize and gift promotional plan, including whether the
9 prospective purchaser is required to attend a sales
10 presentation in order to receive the prize, gift, or other
11 item;

12 (3) the date the offer expires;

13 (4) a statement of the number of items that will be
14 awarded if the number of prizes, gifts, or other items to be
15 awarded is limited; and

16 (5) the method by which prizes, gifts, or other items
17 are to be awarded.

18 Section 22. Awarding of gifts and prizes. (1) Any
19 prize, gift, or other item offered pursuant to a prize and
20 gift promotional offer must be delivered to the prospective
21 purchaser on the day he appears to claim it whether or not
22 he purchases a timeshare interval. If the prize is not
23 available it must be presented or mailed at the developer's
24 expense, postage prepaid within 30 days thereafter.

25 (2) All prizes, gifts, or other items represented by

1 the developer to be awarded in connection with any prize and
2 gift promotional offer must be awarded by the date
3 referenced in the advertising material used in connection
4 with such offer.

5 Section 23. Investigations by board. (1) The board
6 may:

7 (a) conduct public or private investigations within or
8 outside the state to:

9 (i) determine whether any registration should be
10 granted, denied, or revoked;

11 (ii) determine whether a person has violated or is
12 about to violate a provision of [this act]; or

13 (iii) aid in the enforcement of [this act] and rules
14 issued under [this act];

15 (b) administer oaths and affirmations, subpoena
16 witnesses and compel their attendance, take evidence, and
17 require the production of any books, papers, correspondence,
18 memoranda, agreements, or other documents or records that
19 the board considers relevant to the inquiry; and

20 (c) publish information concerning a violation of
21 [this act] or rule or order issued under [this act].

22 (2) If a person fails to comply with a lawful
23 subpoena, refuses to testify under lawful interrogation, or
24 refuses to produce documents and records, the board may
25 apply to the district court of any county for relief. After

1 satisfactory evidence of willful disobedience, the court may
2 compel obedience by proceedings for contempt.

3 Section 24. Cease and desist orders. The board may by
4 summary order, subject to [section 25], require any person
5 to cease and desist from an act or practice if it appears
6 that the person is violating or is about to violate a
7 provision of [this act] or rule or order issued under [this
8 act].

9 Section 25. Hearing procedure -- orders. (1) Upon the
10 entry of an order under [section 8], [section 13], or
11 [section 24], the board shall promptly notify the applicant
12 or registrant that the order has been entered and the
13 reasons therefor and that it will become effective 20 days
14 after receipt of the board's notification unless a hearing
15 is requested under this section, in which case it will
16 become effective on the date the board issues its final
17 order. If a hearing is requested in writing by the
18 applicant, the matter will be scheduled for hearing in
19 accordance with subsection (2).

20 (2) If entry of the order results in denial of an
21 application under [section 8] or [section 13], the hearing
22 must be held within a reasonable time and in accordance with
23 Title 2, chapter 4.

24 Section 26. Attorney general to act as attorney for
25 board. The attorney general shall act as attorney for the

1 board in actions and proceedings brought by or against it
2 under [this act]. Fees and expenses of the attorney general
3 acting in this capacity must be paid out of board money in
4 the state special revenue fund.

5 Section 27. Injunctions. (1) The attorney general, in
6 the name of the state or the board, may bring an action to
7 enjoin a person from violating a provision of [this act].
8 Upon a proper showing, the district court shall grant a
9 permanent or temporary injunction, restraining order, or
10 writ of mandamus. The court may make any additional order of
11 judgment necessary to restore to a person any interest in
12 money or property, real or personal, that may have been
13 acquired by an act prohibited or declared to be unlawful
14 under [this act]. The prevailing party may recover costs of
15 the action, including a reasonable attorney fee.

16 (2) The district court issuing an injunction shall
17 retain jurisdiction. A person who violates the terms of an
18 injunction shall pay a civil penalty as set by the court,
19 but not to exceed \$25,000.

20 (3) The attorney general, in the name of the state or
21 the board, may apply to the district court to appoint a
22 receiver or conservator for any person or the assets of any
23 person who is subject to a cease and desist order, permanent
24 or temporary injunction, restraining order, or writ of
25 mandamus.

1 Section 28. Criminal proceedings. The board may refer
2 evidence concerning violations of [this act] to the attorney
3 general or the proper prosecuting attorney, who may
4 institute appropriate criminal proceedings.

5 Section 29. Fees. (1) The board shall charge and
6 collect fees fixed by this section. All fees collected under
7 [this act] must be deposited into the state special revenue
8 fund for the use of the board and are not refundable except
9 as provided in [this act].

10 (2) The initial fee for filing an application for
11 registration for sale of a timeshare is \$500. Any filing
12 containing over 400 intervals must be accompanied by a fee
13 of \$5 for each additional interval.

14 (3) A fee for amendment of registration for the
15 purpose of adding additional intervals during a registration
16 period is \$200 plus \$5 for each interval in excess of 50
17 added by such amendment.

18 (4) The fee for an application for renewal of
19 registration is \$200.

20 (5) The fee for an initial application for or renewal
21 of a license as a timeshare salesperson is \$15.

22 (6) The fee for an initial application for or renewal
23 of a license as a timeshare broker is \$35.

24 (7) The fee for an amendment of registration, other
25 than the addition of units, as required in [section 5(3)],

1 is \$200.

2 Section 30. Rulemaking authority. The board shall
3 adopt rules to carry out the provisions of [this act]. The
4 rules may include but are not limited to:

5 (1) format of forms for applications and renewal of
6 registration and prescribing any additional information to
7 be supplied;

8 (2) documents acceptable in lieu of registration
9 documents under [section 6];

10 (3) conditions that may be placed upon registration
11 under [section 9];

12 (4) the subject matter of the examination OR
13 CONTINUING EDUCATION REQUIREMENT for license as a timeshare
14 salesperson or timeshare broker; and

15 (5) additional information included in a disclosure
16 document.

17 Section 31. Severability. If a part of this act is
18 invalid, all valid parts that are severable from the invalid
19 part remain in effect. If a part of this act is invalid in
20 one or more of its applications, the part remains in effect
21 in all valid applications that are severable from the
22 invalid applications.

23 Section 32. Effective dates -- applicability.

24 (1) Except as provided in subsection (2), this act is
25 effective January 1, 1988.

SB 0213/04

1 (2) Section 30 and this section are effective on
2 passage and approval, but rules adopted pursuant to section
3 30 are not effective before January 1, 1988.

-End-

STANDING COMMITTEE REPORT

HOUSE

MARCH 18 19 87

SENATE BILL NO. 213
March 18 19 87

Page 2 of 2

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 213

- do pass
- be concurred in
- as amended
- do not pass
- be not concurred in
- statement of intent attached

Les Kitseiman

 REP. LES KITSEIMAN Chairman

AMENDMENTS AS FOLLOWS:

- 1) Page 8, line 5
Strike: "one"
Insert: "two"
- 2) Page 8, line 6
Strike: "interest"
Insert: "interests"
- 3) Page 11, line 6
Following: "LICENSED"
Insert: "as a real estate broker or salesperson"
- 4) Page 11, line 7
Strike: "BECOME LICENSED"
Insert: "act"
- 5) Page 11, line 11
Following: "APPLICANT"
Insert: "No license other than that issued pursuant to Title 37, chapter 51, is required."

STATEMENT OF INTENT

A statement of intent is required for this act because it delegates rulemaking authority to the board of realty regulation. The board is authorized to adopt rules concerning:

- (1) licensing of timeshare brokers and timeshare salespersons;
- (2) information contained in applications for registration of timeshare offerings;
- (3) documents acceptable in lieu of registration documents;
- (4) conditions upon registration;
- (5) gift and promotional activities; and
- (6) disciplinary proceedings.

It is the intent of the legislature that the board use as guidelines for these rules the rules of the board of realty regulation implemented pursuant to the real estate licensing laws and the rules of other states governing the timeshare industry. The board may also use as guidelines for these rules the rules of the securities division of the state auditor's office.

JAA
 Rep. Brandewie will sponsor

THIRD reading copy (BLUE)
color

JAA
JAC

Chairman.