

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0309.01 Christy Chase x2008

HOUSE BILL 12-1116

HOUSE SPONSORSHIP

Murray, Summers, Barker, Baumgardner, Brown, Casso, Holbert, McCann, Miklosi,
Williams A.

SENATE SPONSORSHIP

Nicholson,

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING DECEPTIVE TRADE PRACTICES RELATED TO TIME SHARE
102 RESALE TRANSACTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill amends provisions of the "Colorado Consumer Protection Act" relating to time share transactions and, in particular, transactions involving resale time shares. **Section 3** of the bill requires entities that provide time share resale services to disclose the following information to the owner of the resale time share, and makes failure to disclose the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

information a deceptive trade practice:

- ! Contact information for the time share resale entity and any agent or third-party service provider who will perform any time share resale services for the entity;
- ! A legal description of the resale time share;
- ! A description of the method or documentation by which the transfer of the resale time share will be completed;
- ! If the owner of the resale time share will retain any interest in the resale time share, a description of the interests retained by the owner of the resale time share;
- ! A listing of any fees, costs, or other consideration that the owner of the resale time share must pay or reimburse for performance of the time share resale service;
- ! A statement that the time share resale entity and its affiliates and agents will not collect from the owner of the resale time share any fees, costs, or other consideration until the entity provides the owner a copy of the recorded deed clearly demonstrating the transfer of the resale time share and a written acknowledgment from the association of time share owners or other responsible person that the time share resale entity has complied with the association's policies governing the transfer of resale time shares, if any;
- ! The date by which all acts sufficient to transfer the resale time share in accordance with the time share resale transfer agreement are estimated to be completed, which should be within 180 days after entering the agreement;
- ! A statement as to whether any person, including the owner of the resale time share, may occupy, rent, exchange, or otherwise exercise any form of use of the resale time share during the term of the time share resale transfer agreement;
- ! The name of any person, other than the owner of the resale time share, who will receive any rents, profits, or other consideration or thing of value, if any, generated from the transfer of the applicable resale time share or the use of the applicable resale time share during the term of the time share resale transfer agreement;
- ! A statement detailing the owner's responsibilities in the event the entity does not transfer ownership of the resale time share within 180 days after entering the agreement;
- ! A statement that the time share resale entity will notify the specified persons or entities, in writing, when ownership of the resale time share is transferred.

Section 2 of the bill defines the following activities as deceptive trade practices in the advertisement or sale of a time share or the provision of a resale time share service:

- ! Making false or misleading statements in connection with a time share resale service;
- ! Making false or misleading statements concerning the method or source from which the name, address, telephone number, or other contact information of the owner was obtained;
- ! Making false or misleading statements concerning the identity of the time share resale service entity or that entity's affiliates or the terms and conditions upon which the time share or the time share resale services are offered.

Section 1 defines the following terms: "Resale time share", "time share resale entity", "time share resale service", and "time share resale transfer agreement".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 6-1-102, **amend**
3 (11.5); and **add** (9.5), (11.3), (11.7), and (11.9) as follows:

4 **6-1-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (9.5) "RESALE TIME SHARE" MEANS A TIME SHARE, INCLUDING ALL
7 OR SUBSTANTIALLY ALL OWNERSHIP, RIGHTS, OR INTERESTS ASSOCIATED
8 WITH THE TIME SHARE:

9 (a) THAT HAS BEEN ACQUIRED PREVIOUSLY FOR PERSONAL,
10 FAMILY, OR HOUSEHOLD USE; AND

11 (b) (I) THAT IS OWNED BY A COLORADO RESIDENT; OR

12 (II) THE ACCOMMODATIONS AND OTHER FACILITIES OF WHICH ARE
13 AVAILABLE FOR USE THROUGH THE TIME SHARE ARE PRIMARILY LOCATED
14 IN COLORADO.

15 (11.3) "TIME SHARE" MEANS A TIME SHARE ESTATE, AS DEFINED IN
16 SECTION 38-33-110 (5), C.R.S.; A TIME SHARE USE, AS DEFINED IN SECTION
17 12-61-401 (4), C.R.S.; OR ANY CAMPGROUND OR RECREATIONAL
18 MEMBERSHIP THAT DOES NOT CONSTITUTE THE TRANSFER OF AN INTEREST

1 IN REAL PROPERTY.

2 (11.5) (a) ~~"Time share" means a time share estate, as defined in~~
3 ~~section 38-33-110 (5), C.R.S., a time share use, as defined in section~~
4 ~~12-61-401 (4), C.R.S., or any campground or recreational membership~~
5 ~~which does not constitute the transfer of an interest in real property~~ "TIME
6 SHARE RESALE ENTITY" MEANS ANY PERSON WHO, EITHER DIRECTLY OR
7 INDIRECTLY, ENGAGES IN A TIME SHARE RESALE SERVICE.

8 (b) "TIME SHARE RESALE ENTITY" DOES NOT INCLUDE:

9 (I) THE DEVELOPER, ASSOCIATION OF TIME SHARE OWNERS, OR
10 OTHER PERSON RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR
11 ARRANGEMENT BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH A
12 RESALE TIME SHARE ARE UTILIZED, BUT ONLY TO THE EXTENT THE RESALE
13 TIME SHARE IS PART OF AN EXISTING PLAN OR ARRANGEMENT MANAGED
14 BY THAT DEVELOPER, ASSOCIATION, OR PERSON; OR

15 (II) ATTORNEYS, TITLE AGENTS, TITLE COMPANIES, OR ESCROW
16 COMPANIES PROVIDING CLOSING, SETTLEMENT, OR OTHER TRANSACTION
17 SERVICES IN CONNECTION WITH THE TRANSFER OF A RESALE TIME SHARE,
18 BUT ONLY TO THE EXTENT THEY ARE NOT ENGAGED IN OTHER TIME SHARE
19 RESALE SERVICE.

20 (11.7) "TIME SHARE RESALE SERVICE" MEANS ANY OF THE
21 FOLLOWING ACTIVITIES, ENGAGED IN DIRECTLY OR INDIRECTLY AND FOR
22 CONSIDERATION, REGARDLESS OF WHETHER PERFORMED IN PERSON, BY
23 MAIL, BY TELEPHONE, OR BY ANY OTHER MODE OF INTERNET OR
24 ELECTRONIC COMMUNICATION:

25 (a) THE SALE, RENTAL, LISTING, OR ADVERTISING OF, OR AN OFFER
26 TO SELL, RENT, LIST, OR ADVERTISE, ANY RESALE TIME SHARE;

27 (b) THE PURCHASE OR OFFER TO PURCHASE ANY RESALE TIME

1 SHARE;

2 (c) THE TRANSFER OR OFFER TO ASSIST IN THE TRANSFER OF ANY
3 RESALE TIME SHARE; OR

4 (d) THE INVALIDATION OR AN OFFER TO INVALIDATE THE
5 PURCHASE OR OWNERSHIP OF ANY RESALE TIME SHARE OR THE PURCHASE
6 OF ANY TIME SHARE RESALE SERVICE.

7 (11.9) (a) "TIME SHARE RESALE TRANSFER AGREEMENT" MEANS A
8 CONTRACT BETWEEN A TIME SHARE RESALE ENTITY AND THE OWNER OF A
9 RESALE TIME SHARE IN WHICH THE TIME SHARE RESALE ENTITY AGREES TO
10 TRANSFER, OR OFFERS TO ASSIST IN THE TRANSFER OF ALL OR
11 SUBSTANTIALLY ALL OF, THE RIGHTS OR INTERESTS IN A RESALE TIME
12 SHARE ON BEHALF OF THE OWNER OF THE RESALE TIME SHARE.

13 (b) (I) "TIME SHARE RESALE TRANSFER AGREEMENT" DOES NOT
14 INCLUDE A CONTRACT TO SELL, RENT, LIST, OR ADVERTISE A RESALE TIME
15 SHARE IF THE OWNER OF THE RESALE TIME SHARE:

16 (A) UPON ENTERING THE CONTRACT, REASONABLY EXPECTS TO
17 RECEIVE CONSIDERATION IN EXCHANGE FOR THE RESALE TIME SHARE; AND

18 (B) UPON THE ACTUAL SALE OR RENTAL OF THE TIME SHARE,
19 RECEIVES CONSIDERATION.

20 (II) FOR PURPOSES OF THIS SUBSECTION (11.9), A TRANSFER OF THE
21 RESALE TIME SHARE DOES NOT, BY ITSELF, CONSTITUTE CONSIDERATION.

22 **SECTION 2.** In Colorado Revised Statutes, **amend** 6-1-703 as
23 follows:

24 **6-1-703. Time shares and resale time shares - deceptive trade**
25 **practices.** (1) A person engages in a deceptive trade practice when, in
26 the course of ~~such~~ THE person's business, vocation, or occupation, ~~such~~
27 THE person engages in one or more of the following activities in

1 connection with the advertisement or sale of a time share OR THE
2 PROVISION OF A TIME SHARE RESALE SERVICE:

3 (a) Misrepresents:

4 (I) The investment, resale, or rental value of any time share;

5 (II) The conditions under which a purchaser may exchange the
6 right to use accommodations or facilities in one location for the right to
7 use accommodations or facilities in another location; or

8 (III) The period of time during which the accommodations or
9 facilities contracted for will be available to the purchaser;

10 (b) Fails to allow any purchaser ~~of a time share~~ a right to rescind
11 the sale OF A TIME SHARE OR A RESALE TIME SHARE SERVICE within five
12 calendar days after the sale;

13 (c) (I) Fails to provide conspicuous notice on the contract of the
14 right of a purchaser of a time share OR TIME SHARE RESALE SERVICE to
15 rescind the sale IN WRITING either by telegram, mail, or hand delivery.

16 (II) For purposes of this section, notice of rescission is ~~considered~~
17 given:

18 (A) If by mail, when postmarked;

19 (B) If by telegram, when filed for telegraphic transmission; or

20 (C) If by hand delivery, when delivered to the seller's place of
21 business.

22 (d) Fails to refund any down payment or deposit made pursuant
23 to a time share contract OR CONTRACT FOR TIME SHARE RESALE SERVICE
24 within seven days after the seller OR TIME SHARE RESALE ENTITY receives
25 the purchaser's written notice of rescission; EXCEPT THAT, IF THE
26 PURCHASER'S CHECK HAS NOT CLEARED AT THE TIME NOTICE OF
27 RESCISSION IS RECEIVED, THE PERSON HAS SEVEN ADDITIONAL DAYS AFTER

1 RECEIPT OF FUNDS FROM THE PURCHASER'S CLEARED CHECK TO REFUND
2 THE DOWN PAYMENT OR DEPOSIT;

3 (e) WITH RESPECT TO THE SALE OR SOLICITATION OF ANY TIME
4 SHARE RESALE SERVICE, MAKES FALSE OR MISLEADING STATEMENTS,
5 INCLUDING STATEMENTS CONCERNING:

6 (I) THE EXISTENCE OF OFFERS TO BUY OR RENT THE RESALE TIME
7 SHARE;

8 (II) THE LIKELIHOOD OF, OR THE TIME NECESSARY TO COMPLETE,
9 ANY SALE, RENTAL, TRANSFER, OR INVALIDATION;

10 (III) THE VALUE OF THE RESALE TIME SHARE;

11 (IV) THE CURRENT OR FUTURE COSTS OF OWNING THE RESALE TIME
12 SHARE, INCLUDING ASSESSMENTS, MAINTENANCE FEES, OR TAXES; OR

13 (V) HOW AMOUNTS PAID BY THE PURCHASER OF THE RESALE TIME
14 SHARE SERVICE WILL BE UTILIZED;

15 (f) MAKES FALSE OR MISLEADING STATEMENTS CONCERNING THE
16 METHOD OR SOURCE FROM WHICH THE NAME, ADDRESS, TELEPHONE
17 NUMBER, OR OTHER CONTACT INFORMATION OF THE OWNER OF THE
18 RESALE TIME SHARE WAS OBTAINED;

19 (g) MAKES FALSE OR MISLEADING STATEMENTS CONCERNING:

20 (I) THE IDENTITY OF THE TIME SHARE RESALE SERVICE ENTITY OR
21 THAT ENTITY'S AFFILIATES; OR

22 (II) THE TERMS AND CONDITIONS UPON WHICH THE TIME SHARE
23 RESALE SERVICES ARE OFFERED;

24 (h) WITH RESPECT TO TIME SHARE RESALE TRANSFER
25 AGREEMENTS, FAILS TO COMPLY WITH ANY PROVISION OF, OR OTHERWISE
26 MAKES FALSE OR MISLEADING STATEMENTS IN CONNECTION WITH, ANY
27 DISCLOSURE REQUIRED TO BE MADE UNDER SECTION 6-1-703.5.

1 (2) THE UNLAWFUL PRACTICES LISTED IN THIS SECTION ARE IN
2 ADDITION TO AND DO NOT LIMIT THE TYPES OF DECEPTIVE TRADE
3 PRACTICES ACTIONABLE UNDER SECTION 6-1-105.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 6-1-703.5 as
5 follows:

6 **6-1-703.5. Time share resale transfer agreements - deceptive**
7 **trade practices.** (1) A TIME SHARE RESALE ENTITY ENGAGES IN A
8 DECEPTIVE TRADE PRACTICE WHEN THE ENTITY FAILS TO INCLUDE IN A
9 TIME SHARE RESALE TRANSFER AGREEMENT THE FOLLOWING
10 INFORMATION:

11 (a) THE NAME, TELEPHONE NUMBER, AND PHYSICAL ADDRESS OF
12 THE TIME SHARE RESALE ENTITY AND THE NAME AND ADDRESS OF ANY
13 AGENT OR THIRD-PARTY SERVICE PROVIDER WHO WILL PERFORM ANY OF
14 THE TIME SHARE RESALE SERVICES FOR THAT TIME SHARE RESALE ENTITY;

15 (b) A DESCRIPTION OF THE APPLICABLE RESALE TIME SHARE
16 LEGALLY SUFFICIENT FOR RECORDING OR OTHER LEGAL TRANSFER;

17 (c) A DESCRIPTION OF THE METHOD OR DOCUMENTATION BY
18 WHICH THE TRANSFER OF THE RESALE TIME SHARE WILL BE COMPLETED,
19 INCLUDING WHETHER:

20 (I) THE OWNER OF THE RESALE TIME SHARE WILL RETAIN ANY
21 INTEREST IN THE RESALE TIME SHARE FOLLOWING THE TRANSFER; AND

22 (II) THE OWNER OF THE RESALE TIME SHARE MUST GRANT A POWER
23 OF ATTORNEY OR OTHERWISE DELEGATE ANY AUTHORITY NECESSARY TO
24 COMPLETE THE TRANSFER OF THE RESALE TIME SHARE AND THE SCOPE OF
25 THE AUTHORITY DELEGATED BY THE OWNER OF THE RESALE TIME SHARE;

26 (d) IF THE OWNER OF THE RESALE TIME SHARE WILL RETAIN ANY
27 INTEREST IN THE RESALE TIME SHARE, A DESCRIPTION OF THE INTERESTS

1 RETAINED BY THE OWNER OF THE RESALE TIME SHARE;

2 (e) A LISTING OF ANY FEES, COSTS, OR OTHER CONSIDERATION
3 THAT THE OWNER OF THE RESALE TIME SHARE MUST PAY OR REIMBURSE
4 FOR PERFORMANCE OF THE TIME SHARE RESALE SERVICE;

5 (f) A STATEMENT THAT NEITHER THE TIME SHARE RESALE ENTITY
6 NOR ANY AFFILIATE OR AGENT OF THE ENTITY SHALL COLLECT FROM THE
7 OWNER OF THE RESALE TIME SHARE ANY FEES, COSTS, OR OTHER
8 CONSIDERATION UNTIL THE TIME SHARE RESALE ENTITY PROVIDES THE
9 FOLLOWING TO THE OWNER OF THE RESALE TIME SHARE:

10 (I) A WRITTEN ACKNOWLEDGMENT FROM THE ASSOCIATION OF
11 TIME SHARE OWNERS, OR OTHER PERSON RESPONSIBLE FOR MANAGING OR
12 OPERATING THE PLAN OR ARRANGEMENT BY WHICH THE RIGHTS OR
13 INTERESTS ASSOCIATED WITH THE APPLICABLE RESALE TIME SHARE ARE
14 UTILIZED, THAT THE TIME SHARE RESALE ENTITY HAS COMPLIED WITH THE
15 ASSOCIATION'S POLICIES GOVERNING THE TRANSFER OF RESALE TIME
16 SHARES BY TIME SHARE OWNERS, IF ANY; AND

17 (II) A COPY OF THE RECORDED DEED OR OTHER EQUIVALENT
18 WRITTEN EVIDENCE CLEARLY DEMONSTRATING THAT THE RESALE TIME
19 SHARE HAS BEEN TRANSFERRED TO A SUBSEQUENT TRANSFEREE IN
20 ACCORDANCE WITH THE TIME SHARE RESALE TRANSFER AGREEMENT AND
21 APPLICABLE LAW;

22 (g) THE DATE BY WHICH ALL ACTS SUFFICIENT TO TRANSFER THE
23 RESALE TIME SHARE IN ACCORDANCE WITH THE TIME SHARE RESALE
24 TRANSFER AGREEMENT ARE ESTIMATED TO BE COMPLETED. THE TIME
25 SHARE RESALE ENTITY SHALL USE COMMERCIALY REASONABLE GOOD
26 FAITH EFFORTS TO COMPLETE THE TRANSFER OF THE SUBJECT TIME SHARE
27 WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE THE TIME SHARE

1 TRANSFER AGREEMENT IS EXECUTED BY THE OWNER OF THE RESALE TIME
2 SHARE.

3 (h) A STATEMENT AS TO WHETHER ANY PERSON, INCLUDING THE
4 OWNER OF THE RESALE TIME SHARE, MAY OCCUPY, RENT, EXCHANGE, OR
5 OTHERWISE EXERCISE ANY FORM OF USE OF THE RESALE TIME SHARE
6 DURING THE TERM OF THE TIME SHARE RESALE TRANSFER AGREEMENT;

7 (i) THE NAME OF ANY PERSON, OTHER THAN THE OWNER OF THE
8 RESALE TIME SHARE, WHO WILL RECEIVE ANY RENTS, PROFITS, OR OTHER
9 CONSIDERATION OR THING OF VALUE, IF ANY, GENERATED FROM THE
10 TRANSFER OF THE APPLICABLE RESALE TIME SHARE OR THE USE OF THE
11 APPLICABLE RESALE TIME SHARE DURING THE TERM OF THE TIME SHARE
12 RESALE TRANSFER AGREEMENT;

13 (j) THE FOLLOWING STATEMENT CLEARLY AND CONSPICUOUSLY
14 AND IN SUBSTANTIALLY THE FOLLOWING FORM:

15 WE [NAME OF TIME SHARE RESALE ENTITY] WILL USE
16 COMMERCIALY REASONABLE GOOD FAITH EFFORTS TO
17 TRANSFER OWNERSHIP OF YOUR RESALE TIME SHARE TO
18 ANOTHER PERSON WITHIN ONE HUNDRED EIGHTY DAYS
19 AFTER YOUR EXECUTION OF THIS AGREEMENT. IF WE FAIL IN
20 THIS OBLIGATION, YOU, THE RESALE TIME SHARE OWNER,
21 WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF
22 ALL COSTS AND FEES ASSOCIATED WITH YOUR RESALE TIME
23 SHARE, INCLUDING, AS APPLICABLE, REGULAR
24 ASSESSMENTS, SPECIAL ASSESSMENTS, AND REAL AND
25 PERSONAL PROPERTY TAXES.

26 (k) A STATEMENT THAT THE TIME SHARE RESALE ENTITY WILL
27 NOTIFY THE FOLLOWING PERSONS OR ENTITIES, IN WRITING, WHEN

1 OWNERSHIP OF THE RESALE TIME SHARE IS TRANSFERRED, AS APPLICABLE:

2 (I) THE ASSOCIATION OF TIME SHARE OWNERS OR OTHER PERSONS
3 RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR ARRANGEMENT
4 BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH THE APPLICABLE
5 TIME SHARE RESALE ARE UTILIZED; AND

6 (II) THE EXCHANGE COMPANY OPERATING ANY EXCHANGE
7 PROGRAM THAT THE RESALE TIME SHARE WAS PART OF AT THE TIME THE
8 TRANSFER WAS COMPLETED.

9 (2) IN MAKING THE DISCLOSURES REQUIRED UNDER THIS SECTION,
10 THE TIME SHARE RESALE ENTITY MAY RELY UPON INFORMATION PROVIDED
11 IN WRITING BY THE OWNER OF THE APPLICABLE RESALE TIME SHARE OR
12 THE DEVELOPER, ASSOCIATION OF TIME SHARE OWNERS, OR OTHER PERSON
13 RESPONSIBLE FOR MANAGING OR OPERATING THE PLAN OR ARRANGEMENT
14 BY WHICH THE RIGHTS OR INTERESTS ASSOCIATED WITH THE APPLICABLE
15 RESALE TIME SHARE ARE UTILIZED.

16 (3) A TIME SHARE RESALE ENTITY SHALL SUPERVISE, MANAGE,
17 AND CONTROL ALL ASPECTS OF THE TIME SHARE RESALE TRANSFER
18 AGREEMENT AND THE OFFERING OF THE RESALE TIME SHARE BY ANY
19 AFFILIATE, AGENT, CONTRACTOR, OR EMPLOYEE OF THAT TIME SHARE
20 RESALE ENTITY. A VIOLATION OF THIS SECTION IS A VIOLATION BY THE
21 TIME SHARE RESALE ENTITY AND BY THE PERSON ACTUALLY COMMITTING
22 THE CONDUCT THAT CONSTITUTES THE VIOLATION.

23 **SECTION 4. Act subject to petition - effective date.** This act
24 takes effect at 12:01 a.m. on the day following the expiration of the
25 ninety-day period after final adjournment of the general assembly (August
26 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
27 referendum petition is filed pursuant to section 1 (3) of article V of the

1 state constitution against this act or an item, section, or part of this act
2 within such period, then the act, item, section, or part will not take effect
3 unless approved by the people at the general election to be held in
4 November 2012 and, in such case, will take effect on the date of the
5 official declaration of the vote thereon by the governor.