

CHAPTER 855

H.B. No. 49

AN ACT

relating to the regulation of membership camping resorts; enacting the Texas Membership Camping Resort Act.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the Texas Membership Camping Resort Act.

SECTION 2. DEFINITIONS. In this Act:

- (1) "Advertising" means a direct or indirect solicitation or inducement to purchase and includes but is not necessarily limited to a solicitation or inducement made by print or electronic media, through the mail, or by personal contact.
- (2) "Amenities" means all common areas of real property occupied by a membership camping resort and includes but is not necessarily limited to camping sites, swimming pools, stables, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, grocery stores, and maintenance facilities.
- (3) "Blanket encumbrance" means a mortgage, deed of trust, option to purchase, or vendor's lien, an interest obtained under a contract or agreement of sale, or other financing lien or encumbrance granted by an operator that secures or evidences the obligation to pay money or to sell or convey any campgrounds located in this state that are made available to purchasers by the operator, and that authorizes, permits, or requires the foreclosure or other disposition of the affected campground.
- (4) "Business day" means any day except Saturday, Sunday, and federal holidays.
- (5) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, recreational vehicle, or similar device designed for camping.
- (6) "Commissioner" means the commissioner of the Texas Department of Labor and Standards or that official's designee.
- (7) "Dispose" or "disposition" means a voluntary transfer of any membership interest or membership right, but does not include the transfer or release of a real estate lien or of a security interest.
- (8) "Home resort" means the camping resort to which the purchaser has purchased a right of membership. The term does not include a resort that a purchaser may use as a result of a reciprocal program among operators.
- (9) "Membership camping contract" means an agreement under which a purchaser pays for or becomes obligated to pay for a membership interest or membership right in a membership camping resort.
- (10) "Membership camping contract broker" means a person who resells a membership camping contract to a new purchaser on behalf of the former purchaser. The term does not include a membership camping operator or that person's agent.
- (11) "Membership camping resort disclosure statement" means a written statement that includes the information that is required by Subsection (b) of Section 5 of this Act.
- (12) "Membership camping resort" means real property owned or operated by a membership camping operator that is available for camping by purchasers of a membership right.
- (13) "Membership interest" means a membership camping resort estate.
- (14) "Membership right" means a license, contract right, or other right entitling a purchaser to use camping sites or amenities at a membership camping resort.
- (15) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes, but is not necessarily limited to, any attempt to encourage a person to purchase a membership interest or membership right.
- (16) "Operator" means a person who owns or provides a camping site or an amenity to a purchaser. The term does not include:
- (A) a person who owns or otherwise provides a mobile home park or a camping or recreational trailer park open to the general public with camping sites that are rented on a fee for use basis, and who does not solicit purchases of membership camping contracts; or
- (B) an outdoor service, facility, enterprise, or park that is owned or operated by, or under the control of, the United States, this state, or a political subdivision of this state.
- (17) "Person" means an individual, partnership, corporation, association, or other legal entity.

(18) "Promotion" means any program or activity that is used to induce any person to attend a membership camping resort sales presentation.

(19) "Promotional disclosure statement" means a written statement that includes the information which is required by Subsection (a) of Section 5 of this Act.

(20) "Purchaser" means a person, other than an operator, seller, or broker, who by means of voluntary transfer acquires a membership interest or membership right in a membership camping resort other than as security for an obligation.

(21) "Reciprocal company" means any person, including an operator, who operates a reciprocal program.

(22) "Reciprocal program disclosure statement" means a written statement that includes the information which is required by Subsection (c) of Section 5 of this Act.

(23) "Reciprocal program" means any program under which the purchaser of a membership interest or membership right in a membership camping resort may use the facilities of a membership camping resort other than those of the purchaser's home resort.

(24) "Seller" means a person, including an operator, who in the ordinary course of business offers a membership interest or membership right for sale to the public, but does not include a person who acquires a membership interest or membership right for his use and subsequently offers it for resale.

SECTION 3. REGISTRATION; ADMINISTRATION. (a) No person shall offer or dispose of a membership interest or membership right under a membership camping contract in this state unless the operator is registered with the commissioner. If an operator also sells membership camping contracts, that operator must also comply with the registration requirements for membership camping contract brokers imposed under Section 4 of this Act.

(b) A registration filed under this section must be on a form prescribed by the commissioner and must include, to the extent applicable, the following information:

(1) the operator's name, address, and the organizational form of the operator's business, including the date and jurisdiction under which the business was organized, the name and address of each of its officers in this state, and the name and address of each membership camping resort located in this state that is owned or operated, in whole or in part, by the operator;

(2) a list of all owners of 10 percent or more of the capital stock of the operator's business if the operator is not required to report under the Securities and Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.);

(3) a brief description and certified copy of the instrument creating the operator's ownership of, or other right to use, the membership camping resort and the amenities that are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement, or other agreement entitling the operator to use the membership camping resort and the amenities, and any material provision of the agreement that restricts a purchaser's use of the membership camping resort or the amenities;

(4) a sample copy of each instrument to be delivered to a purchaser to evidence the purchaser's membership in the membership camping resort, and a sample copy of each agreement that a purchaser is required to execute;

(5) financial statements of the operator for the most recent fiscal quarter;

(6) a narrative description of the promotional plan for the offering of membership interests or membership rights;

(7) a copy of any agreement between the operator and any person owning, controlling, or managing the membership camping resort;

(8) a complete list of the locations and addresses of any sales offices located in this state;

(9) the names of any other states or foreign countries in which a registration of the operator or the membership camping contract has been filed;

(10) complete information concerning any adverse order, judgment, or decree entered by any court or administrative agency in connection with a membership camping resort operated by the operator or in which the operator had an interest at the time of the order, judgment, or decree;

(11) a description of any blanket encumbrance on the membership camping resort; and

(12) a membership camping resort disclosure statement and any required reciprocal disclosure statement required by Section 5 of this Act.

(c) The registration must be signed by the operator, by an officer or general partner of the operator, or by another person who holds a power of attorney for this purpose from the operator. If the registration is signed under a power of attorney, a copy of the power of attorney must be included with the registration. The registration must be submitted with the registration fee set by the commissioner pursuant to Section 9 of this Act.

(d) The operator shall promptly file amendments to the registration reporting to the commissioners any material and adverse change in any document contained in such registration. For the purposes of this subsection, a material and adverse change includes any change that significantly reduces or terminates either the applicant's or a purchaser's right to use the membership camping resort or any of the amenities described by the membership camping contract, but does not include minor changes covering the use of the membership camping resort, its amenities, or any reciprocal program.

(e) The commissioner shall investigate all matters relating to the registration and may in his discretion require a personal inspection of the proposed membership camping resort by any persons designated by him.

(f) The commissioner may prescribe and publish forms necessary to carry out the provisions of this Act. The commissioner shall not approve or disapprove any registration and an operator shall not represent to any person that the commissioner endorses or approves the membership camping resort or membership camping contract.

SECTION 4. REGISTRATION OF SELLERS AND MEMBERSHIP CAMPING CONTRACT BROKERS. (a) A person may not offer a membership interest or membership right in a membership camping resort or resell membership camping contracts in this state unless the person is registered with the commissioner. Each application for registration as a seller or membership camping contract broker must be in writing and must be signed by the applicant.

(b) The application must state:

(1) the name and address of the applicant;

(2) the name and place of business of the applicant's employer, if any;

(3) whether the applicant has been convicted of a felony, or a misdemeanor involving moral turpitude, and if so, the nature of the felony, where and when it was committed, and the disposition of the conviction; and

(4) whether the applicant has been refused a real estate broker's or salesman's license or any other occupational license in this or any other state, or whether the applicant's license as a real estate broker or salesman in this or any other state has been revoked or suspended.

(c) The commissioner may require any additional information that is reasonably necessary to determine the good moral character of an applicant for registration.

(d) Each application for registration as a seller or membership camping contract broker must be accompanied by the required registration fee set by the commissioner pursuant to Section 9 of this Act.

(e) The commissioner may prescribe and publish forms to carry out the provisions of this section.

SECTION 5. DISCLOSURE STATEMENTS. (a) Prior to or at the time of the use of any promotion in connection with the offering of a membership interest or membership right in a membership camping resort, the person who intends to use the promotion shall include the following information in its advertisements to the prospective purchaser:

(1) a statement to the effect that the promotion is intended to solicit purchasers of membership interests or membership rights in a membership camping resort;

(2) the full name of the operator and seller of the membership interest or membership right in the membership camping resort;

(3) if applicable, the full name and address of any marketing company involved in the promotion of the membership camping resort;

(4) the complete rules of the promotion;

(5) the method of awarding, the odds of winning, and the approximate retail value of prizes, gifts, or other benefits under the promotion and the date by which each prize, gift, or benefit will be awarded or conferred;

(6) any restrictions, qualifications, or other conditions that the recipient must satisfy before the recipient is entitled to receive a prize, gift, or other benefit, including:

(A) any deadline by which the recipient must visit the membership camping resort, attend the sales presentation, or contact a seller in order to receive the prize, gift, or other benefit;

(B) the date on which the offer expires; and

(C) any other conditions, including minimum age qualifications, financial qualifications, or a requirement that if the recipient is married both husband and wife must be present in order to receive the prize, gift, or other benefit;

(7) if applicable, a statement that the operator or seller reserves the right to provide a certificate with which to redeem or claim the prize, gift, or other benefit awarded and that the prize, gift, or other benefit shall be shipped or delivered to the recipient within 30 days following mailing of the certificate;

(8) if applicable, a statement that the operator or seller reserves the right to substitute a prize, gift, or other benefit of equal value for the prize, gift, or other benefit awarded if the item is not available to the operator or seller after the purchaser or prospect has complied with the provisions of the promotion.

(b) Prior to or at the time of the signing of any agreement or membership camping contract to acquire a membership interest or membership right in a membership camping resort, the operator shall provide a membership camping resort disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the membership camping resort disclosure statement. The membership camping resort disclosure statement shall include:

(1) the name and address of the operator and the name and specific location of the membership camping resort;

(2) a description of the amenities, membership camping resort, and any project or development within which the membership camping resort is located or of which it is a part. The disclosure statement shall also state the total number of camping sites in the membership camping resort and whether and under what circumstances that number may be increased or decreased; if a membership interest or membership right includes amenities not yet in existence, the disclosure statement shall provide the approximate commencement and completion schedule of such proposed amenities;

(3) a description of the membership interests and membership rights currently available for disposition;

(4) a statement that a council of purchasers exists or is expected to be created or that such a council does not exist and is not expected to be created; if such a council exists or is reasonably contemplated, the disclosure statement shall contain a description of its powers and responsibilities;

(5) the name and principal address of the managing entity;

(6) a description and amount of any current or expected dues, assessments, fees, taxes, or charges to be paid by purchasers for the use of amenities or for any other purpose;

(7) a description and amount of insurance coverage provided for the protection of the purchaser; and

(8) a statement that any deposit made in connection with the purchase of a membership interest or membership right will be held until expiration of any right to cancel the contract or any later time specified in the contract and will be returned to the purchaser if he elects to exercise his right of cancellation.

(c) Prior to or at the time of the signing of any agreement or membership camping contract in which a prospective purchaser is also offered participation in a reciprocal program, the operator shall also deliver to the prospective purchaser the reciprocal program disclosure statement of the reciprocal company whose reciprocal program is advertised or offered by the operator or seller in connection with the disposition. If participation in a reciprocal program is offered for the first time after a disposition has occurred, any person offering such participation shall also deliver a reciprocal program disclosure statement to the purchaser prior to the execution by the purchaser of any instrument relating to participation in the reciprocal program. In all cases, the person offering such participation shall obtain from the purchaser a written acknowledgement of receipt of the reciprocal program disclosure statement. The reciprocal program disclosure statement shall include the following information:

- (1) the name and address of the reciprocal company;
- (2) if the reciprocal company is not the operator, a statement describing the legal relationship, if any, between the reciprocal company and the operator;
- (3) a statement that the reciprocal program might terminate or become unavailable;
- (4) whether membership or participation, or both, in the reciprocal program is voluntary or mandatory;
- (5) a complete description of the required procedure for utilizing the reciprocal program;
- (6) the fee required for membership or participation, or both, in the reciprocal program and whether such fee is subject to change;
- (7) a statement to the effect that participation in the reciprocal program is conditioned upon compliance with the terms of a contract between the reciprocal company and the purchaser; and
- (8) a statement in conspicuous and bold-faced print to the effect that all reciprocal campgrounds are arranged on a space-available basis and that neither the operator nor the reciprocal company guarantees that a particular reciprocal campground can be utilized.

(d) No disclosure statements need be delivered in the case of:

- (1) a gratuitous disposition of a membership interest or membership right;
- (2) a disposition pursuant to a court order;
- (3) a disposition by a governmental agency;
- (4) a disposition by foreclosure or deed in lieu of foreclosure;
- (5) a disposition that may be canceled by the purchaser without penalty at any time and for any reason;
- (6) a disposition of a membership interest or membership right in a membership camping resort situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;
- (7) a disposition of a membership interest or membership right to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state; or
- (8) the redistribution of a membership interest or membership right by a purchaser who acquired such interest or right for his personal use.

SECTION 6. CONTRACT. (a) Each sale of a membership interest or membership right in a membership camping resort must be evidenced by a membership camping contract written in the language principally used in any promotional presentation made to the purchaser. The seller must give the purchaser a copy of the contract at the time it is signed.

(b) Each contract shall contain the following:

- (1) the name and address of the operator and the seller and the location of the membership camping resort;
- (2) the signature of the operator or seller;
- (3) the signature of the purchaser;
- (4) the date on which the purchaser signs the contract;
- (5) the name of the person who closed the transaction described in the membership camping contract;
- (6) a brief description of the nature of the purchaser's interest in, and right or license to use, the membership camping resort;
- (7) a summary or copy of the rules, restrictions, or covenants regulating the purchaser's use of the operator's properties, including a statement of whether and how the rules, restrictions, or covenants may be changed;
- (8) any restraints on the transfer of the membership camping contract;
- (9) any grounds for forfeiture of a purchaser's membership camping contract;
- (10) if applicable, a statement of the purchaser's right to cancel the membership camping contract as provided by Subsection (c) of Section 7 of this Act;
- (11) a statement of whether the purchaser visited the location of the membership camping resort before signing the contract; and
- (12) if applicable, a statement by the seller that if the purchaser timely exercises any right of cancellation under the contract, all payments made by the purchaser to the seller in connection with the contract shall be returned to such purchaser before the 21st day after the seller receives notice of cancellation as required under Section 7 of this Act.

(c) The contract must also contain a brief description of the existing amenities available for use by purchasers at the home resort and of any proposed amenities or amenities not yet complete or fully functional.

(d) The contract must also contain a brief statement of the operator's ownership of, or other right to use, the camping properties represented to be available for use by purchasers, together with the duration of any lease, license, franchise, or reciprocal program entitling the operator to use the property, and material provisions of any agreements that restrict a purchaser's use of the property.

(e) The contract must be revised annually to include any changes to the information required by this section, if applicable.

SECTION 7. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a membership camping contract to purchase a membership interest or membership right before the fourth business day after the contract is executed if the purchaser did not visit the location of the membership camping resort being offered for sale before the contract was signed. A purchaser may not waive his right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

(b) If a purchaser elects to cancel a membership camping contract under Subsection (a) of this section, he may do so by hand delivering notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or to the seller's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded before the 21st day after the date on which the seller receives notice of cancellation.

(c) If applicable, immediately prior to the space reserved in the contract for the signature of the purchaser, in bold-faced and conspicuous type or print that is larger than the type of print in the remaining text of the contract, substantially the following statement must appear:

"If you have not visited the location of the membership camping resort in which you are acquiring an interest or membership right, you may cancel this contract without penalty or obligation before the fourth business day after the date on which you signed this contract. If you decide to cancel this contract, you may do so by hand delivering

notice of cancellation to the seller or by mailing notice by prepaid United States mail to the seller or the seller's agent for service of process. Your notice of cancellation is effective on the date sent or delivered to (name of seller) at (address of seller). A purchaser should not rely on statements other than those included in this contract and the disclosure statement."

SECTION 8. RECIPROCAL PROGRAM. No operator shall incur any liability arising out of use, delivery, or publication by the operator to the purchaser of written information or audio-visual materials provided to it by the reciprocal company pursuant to Section 5 of this Act; provided, however, that an operator shall be subject to liability arising out of the use, delivery, or publication to the purchaser of materials provided by the reciprocal company if the operator knows that such materials are inaccurate or false.

SECTION 9. FEES. (a) The commissioner shall set all fees imposed by this Act in amounts reasonable and necessary to cover the costs of administering this Act.

(b) The commissioner shall deposit all fees received under this Act in the state treasury to the credit of a special fund to be used in the administration of this Act.

SECTION 10. VIOLATIONS. (a) A person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b), Section 17.46, Deceptive Trade Practices-Consumer Protection Act (Section 17.46, Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a membership interest or membership right required by Section 5 of this Act;

(2) failing to provide a purchaser with a copy of the membership camping contract and any other document signed by the purchaser or the operator in connection with the purchase of a membership interest or membership right;

(3) making false or misleading statements of a material nature concerning camping sites or amenities available to the purchaser;

(4) predicting specific or immediate increases in the value of a membership interest or membership right without a reasonable basis for such predictions;

(5) making false or misleading statements of a material nature concerning the conditions under which a purchaser of a membership interest or membership right may use or occupy other membership camping resort camping sites or amenities;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with intent not to award that prize, gift, or benefit;

(7) representing that registration with the commissioner under Section 3 of this Act constitutes approval or endorsement by the commissioner of the operator, the membership camping contract, or the membership camping resort;

(8) offering or disposing of a membership interest or membership right under a membership camping contract without having complied with the registration requirements under Section 3 of this Act; and

(9) offering for sale a membership interest or membership right in a membership camping resort without having complied with the registration requirements under Section 4 of this Act.

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

SECTION 11. INSURANCE. Prior to the disposition of any membership interest or membership right in a membership camping resort, the operator shall maintain the following insurance with respect to the membership camping resort:

(1) property insurance on any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against in a total amount, after application of deductibles, of the insurable value of the personal property of the membership camping resort; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the membership camping resort.

SECTION 12. EXEMPT FROM SECURITIES ACT. The filing of a registration under this Act shall exempt the sale of a membership interest or membership right in a membership camping resort subject to this Act from registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

SECTION 13. CONFLICTING LAWS. Whenever the application of the provisions of this Act or the application thereof to any person or circumstances conflicts with the application of other statutory provisions, this Act shall prevail.

SECTION 14. SEVERABILITY. If any section, paragraph, sentence, clause, or word of this Act is held to be invalid, the invalidity does not affect other provisions of this Act which can be given effect without the invalid portion.

SECTION 15. SCOPE. This Act shall apply to all membership camping resorts which are located in this state or offered for sale in this state; provided, however, that those membership camping resorts located outside this state shall only be subject to Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of this Act.

SECTION 16. EFFECTIVE DATE. This Act applies to any membership camping resort in existence on or after the effective date of this Act, but does not affect a membership camping contract in existence before that date. A membership camping resort that began sales prior to July 1, 1987, must comply with this Act on or before January 1, 1988. A membership camping resort that has not made sales prior to July 1, 1987, must comply with this Act on commencement of sales or on September 1, 1987, whichever is later.

SECTION 17. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 12, 1987, by the following vote: revenue dedication:
Yeas 136, Nays 0, 1 present, not voting; remainder of bill: non-record vote. Passed
by the Senate on May 29, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.