

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1034
92ND GENERAL ASSEMBLY

Reported from the Committee on Tourism and Cultural Affairs, May 5, 2004, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 1034 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

3711L.12C

AN ACT

To amend chapter 407, RSMo, by adding thereto six new sections relating to vacation clubs, with penalty provisions.

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

Section A. Chapter 407, RSMo, is amended by adding thereto six new sections, to be known as sections 407.682, 407.685, 407.688, 407.691, 407.694, and 407.699, to read as follows:

407.682. As used in sections 407.682 to 407.699, the following terms shall mean:

(1) "Membership fee", the initial or reoccurring fee that is unrelated to actual pass-through costs associated with the use and enjoyment of vacation benefits charged to vacation club members in exchange for their right to use and enjoy vacation benefits;

(2) "Vacation benefits", benefits that are offered to vacation club purchasers and customers that include all forms of overnight resort, condominium, timeshare, hotel, motel, and other rental housing of every nature; all forms of air travel and rental car access; all forms of cruise line access and usage; and all other forms of discounted travel services of every nature;

(3) "Vacation club", any business enterprise that either directly, indirectly, or through the use of a fulfillment company or other third party offers to sell to the public the reoccurring right to purchase vacation benefits at prices that are represented as being discounted from prices otherwise not generally available to the public and charges members or customers a membership fee that collectively equals no less than three hundred dollars;

(4) "Rescission statement", a statement that shall be printed on all contracts pertaining

to the purchase of vacation benefits from a vacation club that shall provide in at least fourteen-point bold type the following statement:

"Assuming you have not accessed any vacation benefits and have returned to the vacation club all materials delivered to the purchaser at closing, you have the right to rescind this transaction for a period of five working days after the date of this agreement. To exercise the right of rescission, you must deliver to the vacation club by certified mail within the five working day period, return receipt requested, at the address referenced in this contract, a written statement of your desire to rescind this transaction, and you must then deliver all materials of value that were provided and given to you at the time of the purchase of your vacation benefits. If you have a complaint arising from this contract, several options are available to you if you are dissatisfied after contacting the vacation club, including filing the complaint with the local county mediation board, the local prosecutor, or the state attorney general. The following contact information is provided in the event any of the parties have questions or issues concerning the rights and responsibilities contained herein:

1. The Office of the Attorney General

(Address of the Office of the Attorney General)

2. The Office of (county name) Prosecuting Attorney

(Address of the (county name) Prosecuting Attorney)

3. The Office of (county name) Board of Vacation Club Mediation

(Address of the (county name) Board of Vacation Club Mediation)

4. Office of the Vacation Club

(Address of the vacation club)

(5) "Surety bond", any surety bond, corporate guaranty, letter of credit, certificate of deposit, or other financial assurance in the sum of fifty thousand dollars that is required to be delivered by vacation clubs seeking registration pursuant to sections 407.682 to 407.699. In the event that such surety bond has been accessed as a result of the need to reimburse purchasers, the amount of the surety bond shall be increased by twenty-five thousand dollars per reimbursement. All surety bonds shall:

(a) Serve as a source of funds to reimburse purchasers of vacation benefits who validly exercise their rights pursuant to the rescission statement in their contract but who are not provided a refund satisfactory to the purchaser or equal to the purchase price of their unused vacation benefits;

(b) Serve as a source of funds to reimburse purchasers of vacation benefits who have been proven to be the subject of fraud and misrepresentation;

(c) Remain in full force and effect during the period of time the vacation club conducts its business activities; and

(d) Be deemed acceptable to the attorney general if:

a. It is issued by an insurance company that possesses at least a "B+" rating, or its

equivalent by A.M. Best or its successors or by any other nationally recognized entity that rates the creditworthiness of insurance companies;

b. It is in the form of a letter of credit that is issued by a banking institution with assets of at least seventy-five million dollars;

c. It is in the form of a certificate of deposit; or

d. It is in a form that otherwise is acceptable to the attorney general;

(6) "Travel agency", a business or service authorized to make arrangements for customers for travel accommodations which include, but are not limited to, transportation, lodging, and entertainment.

407.685. 1. No vacation club may offer vacation benefits for sale unless the vacation club maintains an effective registration statement with the Missouri attorney general that discloses the following information:

(1) The name of the vacation club, including the name under which the vacation club is doing or intends to do business, if it is different from the name of the vacation club;

(2) The name of any parent or affiliated organization that will engage in business transactions with the purchasers of vacation benefits or accept responsibility for statements made by, or acts of, the vacation club that relate to sales solicited by the vacation club;

(3) The vacation club's business type and place of organization;

(4) If the vacation club is an entity, the vacation club's formation and governing documents, including articles of organization, bylaws, operating agreements, and partnership agreements;

(5) If operating under a fictitious business name, the location where the fictitious name has been registered and the same information for any parent or affiliated organization disclosed pursuant to subdivision (2) of this section;

(6) The names and addresses of the principal owners, officers, and directors of the vacation club;

(7) The addresses where the vacation club shall offer vacation benefits for sale;

(8) The name and address of the registered agent in the state of Missouri for service of process for the vacation club; and

(9) A description of the vacation benefits the vacation club is offering for sale.

2. The attorney general shall evidence its receipt, approval, or disapproval, as the case may be, of a vacation club's registration statement or registration renewal statement within thirty days from and after the submission. Upon compliance with the foregoing requirements, the attorney general shall approve the registration statement. Should any registration fail to address any of the registration conditions as set forth above, the attorney general shall advise in writing the registration deficiencies and the manner in which said deficiencies shall be cured. Such advice shall be provided by the attorney general within fifteen working days from the initial filing of the documents.

3. Vacation clubs that are operational prior to the effective date of this act may continue their business activities during the pendency of the attorney general's processing of their registration statements; provided that such registration statement is filed with the attorney general within ninety days of the effective date of this act. Registration of a vacation club shall not be transferable.

4. The registration statement shall additionally have appended thereto:

(1) The form of contract pursuant to which the vacation club proposes to sell vacation benefits which contains the rescission statement;

(2) The form of surety bond that will be issued upon acceptance and approval of the registration statement by the attorney general;

(3) A check made to the order of the Missouri attorney general in the amount of two hundred fifty dollars.

407.688. Each vacation club registered pursuant to sections 407.682 to 407.699 may renew its registration by filing with the attorney general a registration renewal statement containing all of the information required in section 407.685 within thirty calendar days of the anniversary date of the attorney general's issuance of its approval of the vacation club's registration statement. The attorney general may charge an annual renewal fee in a sum not to exceed two hundred fifty dollars.

407.691. Assuming a purchaser has not otherwise accessed any vacation benefits and returns to the vacation club all materials of value delivered to the purchaser at closing, all purchasers of vacation benefits from a vacation club that is registered shall have the nonwaivable right for a period of five working days after the date of their purchase to rescind and cancel their vacation benefits purchase and receive a full or partial refund of all sums otherwise paid to the vacation club minus the cost of any services actually consumed or utilized. Individuals who purchase vacation benefits from a vacation club that is not registered pursuant to sections 407.682 to 407.966 shall have a nonwaivable right for a period of three years from the date of purchase to rescind and cancel their vacation benefits.

407.694. 1. Any county commission may establish the "..... (county name) Board of Vacation Club Mediation" and select its membership. The board membership shall consist of one individual who is a member of the chamber of commerce of a city, town, or village within the county, one individual who is associated with the travel industry, and one elected official from a political subdivision within the county.

2. Any individual who purchases vacation benefits from a vacation club and has a grievance has the option to file a written complaint with the office of the state attorney general, the county prosecuting attorney, or any existing county vacation club mediation board. The office which receives the complaint shall deliver to the vacation club that is the subject of the complaint, within ten working days by registered mail, all written complaints received pursuant to this section. Should the office receiving the complaint, including the attorney

general, fail to deliver the complaint as stated herein, any action shall be stayed for a period of fifteen working days from the date the club was first notified, thereby allowing the vacation club to cure the grievance.

3. Prior to utilizing any other remedies available pursuant to sections 407.682 to 407.699, a vacation club shall have thirty working days following the filing of a complaint to cure any grievances stated in the complaint. The parties may not seek other forms of redress during this period. Any complaint filed and the resolution of such complaint pursuant to this section shall be subject to the provisions of chapter 610, RSMo. Upon satisfaction of any complaint, the parties shall execute a written mutual release which shall operate to remove the matters contained in the release as a basis for further action by any entity or person pursuant to sections 407.682 to 407.699.

4. Upon the failure of the vacation club to cure any grievance, and at the request of either party, the county mediation board, if available, shall contact the other party to determine if mediation is the acceptable means of dispute resolution. If so, the board shall schedule a mediation session within fifteen working days and select a mediator. The buyer shall not be required to be physically present during the mediation effort. The parties may not seek other forms of redress during this fifteen working day period for mediation. Within fifteen calendar days of the first meeting for the mediation, but not more than forty-five working days from the filing of the complaint, the parties must resolve the dispute or seek alternative methods of redress. Any costs associated with the mediation shall be paid for by the vacation club. If mediation is not available or is not an acceptable means of dispute resolution, the parties may pursue arbitration, civil action, or, if appropriate prosecution, as a course of redress.

5. (1) The attorney general, prosecuting attorney, or buyer may bring an action in a court of competent jurisdiction to enjoin a violation of sections 407.682 to 407.699.

(2) A person who violates any provision of sections 407.682 to 407.699 is guilty of a class D felony and shall be subject to a penalty of ten thousand dollars. Any fines collected pursuant to this subsection shall be transferred to the state school moneys fund as established in section 166.051, RSMo, and distributed to the public schools of this state in the manner provided in section 163.031, RSMo.

407.699. 1. Notwithstanding any other provisions of law to the contrary, sections 407.682 to 407.699 shall not apply to travel agencies that are involved in the sale of airfare, hotel, and related travel services to the general public.

2. Notwithstanding any other provisions of law, sections 407.682 to 407.699 shall not apply to publicly held corporations, the voting stock of which is traded on a recognized exchange or over the counter, as well as the affiliates, subsidiaries, and divisions of such corporations which are controlling, controlled by or under the common control with such corporations and all employees, subsidiaries, and divisions.