

HOUSE BILL No. 5817

May 29, 1990, Introduced by Reps. Trim, DeMars, Law, Bender, Gubow, Harrison, Kosteva, Richard A. Young and Spaniola and referred to the Committee on Towns and Counties.

A bill to regulate the use of certain campgrounds and facilities; to create a membership camping plan; to license certain people associated with the sale of interests in camping sites; to prescribe the powers and duties of certain state departments and agencies; to create a fund and provide for its expenditure; and to prescribe penalties and provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "membership camping act".

3 Sec. 2. As used in this act:

4 (a) "Advertisement" or "advertising" means any written,
5 oral, printed, or visual communication by an offeror made in con-
6 nection with the promotion of a membership camping plan, except
7 as provided in section 9.

1 (b) "Business day" means a calendar day other than a
2 Saturday, Sunday, or national holiday.

3 (c) "Campground" means real property that is a part of a
4 membership camping plan. Campground does not include a mobile
5 home or recreational vehicle park if a membership camping plan is
6 not offered for sale, sold, or otherwise promoted with regard to
7 the mobile home or recreational vehicle park.

8 (d) "Camping site" means a portion of a campground designed
9 or promoted for the purpose of camping, including a trailer,
10 tent, tent trailer, pickup camper, cabin, or other similar device
11 or accommodation used for camping and located upon the site.

12 (e) "Department" means the department of commerce.

13 (f) "Dues payment" means the mandatory annual or periodic
14 fee paid by a purchaser, other than the purchase price, as set
15 forth in the membership camping contract. Dues payment does not
16 include optional user fees charged for specific goods or services
17 such as campground recreation or rental fees, equipment or accom-
18 modation rentals, or meals.

19 (g) "Encumbrance" means any purchase money or nonpurchase
20 money mortgage or lien upon or interest in all or any portion of
21 the real property underlying a campground in this state.
22 Encumbrance does not include a lien for ad valorem taxes not yet
23 due and payable or other assessment that is not yet due and pay-
24 able that is disclosed to the department in the evidence of title
25 supplied by the offeror pursuant to section 4.

26 (h) "Facilities" means all amenities offered in connection
27 with a state campground or all amenities required to be disclosed

1 to purchasers pursuant to section 4(1)(h), including, but not
2 limited to, camping sites, available rental trailers or cabins,
3 swimming pools, sport courts, recreation buildings, and trading
4 posts or grocery stores.

5 (i) "Membership camping contract" or "contract" means an
6 agreement evidencing a purchaser's right to use campgrounds and
7 facilities pursuant to a membership camping plan.

8 (j) "Membership camping plan" or "plan" means an arrangement
9 or other device, whether by membership agreement, rental agree-
10 ment, license, right-to-use agreement, or otherwise, under which
11 a purchaser, in exchange for consideration, receives the right to
12 use campgrounds and facilities. Membership camping plan does not
13 include either of the following:

14 (i) An arrangement or other device, whether by membership
15 agreement, rental agreement, license, right-to-use agreement, or
16 otherwise, under which a purchaser has the 1-time right to use a
17 specific identified camping site and related facilities for a
18 specific, identified nonrecurring period of time.

19 (ii) A reciprocal program or any arrangement or other device
20 under which a purchaser acquires any leasehold, fee, or other
21 ownership interest in campgrounds and facilities.

22 (k) "Offer", "offer to sell", or "offer for sale" means any
23 solicitation, advertisement, inducement, or other method or
24 attempt to encourage a person to become a purchaser.

25 (l) "Offeror" includes 1 or more of the following:

26 (i) A "creating offeror" who creates a membership camping
27 plan by either filing a plan with the department for approval or

1 by offering membership camping contracts for sale to the public
2 in the ordinary course of business in connection with the member-
3 ship camping plan.

4 (ii) A "successor offeror" who succeeds to all or substan-
5 tially all of the remaining interest of a creating offeror in a
6 membership camping plan, whether by sale, assignment, foreclo-
7 sure, deed in lieu of foreclosure, remedies exercised under the
8 laws of this state, or otherwise.

9 (iii) A "concurrent offeror" means a person other than a
10 salesperson or tour generator working solely for an offeror, and
11 other than a purchaser who refers names of prospective purchasers
12 to an offeror or who is not a salesperson and is not a tour gen-
13 erator, who offers more than 1 membership camping contract for
14 sale or resale to the public in the ordinary course of business
15 on his or her own behalf or on the behalf of others.

16 (m) "Ordinary course of business" means the transaction of
17 business by a person in the business of selling or reselling mem-
18 bership camping plans. A mortgagee who acquires any portion of
19 an offeror's interest in a membership camping plan and later dis-
20 poses of a portion in any manner is operating in the ordinary
21 course of business.

22 (n) "Principal campground" means the particular campground
23 located in this state that is the primary campground in reliance
24 upon which a prospective purchaser executes a membership camping
25 contract. If the membership camping plan consists of only 1
26 campground, that campground shall be the principal campground.
27 Principal campground does not include any other campground or

1 facility concerning which the purchaser may have use rights
2 arising out of the membership camping plan or a reciprocal
3 program.

4 (o) "Purchase price" means the purchase price of a member-
5 ship camping contract, including finance charges and related
6 closing costs, if any, and excluding all dues payments.

7 (p) "Purchaser" means a person, other than an offeror, who
8 enters into a membership camping contract and obtains the right
9 to use the campgrounds and facilities of a membership camping
10 plan.

11 (q) "Reciprocal program" means an arrangement, opportunity,
12 or procedure arranging the use of campgrounds and facilities
13 among purchasers in different membership camping plans.

14 (r) "Reciprocal program operator" means a person who owns or
15 operates a reciprocal program.

16 (s) "Salesperson" means a person who is engaged in promot-
17 ing, offering for sale, or selling a membership camping plan as
18 the employee, independent contractor, agent, officer, director,
19 shareholder, partner, or principal of an offeror. Salesperson
20 does not include an offeror or a tour generator or a purchaser
21 who is not in the business of referring names of prospective pur-
22 chasers to an offeror.

23 (t) "Substitute Michigan campground" means a campground that
24 is obtained by an offeror to replace a campground in this state
25 that is terminated from the membership camping plan pursuant to
26 section 8.

1 (u) "Tour generator" means a person who is engaged in the
2 referral of prospective purchasers of a membership camping plan
3 to a salesperson or to an offeror. Tour generator does not
4 include an offeror and does not include a purchaser who is not in
5 the business of referring names of prospective purchasers to an
6 offeror.

7 (v) "Trust account" means an account created and used for
8 the purposes required in this act.

9 (w) "Trustee" includes 1 or more of the following:

10 (i) A savings and loan association, bank, trust company, or
11 other financial lending institution having a net worth in excess
12 of \$5,000,000.00 that is either located in this state or has sub-
13 mitted to the jurisdiction of the department and the courts of
14 this state, and is otherwise acceptable to the department.

15 (ii) An attorney who is a member in good standing of the
16 Michigan bar association and who has posted a fidelity bond in
17 the amount of \$50,000.00 issued by a company authorized and
18 licensed to do business in this state as surety.

19 Sec. 3. (1) An offeror of a membership camping plan or
20 salesperson shall use and furnish to each purchaser a fully com-
21 pleted copy of a contract incorporating all of the following
22 information:

23 (a) The actual date the contract is executed by the offeror
24 and the purchaser.

25 (b) The name and address of the offeror.

26 (c) A complete description of the purchase price.

1 (d) The term of the contract.

2 (e) The disclosure required by subsections (3) and (4).

3 (2) A purchaser has the right to cancel a contract required
4 under this section within the time period and in the manner
5 described in subsection (3) and to receive a refund of all sums
6 paid to the offeror within the time period and in the manner
7 described in subsection (4). An attempt by an offeror, tour gen-
8 erator, or salesperson to misrepresent the right to cancel to a
9 purchaser is a violation of this act.

10 (3) The following capitalized language shall appear in at
11 least 10-point type in close proximity to the purchaser's signa-
12 ture line on the contract required under this section:

13 "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY
14 PENALTY OR OBLIGATION UNTIL MIDNIGHT OF THE FIFTH DAY
15 AFTER THE DATE YOU SIGN THIS CONTRACT, UNLESS THE
16 FIFTH DAY FALLS ON A SUNDAY OR NATIONAL HOLIDAY, IN
17 WHICH EVENT YOU MAY CANCEL THIS CONTRACT WITHOUT
18 PENALTY OR OBLIGATION UNTIL MIDNIGHT ON THE FIRST
19 BUSINESS DAY FOLLOWING THE SUNDAY OR NATIONAL
20 HOLIDAY. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU
21 MUST NOTIFY THE TRUSTEE IN WRITING OF YOUR
22 CANCELLATION. YOUR CANCELLATION SHALL BE EFFECTIVE
23 UPON THE DATE MAILED AND SHALL BE MAILED TO (Name
24 of Trustee) AT (Address of Trustee). ANY
25 ATTEMPT TO MISREPRESENT THIS ABSOLUTE CANCELLATION
26 RIGHT IS UNLAWFUL."

1 (4) The contract required under this section shall also
2 include the following statement:

3 "WITHIN 20 DAYS AFTER THE TRUSTEE RECEIVES YOUR
4 WRITTEN CANCELLATION, THE TRUSTEE SHALL REFUND TO YOU
5 THE TOTAL AMOUNT OF ALL CLEARED PAYMENTS WHICH YOU
6 HAVE MADE UNDER THE CONTRACT, PROVIDED THAT SUCH
7 REFUNDS MAY BE MADE EITHER BY CHECK OR, IF YOU USED A
8 CREDIT CARD, BY CREDIT TO YOUR CREDIT CARD ACCOUNT."

9 (5) The purchaser shall designate in the contract or on a
10 separate form his or her choice of the campground that the pur-
11 chaser intends to be his or her principal campground. This des-
12 ignation shall be made in a form and manner approved by the
13 department.

14 (6) The offeror shall maintain among its business records a
15 copy of each executed contract for a period of at least 3 years
16 after the date of the contract.

17 Sec. 4. (1) The offeror of a membership camping plan shall
18 include all of the following disclosures concerning the member-
19 ship camping plan and the principal campground within, attached
20 as an exhibit to, or distributed together with each membership
21 camping contract:

22 (a) The following capitalized statement in at least 10-point
23 type:

24 "THESE DISCLOSURES CONTAIN IMPORTANT MATTERS TO
25 BE CONSIDERED IN ACQUIRING A CAMPGROUND MEMBERSHIP.
26 THESE STATEMENTS ARE ONLY SUMMARY IN NATURE. A
27 PROSPECTIVE PURCHASER SHOULD REVIEW THESE MATTERS

1 CAREFULLY. YOU SHOULD NOT RELY UPON ORAL
2 REPRESENTATIONS AS BEING CORRECT; REFER TO THESE
3 DISCLOSURES FOR CORRECT REPRESENTATIONS. THE OFFEROR
4 IS PROHIBITED FROM MAKING ANY REPRESENTATIONS
5 CONTRADICTORY TO THOSE CONTAINED IN THE CONTRACT AND
6 EXHIBITS TO THE CONTRACT."

7 (b) A summary of the experience of the offeror in the busi-
8 ness of developing and marketing membership camping plans.

9 (c) A summary of the nature and duration of the purchaser's
10 use rights in the campgrounds and facilities included in the mem-
11 bership camping plan.

12 (d) A description of any mandatory dues payments that are
13 payable to the offeror by the purchaser during the term of the
14 contract, including a description of any limitation upon the
15 offeror's ability, to increase the dues payments from time to
16 time. If there are no limitations upon the offeror's ability to
17 increase the dues payments, the following capitalized statement
18 shall appear in at least 10-point type:

19 "IN ADDITION TO THE PURCHASE PRICE, YOU MUST
20 MAKE PERIODIC DUES PAYMENTS MORE SPECIFICALLY
21 DESCRIBED HEREIN WHICH MAY BE INCREASED FROM TIME TO
22 TIME WITHOUT LIMITATION."

23 (e) A description of any optional user fees that shall or
24 may be imposed upon the purchaser by the offeror at the principal
25 campground, including a description of any limitation upon the
26 offeror's ability to increase the various user fees.

1 (f) A description of the type and number of camping sites
2 and facilities available or planned at the principal campground
3 and the maximum ratio of the number of contracts to be offered by
4 the offeror to the number of camping sites available in the mem-
5 bership camping plan and principal campground.

6 (g) A description of the nature of the offeror's ownership
7 of, or leasehold interest in, the principal campground and
8 facilities. If any of the principal campgrounds is one in which
9 an offeror has only a leasehold interest, the following capital-
10 ized statement in at least 10-point type shall appear:

11 "THE OFFEROR ONLY HAS A LEASEHOLD INTEREST IN
12 THIS CAMPGROUND THAT EXPIRES ON (date of
13 expiration). UPON EXPIRATION OF THE LEASE, THE
14 OFFEROR MAY TERMINATE THIS CAMPGROUND AS A PART OF THE
15 MEMBERSHIP CAMPING PLAN."

16 (h) A summary of the description of the other campgrounds in
17 the membership camping plan, including a description of the
18 nature of the offeror's ownership of, or leasehold interest in,
19 those campgrounds and related facilities, and including a summary
20 description or grid outline of the type and number of camping
21 sites and facilities presently constructed at the campgrounds and
22 a separate summary description or grid outline of the type and
23 number of camping sites and facilities planned but not yet con-
24 structed at those campgrounds. These summaries or grid outlines
25 shall include, but not be limited to, all of the following
26 information:

1 (i) Whether each campground is owned or leased by the
2 offeror.

3 (ii) Whether each campground is encumbered by mortgages or
4 other liens that, if foreclosed, could eliminate the purchaser's
5 right to use the campground under the membership camping plan.

6 (iii) Whether each campground offers specific goods or serv-
7 ices for which an optional user fee may be charged. The depart-
8 ment has the discretion to permit the information required by
9 this subparagraph to be presented in a single grid so long as
10 such presentation is not confusing.

11 (i) A description of the rights of any nonmembers of the
12 membership camping plan to use the campgrounds and facilities of
13 the membership camping plan.

14 (j) A description of the offeror's right to change or with-
15 draw from use all or a portion of the campgrounds and facilities
16 of the membership camping plan and the extent to which the
17 offeror is obligated to replace any campgrounds or facilities
18 withdrawn.

19 (k) A summary of the rules, restrictions, or covenants gov-
20 erning or regulating the purchaser's use of the campgrounds and
21 facilities of the membership camping plan, including a descrip-
22 tion of the offeror's right to amend the rules, restrictions, or
23 covenants. In lieu of a summary, the offeror may furnish to each
24 purchaser a complete copy of the rules, restrictions, or cove-
25 nants at the time of execution of the contract by the purchaser.

1 (l) A description of any restrictions upon the transfer by
2 the purchaser of the purchaser's membership in the membership
3 camping plan.

4 (m) Other information as is necessary to disclose fully and
5 fairly all aspects of the membership camping plan.

6 (2) If an offeror has in good faith attempted to comply with
7 the requirements of this section, and if, in fact, he or she has
8 substantially complied with the disclosure requirements of this
9 section, nonmaterial errors or omissions are not actionable.

10 Sec. 5. (1) Prior to offering a membership camping plan to
11 a person, the offeror shall file a copy of the contract with the
12 department for review and approval. Until the department
13 approves the filing, a membership camping contract shall not be
14 offered to a person. Each contract offered prior to filing shall
15 be considered to be a separate violation of this section.

16 (2) Upon receipt of a contract filed as required in
17 subsection (1), the department shall give the offeror written
18 acknowledgment of receipt. Within 45 days after receipt, the
19 department shall determine whether the proposed contract meets
20 the requirements of this act and shall notify the offeror by mail
21 that the department has either approved the filing or has found
22 specified deficiencies in it. If the department fails to approve
23 the filing or to specify deficiencies within the 45-day period,
24 the filing is approved. If deficiencies are specified, the
25 offeror may correct those deficiencies and, within 20 days after
26 receipt of the offeror's corrections, the department shall notify
27 the offeror by mail that the department has either approved the

1 corrected filing or has found additional deficiencies in it. If
 2 the department fails to approve the corrected filing or to spec-
 3 ify deficiencies within the 20-day period, the filing is
 4 approved. Additional corrections and responses shall be handled
 5 in the same manner as provided in this subsection.

6 (3) An amendment to a contract that is approved must be
 7 filed with the department at least 30 days prior to the effective
 8 date of the amendment. Deficiencies and corrections in and to
 9 the amendments shall be handled in the manner described in
 10 subsection (2) within a 20-day review period by the department.

11 (4) Upon filing a contract as provided in subsection (1),
 12 the offeror shall pay a filing fee to the department in the fol-
 13 lowing amounts:

14	<u>Number of Michigan Sites in Plan</u>	<u>Initial Filing Fee</u>
15	1. - 49	\$ 1,500
16	50 - 99	2,500
17	100 - 149	5,000
18	150 - 249	7,500
19	250 or more	10,000

20 Following an initial filing of a contract on January 1 of each
 21 year, the offeror shall pay to the department an annual renewal
 22 fee in the following amounts:

23	<u>Number of Michigan Sites in Plan</u>	<u>Annual Renewal Fee</u>
24	1 - 49	\$ 825
25	50 - 99	1,375
26	100 - 149	2,750

1	150 - 249	4,125
2	250 or more	5,500

3 If a plan is offered in this state and has no camping sites
 4 available for use in this state, the initial filing fee to be
 5 paid according to the schedules in this section shall be based
 6 upon the total number of sites offered to residents of this state
 7 as available for use, irrespective of where located.

8 (5) An offeror shall file with the department on or before
 9 March 1 of each year a report and affidavit concerning the occu-
 10 pancy level for each campground that is a part of the membership
 11 camping plan and is located in this state. If no campgrounds are
 12 located in this state, the report and affidavit shall relate to
 13 all campgrounds in that plan. This occupancy level shall be
 14 expressed in terms of a separate ratio of the number of occupied
 15 camping sites to the number of available camping sites for each
 16 weekend of the previous calendar year. As used in this section,
 17 "weekend" means the period of time beginning at 6 p.m. on Friday
 18 and ending at 6 p.m. on the following Sunday.

19 (6) If the report and affidavit described in subsection (5)
 20 show that the occupancy level reached 100% for more than 40 week-
 21 ends for a given campground, the offeror shall immediately cease
 22 offering that campground as a part of the membership camping plan
 23 until the offeror has demonstrated to the department that the
 24 offeror has increased the number of camping sites available at
 25 that campground or at another campground so that the ratio is
 26 below the maximum occupancy ratio. The department shall take

1 into consideration past sales, future projections, and other
2 relevant measures in determining whether sales may recommence.

3 (7) If an offeror increases the number of camping sites
4 available for use in the plan, the offeror shall file with the
5 department an amendment to the plan prior to offering the addi-
6 tional sites. Upon filing the amendment, the offeror shall pay
7 to the department an amendment filing fee equal to to the addi-
8 tional amount that would have been paid pursuant to
9 subsection (4) if the additional sites had been included in the
10 filing prior to the amendment. However, if a plan contains 250
11 or more camping sites prior to amendment, the amendment filing
12 fee shall be \$1,000.00 for each amendment that adds camping sites
13 to the plan.

14 Sec. 6. (1) All funds or other properties received from or
15 on behalf of a purchaser in connection with the execution of a
16 membership camping contract shall be deposited by the offeror
17 within 3 days of receipt by the offeror or a salesperson into a
18 trust account with a financial institution located in this state,
19 established by a trustee solely for the purpose of refunds. The
20 funds or other properties shall be maintained in the trust
21 account until 5 days after the purchaser's cancellation period
22 has expired. If the purchaser delivers a written cancellation of
23 the purchaser's contract to the trustee within the time period
24 described in section 3(3), the purchaser's funds or other proper-
25 ties shall be refunded by the trustee pursuant to section 3(4).
26 If the purchaser does not cancel the contract in the required
27 manner, all funds or other properties received from the purchaser

1 may be released by the trustee to the offeror 6 days after the
2 expiration of the cancellation period. If the trustee receives
3 conflicting demands for any funds or other properties held in the
4 trust account, the trustee shall immediately either submit the
5 matter to arbitration with the consent of the parties or, by
6 interpleader or otherwise, seek an adjudication of the matter by
7 a court of competent jurisdiction.

8 (2) Trustees shall be independent of the offeror, and nei-
9 ther the offeror nor an officer, director, affiliate, subsidiary,
10 or employee of the offeror may serve as trustee. However, an
11 attorney who represents an offeror but who is not an officer,
12 director, or employee of the offeror may serve as trustee for the
13 offeror.

14 (3) The funds held in trust pursuant to subsection (1) may
15 be invested only in securities of the federal government, an
16 agency of the federal government, or in savings or time deposits
17 in institutions insured by an agency of the federal government.
18 The interest generated by the investments, if any, shall be paid
19 to the party to whom the escrowed money is paid unless otherwise
20 specified in the contract.

21 (4) In lieu of the trust provisions required by
22 subsection (1), the director of the department shall have the
23 discretion to accept a surety bond issued by a company authorized
24 and licensed to do business in this state as a surety or an
25 irrevocable letter of credit in an amount equal to the trust
26 requirements of this section. The bond or letter of credit shall
27 be in a form satisfactory to the director of the department. The

1 director of the department shall also have the discretion to
2 accept forms of assurance other than surety bonds or irrevocable
3 letters of credit.

4 (5) A trustee shall have a fiduciary relationship with each
5 purchaser whose funds are held in the trust account solely to the
6 extent of maintaining and disbursing the funds in and from
7 accounts pursuant to this act. The trustee shall maintain the
8 books and records of the trust account in accordance with good
9 accounting practices and shall retain the record of a given
10 purchaser's account for a period of 3 years after the closing of
11 the account by the trustee.

12 (6) Notwithstanding any other provision of this section, the
13 trustee shall not disburse any funds to the offeror out of the
14 trust account if the offeror has made the guarantee to the pur-
15 chasers described in section 12(1)(b), until all of the planned
16 facilities are completed in the manner represented. For purposes
17 of this section, the trustee may rely upon the certificate under
18 seal of a licensed engineer or architect or upon a letter from
19 the department certifying that the planned facilities have been
20 completed in the manner represented.

21 (7) An offeror, trustee, or other person who intentionally
22 fails to comply with this section as it pertains to the estab-
23 lishment of a trust account and the deposit and disbursement of
24 funds and other properties received from a purchaser is guilty of
25 a felony. The proof of failure to establish a trust account or
26 to deposit funds in the trust account as required by this section
27 is prima facie proof of the intent required by this subsection.

1 Sec. 7. (1) If a Michigan campground was not offered as
2 part of a membership camping plan prior to the effective date of
3 this act, an offeror shall not represent the campground to be
4 part of its membership camping plan until the offeror obtains and
5 records a nondisturbance instrument from each holder of an
6 encumbrance. The nondisturbance instrument shall be executed by
7 the offeror and by the holder of the encumbrance and shall state
8 all of the following:

9 (a) The instrument may be enforced by a purchaser of the
10 membership camping plan. If the offeror is not in default under
11 its obligations to the holder of the encumbrance, the instrument
12 may be enforced by both the offeror and a purchaser.

13 (b) The instrument shall be effective between each purchaser
14 and the holder of the encumbrance despite any rejection or can-
15 cellation of the purchaser's contract during any bankruptcy pro-
16 ceedings of the offeror.

17 (c) During the time the holder of the encumbrance has an
18 interest in the Michigan campground, the holder will honor all of
19 the rights of the purchasers to use the campground pursuant to
20 their contracts.

21 (d) The instrument is binding upon the successors in inter-
22 est of both the offeror and the holder.

23 (2) The offeror shall not represent a Michigan campground
24 other than a campground described in subsection (1) to be part of
25 its membership camping plan after the effective date of this act
26 until 1 of the following events has occurred with regard to each
27 encumbrance:

1 (a) The offeror obtains and records a nondisturbance
2 instrument pursuant to subsection (1) from each holder of the
3 encumbrance.

4 (b) The offeror posts a surety bond or irrevocable letter of
5 credit with the department, in a form satisfactory to the direc-
6 tor of the department in the amount of the aggregate principal
7 indebtedness remaining due under the encumbrance.

8 (c) The offeror delivers an encumbrance trust agreement
9 among the offeror, the trustee, and the department to the depart-
10 ment in a form satisfactory to the director of the department.

11 (3) An encumbrance trust agreement shall provide that the
12 offeror shall collaterally assign to the trustee purchase-money
13 loans made by the offeror in connection with the sale of con-
14 tracts in an amount calculated in accordance with this subsection
15 and grant the trustee a first lien and security interest upon the
16 loans and all proceeds of the loans. For purposes of this sec-
17 tion, the offeror shall be credited with 80 percent of the out-
18 standing principal balance of each loan assigned. All proceeds
19 shall be held in a trust account by the trustee subject to the
20 provisions of this section for the use and benefit of purchasers
21 in making the payments of principal and interest due under the
22 encumbrance. As soon as the trust account contains sufficient
23 funds to pay in full the outstanding amounts due under the obli-
24 gation secured by the encumbrance, the offeror shall not be
25 required to assign further purchase-money loans to the trustee,
26 and the funds contained in the trust account may be used by the
27 trustee at the direction of the offeror to make the payments of

1 principal due under the encumbrance as the payments come due.
2 Interest generated from investment of the fully funded trust
3 account by the trustee together with proceeds of assigned
4 purchase-money loans in excess of the outstanding amounts due
5 under the obligation secured by the encumbrance may be used by
6 the trustee at the direction of the offeror to make the payments
7 of interest due under the encumbrance as the payments come due.
8 The amount of purchase-money loans to be collaterally assigned
9 shall be calculated based upon the maximum number of contracts
10 per camping site to be offered after the effective date of this
11 act in connection with the Michigan campground in question. The
12 number of contracts per camping site shall not exceed 15, multi-
13 plied by the total number of camping sites available at the
14 Michigan campground to yield the anticipated total number of con-
15 tracts to be sold in connection with the campground. This antic-
16 ipated total number of contracts shall be discounted by a factor
17 of 25% to arrive at the adjusted total number of contracts. The
18 outstanding balance due under the encumbrance shall then be
19 divided by the adjusted total number of contracts to determine
20 the amount per contract sold to be paid to the trustee in the
21 form of collaterally assigned loans as described in subsection
22 (2). The offeror shall make the required collateral assignments
23 to the trustee on a quarterly basis based upon the actual sales
24 of contracts at the Michigan campground in question during the
25 previous calendar quarter.

26 (4) The department shall have the discretion upon
27 application by the offeror and on an annual basis thereafter to

1 modify the formula described in subsection (3) in whole or in
2 part. In considering a modification, the department may take
3 into account such factors as balloon payment requirements, the
4 maturity date of the obligation secured by the encumbrance, occu-
5 pancy rates at the campground in question, the offeror's per-
6 formance in reducing the balance of the obligation, and the aver-
7 age default rate of the purchase-money loans assigned to the
8 trustee by the offeror.

9 (5) If the outstanding balance due under the encumbrance at
10 the time of execution of the encumbrance trust agreement exceeds
11 the anticipated gross revenue based upon the offeror's price list
12 to be generated by the sale of the adjusted total number of con-
13 tracts as calculated in subsection (3), the offeror shall provide
14 the department with other assurances that are acceptable to the
15 department to assure that the excess debt will be discharged in a
16 timely manner.

17 (6) The encumbrance trust agreement shall provide that it
18 may be terminated by the offeror at any time the offeror complies
19 with subsection (2)(a) or (b). Upon the termination, all
20 purchase-money loans and proceeds of the purchase-money loans
21 held by the trustee shall be immediately assigned and delivered
22 to the offeror. All costs of administering this statutory trust,
23 filing and perfecting the security interest, and foreclosing the
24 lien shall be paid by the offeror.

25 (7) The offeror shall submit to the department at the time
26 of filing the opinion of title of a member in good standing of
27 the Michigan bar or other evidence of title acceptable to the

1 department with regard to the title to the Michigan campground
2 for the purpose of establishing full compliance with
3 subsections (1) and (2). The department may require this opinion
4 to be updated through the date of approval of the filing.

5 (8) An offeror that does not comply with subsection (1) or
6 (2) with regard to an encumbrance in connection with a Michigan
7 campground is prohibited from offering a contract for sale during
8 the period of noncompliance.

9 (9) Prior to making an offering, the offeror shall execute
10 and record a separate notice to creditors for each Michigan camp-
11 ground among the public records of each county in which a camp-
12 ground is located. The notice to creditors shall contain all of
13 the following:

14 (a) The name of the offeror and the name of the membership
15 camping plan.

16 (b) The legal description of the campground.

17 (c) A statement that the campground is part of the member-
18 ship camping plan and that any later interests or liens created
19 in connection with or attaching to the legal description con-
20 tained in the notice are subject to the rights of the purchasers
21 of the plan as provided by this act and as set forth in the mem-
22 bership camping contract between the offeror and each purchaser.

23 (d) A statement that the notice shall remain effective until
24 the time that the campground is terminated as a part of the plan
25 pursuant to section 8.

26 (10) Each offeror shall file a quarterly encumbrance report
27 with the department on a form prescribed by the department.

1 (11) If an offeror complies with subsection (2), the offeror
2 shall pay to the department, in addition to its filing fee and
3 annual renewal fee, a fee of \$500.00. The fee shall be paid at
4 the same time as the fees set forth in section 5(4).

5 Sec. 8. (1) For a principal campground for which an offeror
6 has only a leasehold interest, the offeror may terminate the
7 principal campground as a part of the membership camping plan
8 upon the expiration of the term of the lease with no obligation
9 to provide a substitute principal campground pursuant to
10 subsection (3) only if all required disclosures pursuant to
11 section 4 disseminated to purchasers by the offeror which repre-
12 sent the campground to be terminated as a part of the membership
13 camping plan also disclose that the offeror has only a leasehold
14 interest in the principal campground and that the offeror may
15 terminate the principal campground as a part of the plan after
16 the expiration of the term of the lease.

17 (2) For a principal campground for which an offeror holds
18 the fee simple title or a principal campground described in
19 subsection (1) concerning which the offeror failed to give the
20 required disclosures regarding the offeror's right to terminate
21 the principal campground, the offeror may terminate the principal
22 campground as a part of the membership camping plan only after
23 the offeror has obtained a substitute principal campground that
24 complies with subsection (3).

25 (3) To qualify as a substitute principal campground, the
26 campground shall be located within a 50-mile radius of the
27 terminated principal campground and shall have available

1 facilities and camping sites substantially identical to those
2 afforded by the terminated principal campground. If the termi-
3 nated principal campground is located near an area having unique
4 geographic, topographic, scenic, or recreational characteristics,
5 the substitute principal campground shall also be located near
6 such area unless the offeror receives the approval of the direc-
7 tor of the department to locate the substitute principal camp-
8 ground away from the area or outside of the 50-mile radius. The
9 offeror shall fully comply with this section with regard to each
10 substitute principal campground.

11 Sec. 9. (1) Advertising regarding membership camping regu-
12 lated under this act shall be substantially in compliance with
13 this section. All advertising to be used or disseminated within
14 this state, other than the script of an oral representation or
15 sales pitch made by a salesperson, shall be filed with the
16 department by the offeror at least 10 days prior to use. At the
17 time of the initial filing for each plan, a \$750.00 advertising
18 filing fee shall be paid. Following payment for the initial
19 filing, an annual \$500.00 advertising renewal fee shall be paid
20 to the department on or before March 1 of each year.

21 (2) Lodging and vacation certificates used by an offeror in
22 connection with a prize and gift promotional offer shall be gov-
23 erned by section 11.

24 (3) Advertising by an offeror, salesperson, or tour genera-
25 tor shall not:

1 (a) Misrepresent a material fact or create a false or
2 misleading impression regarding the membership camping plan or a
3 reciprocal program.

4 (b) Make a prediction of specific or immediate increases in
5 the price or value of membership camping contracts unless the
6 increases are in fact planned by the offeror.

7 (c) Contain a statement concerning future price increases by
8 the offeror that are nonspecific or not bona fide.

9 (d) Contain an asterisk or other reference symbol as a means
10 of contradicting or substantially changing any previously made
11 statement or as a means of obscuring a material fact.

12 (e) Describe a planned facility that is not yet constructed
13 unless the planned facility is conspicuously identified as pro-
14 posed or under construction and unless the offeror has complied
15 with the requirements of section 12.

16 (f) Misrepresent the size, nature, extent, qualities, or
17 characteristics of any campground or facilities.

18 (g) Misrepresent the amount or period of time during which
19 any campgrounds or facilities will be available to any
20 purchaser.

21 (h) Misrepresent the nature or extent of any services inci-
22 dent to the membership camping plan.

23 (i) Make a misleading or deceptive representation with
24 respect to the content of the contract or the rights, privileges,
25 benefits, or obligations of the purchaser under the contract or
26 this act.

1 (j) Misrepresent the conditions under which a purchaser may
2 use campgrounds and facilities.

3 (k) Misrepresent the availability of a resale or rental pro-
4 gram offered by or on behalf of the offeror.

5 (l) Contain an offer or inducement to purchase that purports
6 to be limited as to quantity or restricted as to time unless the
7 numerical quantity or time limit applicable to the offer or
8 inducement is clearly stated.

9 (m) Imply that a facility is available for the exclusive use
10 of purchasers if the facility will actually be shared by others
11 or by the general public.

12 (n) Purport to have resulted from a referral unless the name
13 of the person making the referral can be produced upon demand of
14 the department.

15 (o) Misrepresent the source of the advertising by leading a
16 prospective purchaser to believe that the advertising is mailed
17 by a governmental agency, credit bureau, bank, or attorney, if
18 that is not the case.

19 (p) Misrepresent the value of any prize, gift, or other item
20 to be awarded in connection with any prize and gift promotional
21 offer made pursuant to section 10.

22 (4) A written advertising shall not be disseminated within
23 this state without bearing the following disclosure: "THIS
24 ADVERTISING IS BEING USED FOR THE PURPOSE OF SOLICITING SALES OF
25 RESORT CAMPGROUND MEMBERSHIPS." The disclosure shall be conspicu-
26 ous and shall appear in not less than 10-point type, unless the
27 advertising is a postcard, in which case the disclosure shall be

1 in bold type and at least as large as the main body type. This
2 subsection does not apply to signs, billboards, and other similar
3 advertising affixed to real or personal property and that is dis-
4 seminated only by visual means.

5 (5) As used in this section, "advertising" does not include
6 any of the following:

7 (a) A stockholder communication such as an annual report or
8 interim financial report, proxy material, registration statement,
9 securities prospectus, registration, property report, or other
10 material required to be delivered to a prospective purchaser by
11 an agency of any other state or the federal government.

12 (b) A communication addressed and disseminated to a holder
13 of a current membership camping contract, unless the communica-
14 tion is made in connection with an attempt to offer a membership
15 camping plan.

16 (c) An audio, written, or visual publication or material
17 prepared or disseminated by a reciprocal program operator relat-
18 ing to a reciprocal program or a reciprocal program operator.

19 (d) A promotion included as a part of a national advertising
20 campaign or a promotion appearing in publications with an inter-
21 state circulation that is not intended to be offered to the
22 public within this state, if the promotion bears the following
23 legend: "This promotion does not constitute an offer of a mem-
24 bership camping plan in the state of Michigan."

25 Sec. 10. (1) A game promotion, contest of chance, or sweep-
26 stakes in which the elements of chance and prize are present

1 shall not be used by an offeror in connection with the offering
2 for sale of membership camping plans.

3 (2) If a prospective purchaser meets all eligibility
4 requirements stated in a prize and gift promotional offer, a
5 prize, gift, or other item offered pursuant to a prize and gift
6 promotional offer shall be delivered to the prospective purchaser
7 on the day he or she appears to claim it, whether or not he or
8 she executes a membership camping contract.

9 (3) The offeror shall maintain among its records the follow-
10 ing information with regard to each prize and gift promotional
11 offer for inspection by the department upon request:

12 (a) A copy of all advertising material to be used in connec-
13 tion with the prize and gift promotional offer.

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

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

19 (d) The information on which the developer relies in deter-
20 mining the verifiable retail value.

21 (4) As used in this section, "prize and gift promotional
22 offer" means any advertising material in which a prospective pur-
23 chaser may receive goods or services other than the membership
24 camping plan itself, either free of charge or at a discount,
25 including, but not limited to, the use of any prize, gift, award,
26 premium, or lodging or vacation certificate.

1 Sec. 11. (1) An offeror shall not use a vacation or lodging
2 certificate as a part of a prize and gift promotional offer
3 unless the promotional entity first provides the offeror with a
4 copy of a letter from the department stating that the promotional
5 entity has complied fully with this section. If the offeror is
6 in compliance with its obligations under this section, vacation
7 or lodging certificates are not advertising.

8 (2) Each promotional entity shall separately file each vaca-
9 tion or lodging certificate program with the department at least
10 10 days prior to the marketing of the program to offerors
11 together with a filing fee of \$5,000.00. A vacation or lodging
12 certificate program shall not be disseminated by the promotional
13 entity to a third party until the department has approved the
14 filing. In disclosing to the department the terms, conditions,
15 and other information concerning the use of lodging or vacation
16 certificates, and in providing reasonable assurances that the
17 obligations under the lodging or vacation certificates will be
18 met, the promotional entity shall include all of the following
19 information in each filing:

20 (a) The name and address of the promotional entity.

21 (b) The total number of lodging or vacation certificates to
22 be printed and corresponding certificate numbers.

23 (c) A copy of the lodging or vacation certificate.

24 (d) The name and location of the resort, hotel, motel, camp-
25 ground, time-share project, or other entity providing the bene-
26 fits under the vacation or lodging certificate.

1 (e) A copy of the contract between the promotional entity
2 and the entity providing the benefits that requires that the
3 terms of the certificate be fulfilled.

4 (f) Any further information reasonably required by the
5 department to verify the accuracy of a representation contained
6 in the certificate.

7 (3) A vacation or lodging certificate shall fairly disclose,
8 if applicable, all of the following:

9 (a) The name and location of the lodging facility.

10 (b) The number of days and nights of lodging offered.

11 (c) The number of persons included without additional
12 charges.

13 (d) Whether attendance at a sales presentation is required
14 to validate the certificate.

15 (e) The expiration date of the certificate.

16 (f) The existence and amount of any charges to the recipient
17 such as deposits, service charges, surcharges, user fees, and
18 peak season charges.

19 (g) Whether the recipients must use a credit card to make
20 their reservations.

21 (h) Rules, terms, requirements, and preconditions governing
22 the use of the certificate contained in a section labeled "terms
23 and conditions," that shall include, but not be limited to, all
24 of the following:

25 (i) Eligibility requirements, such as age, employment, resi-
26 dency, or marital status.

(ii) Whether state and local taxes, if any, are included.

(iii) Whether transportation is included.

(iv) Any further information reasonably required by the department to verify the accuracy of any representation contained in the certificate.

(4) Vacation or lodging certificates shall comply with the standards set forth in section 9(3) and this section. A person shall not misrepresent a lodging certificate to be a vacation certificate.

(5) If, through no fault of the promotional entity, an entity that is to provide lodging or other benefits under the vacation or lodging certificate fails to do so, the promotional entity shall immediately provide recipients of the certificates with comparable lodging and services subject to the same terms and conditions as specified in the certificate. After a provider of the lodging or other benefits fails to honor the terms of a certificate, the promotional entity shall immediately cease distribution of vacation or lodging certificates offering lodging or services at the unavailable facility and shall immediately notify all offerors and other persons to whom the certificates have already been disseminated. Additionally, the promotional entity shall immediately provide the department with all of the following information:

(a) The name of the facility that is no longer providing lodging or other services under the vacation or lodging certificate.

1 (b) The name and address of the comparable facility being
2 offered to recipients of the certificate.

3 (c) The reason for default in the provider's obligations
4 under the certificate.

5 (6) Prior to the distribution of a vacation or lodging cer-
6 tificate by a promotional entity, the director of the department
7 shall require the promotional entity to post a bond or irrevoca-
8 ble letter of credit with the department in an amount that the
9 director of the department determines to be sufficient to ensure
10 that the benefits represented in a vacation or lodging certifi-
11 cate will be available to the recipients of the certificates.

12 (7) As used in this section:

13 (a) "Lodging certificate" means a promotion, arrangement,
14 plan, scheme, or other device, whether evidenced by contract,
15 certificate, license, membership agreement, security, use agree-
16 ment, or otherwise, by which a prospective purchaser is offered
17 complimentary or discounted accommodations or facilities at a
18 hotel, motel, campground, time-share resort, or other similar
19 establishment, regardless of location, except that this term does
20 not include membership camping plans or the offering of the com-
21 plimentary or discounted use of a campground by an offeror in
22 connection with the offer for sale of a membership camping plan.

23 (b) "Vacation certificate" means a lodging certificate that
24 includes complimentary or discounted transportation, meals, or
25 other material benefits in addition to the mere use of accommo-
26 dations and common facilities. Vacation certificate does not
27 include membership camping plans or the offering of the

1 complimentary or discounted use of a campground by an offeror in
2 connection with the offer for sale of a membership camping plan.

3 (c) "Promotional entity" means the entity that administers
4 or operates a vacation or lodging certificate program and markets
5 the program to offerors.

6 Sec. 12. (1) An offeror, salesperson, or tour generator
7 shall not represent that facilities are planned at a Michigan
8 campground in the contract, in any advertising, or otherwise in
9 connection with the promotion of a membership camping plan except
10 as set forth in this act. If facilities are planned but are not
11 yet completed, an offeror, salesperson, or tour generator shall
12 only represent to the public that the facilities will be a part
13 of the membership camping plan if the offeror does 1 of the fol-
14 lowing at its sole option:

15 (a) Assures the director of the department that the con-
16 struction of all facilities that the offeror intends to represent
17 as planned at a Michigan campground will be completed in the
18 manner represented within a designated time by filing with the
19 department a bond or irrevocable letter of credit in a form sat-
20 isfactory to the director of the department or by depositing
21 funds in a trust account held by a bank or surety company
22 licensed to do business in this state in the name of the depart-
23 ment for the benefit of purchasers, the bond, letter of credit,
24 or deposit in the amount of 100% of the cost of constructing the
25 planned facilities. The amount of the bond, letter of credit, or
26 deposit may be reduced from time to time in proportion to the
27 planned facilities that are actually completed in the manner

1 represented. The offeror may also comply with this subsection by
2 entering into an agreement with the department similar to the
3 encumbrance trust agreement described in section 7(3) under which
4 the amount to be secured is the cost of constructing the planned
5 facilities rather than the outstanding principal and interest due
6 under an encumbrance.

7 (b) Guarantees in the membership camping contract that the
8 purchaser will receive a refund of all money paid to the offeror
9 if all or substantially all of the planned facilities are not
10 completed within a designated time frame in the manner repre-
11 sented by the offeror and that none of the purchaser's funds or
12 other property will be released from the trust account required
13 by section 6 to the offeror until all of the planned facilities
14 are completed in the manner represented. Nothing in this subdi-
15 vision shall prevent the offeror from availing itself of the
16 alternatives to the section 6(1) trust provisions pursuant to
17 section 6(4).

18 (2) Subsection (1) applies only to planned facilities at a
19 Michigan campground and to contracts entered into in connection
20 with a Michigan campground that was not offered as part of a mem-
21 bership camping plan prior to the effective date of this act.

22 (3) Subsection (1) shall not apply to a representation by an
23 offeror, salesperson, or tour generator that the offeror intends
24 to acquire or develop properties adjoining, abutting, or contigu-
25 ous to a Michigan campground to be a part of the Michigan
26 campground. However, an offeror, salesperson, or tour generator
27 shall not make any specific representations concerning any

1 specific planned facilities with regard to the adjoining,
2 abutting, or contiguous properties. An offeror, salesperson, or
3 tour generator shall not make any general representations con-
4 cerning development or use of the adjoining, abutting, or conti-
5 guous properties unless the precise text of the general represen-
6 tations is first filed with and approved by the department. This
7 approval shall not be unreasonably withheld. An offeror shall be
8 jointly liable for a violation of this section by a salesperson
9 or tour generator promoting the membership camping plan on behalf
10 of the offeror, and the penalty for the first violation shall be
11 the maximum penalty permitted by section 15(4)(d) against each
12 violator.

13 (4) An offeror shall not sell, convey, lease, assign, mort-
14 gage, or otherwise transfer its interest in Michigan campgrounds
15 and facilities except by an instrument evidencing the transfer
16 recorded in the public records of the county in which the
17 affected campgrounds and facilities are located. The instrument
18 shall be executed by both the transferor and transferee and shall
19 include the following statements:

20 (a) The provisions of the instrument are intended to protect
21 the rights of purchasers of the membership camping plan.

22 (b) The terms of the instrument may be enforced by an exist-
23 ing or later purchaser if the purchaser is not in default of his
24 or her obligations under a membership camping contract.

25 (c) The transferee will fully honor the rights of purchasers
26 to occupy and use the campground and facilities as provided in
27 their membership camping contracts.

1 (d) The transferee will fully honor all rights of purchasers
2 to cancel their contracts and receive appropriate refunds.

3 (e) The obligations of the transferee under the instrument
4 will continue to exist despite cancellation or rejection of the
5 contracts between the membership camping operator and purchasers
6 arising out of bankruptcy proceedings.

7 (f) The obligation of the transferee to purchasers under the
8 instrument created by this section will terminate upon the termi-
9 nation of the campground from the membership camping plan pursu-
10 ant to section 8(1) or (2).

11 (5) If a transfer of the interest of an offeror in a
12 Michigan campground and facilities occurs in a manner that is not
13 in compliance with subsection (4), the terms of subsection (4)
14 shall be presumed to be a part of the transfer and shall be con-
15 sidered to be included in the instrument of transfer. Notice of
16 the transfer shall be mailed to each purchaser shown in the
17 records of the offeror within 30 days after the transfer.
18 Persons who hold mortgages on the campground before the member-
19 ship camping plan is approved by the department shall not be con-
20 sidered transferees for the purposes of subsection (4).

21 (6) In order to protect purchasers of a membership camping
22 plan against the failure of the offeror to maintain a Michigan
23 campground, the offeror shall annually collaterally assign to a
24 trustee, for the use and benefit of the purchasers at the camp-
25 ground, all dues payments anticipated to be received from the
26 purchasers on a form acceptable to the department. The
27 collateral assignment shall provide for all of the following:

1 (a) The offeror shall be entitled to use the dues payments
2 as it sees fit without the direction or advice of the department
3 if it fulfills its maintenance obligations in the manner repre-
4 sented to purchasers. If the offeror defaults in maintaining the
5 campground in a commercially reasonable manner, the trustee, at
6 the direction of its beneficiaries or the department, in addition
7 to the remedies set forth in subdivision (d), may declare the
8 offeror in default under the instrument evidencing the collateral
9 assignment and shall exercise any and all rights available to the
10 trustee as a secured party under the uniform commercial code, Act
11 No. 174 of the Public Acts of 1962, being sections 440.1101 to
12 440.11102 of the Michigan Compiled Laws.

13 (b) The offeror shall build up a fund for 1 year's aggregate
14 maintenance expenses for all Michigan campgrounds by collaterally
15 assigning to a trustee purchase-money loans generated from the
16 sale of contracts by the offeror. For the purposes of this sub-
17 division, the offeror shall be credited with 80% of the outstand-
18 ing principal balance of each loan assigned. The total loans to
19 be collaterally assigned shall equal 100% of 1 year's expenses
20 over a 5-year period. The offeror shall assign loans in an
21 aggregate amount of no less than 15% of such expenses in any 1
22 year. The trustee shall hold the funds in a trust account for
23 the benefit of purchasers for use in the event the offeror fails
24 to maintain the campgrounds. The offeror shall demonstrate to
25 the department the amount of the annual maintenance expenses by
26 providing the department with evidence of such expenses from a
27 certified public accountant.

1 (c) The trust account described in subdivision (b) shall be
2 maintained for at least 5 years. Upon the expiration of the
3 5-year period, the offeror shall be entitled to begin to withdraw
4 the purchase-money loans and the proceeds of the purchase-money
5 loans from the trust account if no disbursement from the trust
6 account by the department has been necessary to meet the
7 offeror's maintenance obligation. The withdrawals by the offeror
8 shall be made over a period of 5 years and shall be in the same
9 percentage amounts and in the same annual order as the percentage
10 amounts in the annual order in which the loans were initially
11 assigned to the trustee pursuant to subdivision (b) so that the
12 entire trust account has been paid back or reassigned to the
13 offeror at the end of the 5-year period. The offeror shall have
14 the option of receiving the disbursements in the form of reas-
15 signed purchase-money loans, or cash, or a combination of reas-
16 signed purchase-money loans and cash.

17 (d) If it is necessary for the department to require dis-
18 bursement from the trust account to meet the maintenance obliga-
19 tions of the offeror during the 5-year withdrawal period
20 described in subdivision (c), further disbursements shall not be
21 made to the offeror from the trust account until the department
22 is satisfied that future maintenance obligations will be met by
23 the offeror, and the department may require the offeror to recom-
24 mence collateral assignments of purchase-money loans into the
25 trust account to replace the amounts disbursed to the offeror.

26 (e) The trustee's security interest in dues payments created
27 under this section shall be governed by the applicable provisions

1 of Act No. 174 of the Public Acts of 1962. All costs of
2 administering this statutory trust, filing and perfecting the
3 security interest, and foreclosing the lien shall be borne by the
4 offeror.

5 (f) As an alternative to the collateral assignment of
6 purchase-money loans described in subdivision (b), the offeror
7 shall have the discretion to post a bond, letter of credit, or
8 such other assurances as the department finds acceptable, includ-
9 ing, but not limited to, the establishment of a maintenance
10 budget by the offeror to be administered as directed by the
11 department pursuant to rule.

12 (7) As used in this section, "cost of constructing the
13 planned facilities" means the projected cost of the construction,
14 certified to the department by the offeror through a certificate
15 under seal executed by a licensed professional engineer in good
16 standing, which cost includes an inflation factor computed annu-
17 ally at the rate of 75% of the average of the immediately preced-
18 ing 5 years of a nationally recognized consumer price index.

19 Sec. 13. (1) An offeror that affiliates its membership
20 camping plan with an independent reciprocal program or that
21 offers its own reciprocal program shall deliver to each prospec-
22 tive purchaser prior to the execution of a contract between the
23 prospective purchaser and the offeror the information described
24 in subsection (2). If the reciprocal program operator is dealing
25 directly with a prospective reciprocal program member who is a
26 resident of this state, the reciprocal program operator shall
27 deliver to the prospective member, prior to the initial offering

1 or execution of a contract between the member and the reciprocal
2 program operator, the information required in subsection (2).
3 This section does not apply to a renewal of a contract for a
4 reciprocal program between a member and the reciprocal program
5 operator. Within 30 days of a reciprocal program operator's
6 first affiliating or first acquiring an offeror in this state, or
7 at least 15 days prior to the time it first offers its reciprocal
8 program directly to residents of this state, or within 90 days of
9 the effective date of this act, if it is currently operating in
10 this state, the reciprocal program operator shall file with the
11 department the information required in subsection (2), shall pay
12 an initial filing fee of \$5,000.00 to the department, and is
13 subject to the annual reporting requirements of subsection (5).

14 (2) Information on reciprocal programs shall include all of
15 the following:

16 (a) The name and address of the reciprocal program
17 operator. If the operator is a partnership or an individual
18 doing business under an assumed name, the name or names of the
19 individual or partner.

20 (b) A statement as to whether or not the member's contract
21 with the reciprocal program operator is a separate and distinct
22 contract from the membership camping contract.

23 (c) A statement as to whether or not the member's participa-
24 tion in the reciprocal program is voluntary or mandatory.

25 (d) A complete and accurate description of all of the
26 following:

1 (i) The terms and conditions of the member's contractual
2 relationship with the reciprocal program operator and the
3 procedure by which changes to the contract may be made.

4 (ii) Limitations, if any, on the use by members of the
5 reciprocal program, including, but not limited to, seasonal or
6 holiday restrictions, geographical limitations, reservation
7 requirements, and other restrictions that materially limit the
8 availability of accommodations to members.

9 (e) A statement indicating whether or not use is arranged on
10 the basis of available space and reservation availability.

11 (f) The fees to be paid by participants in the reciprocal
12 program, including a statement indicating whether fees may be
13 changed by the reciprocal program operator and, if so, the cir-
14 cumstances under which those changes may be made.

15 (g) The name and address, or other appropriate means of
16 identifying the location, of each campground included in the
17 reciprocal program as of the end of the most recent prior fiscal
18 year of the reciprocal program operator.

19 (h) The number of members, current to the end of the recip-
20 rocal program operator's most recent prior fiscal year, eligible
21 to use the reciprocal program. The information required by this
22 subdivision shall be consistent with the information required by
23 subsection (5).

24 (3) Prior to execution of a membership camping contract, the
25 member shall certify in writing that he or she has received the
26 information required in subsection (2).

1 (4) The information required in subsection (2) may be
2 delivered to the member or prospective member in 1 or more of the
3 following:

4 (a) A directory.

5 (b) A membership handbook.

6 (c) Disclosures in the membership camping contract if the
7 information is separate and distinct from all other provisions of
8 the contract.

9 (d) A separate document.

10 (5) An annual report shall be completed and submitted to the
11 department within 120 days of the end of the reciprocal program
12 operator's most recent fiscal year in each year after the effec-
13 tive date of this act. The report shall include all of the
14 information required by subsection (2) in the format in which
15 that information will be delivered to members, as well as the
16 information required in this subsection, which shall be certi-
17 fied, under penalties of perjury, by the reciprocal program oper-
18 ator, and the information shall be accurate as of the reciprocal
19 program operator's most recently fiscal year. Each filing shall
20 be accompanied by an annual filing fee of \$500.00. The annual
21 report shall also include all of the following:

22 (a) If the reciprocal program operator is a corporation, the
23 names of the officers, directors, and shareholders owning at
24 least 5% of the outstanding stock or, if a partnership, the names
25 of all general and limited partners.

26 (b) A statement indicating whether the reciprocal program
27 operator or any of its officers, directors, or partners has any

1 legal or beneficial interest in any offeror and, if so, the
2 nature and extent of that interest.

3 (c) A statement describing the manner, if any, in which
4 access to the reciprocal program will be allowed other than by
5 purchase of an affiliated membership camping plan.

6 (6) An offeror shall not be liable for the use, delivery, or
7 publication of the information provided to him or her by an inde-
8 pendent reciprocal program operator.

9 (7) Except as otherwise provided in this section, an inde-
10 pendent reciprocal program operator shall not be liable for
11 either of the following:

12 (a) A representation made by an offeror or its officers,
13 agents, or employees, relating to the independent reciprocal pro-
14 gram or reciprocal program operator.

15 (b) The use, delivery, or publication by the offeror of
16 information relating to the reciprocal program or the reciprocal
17 program operator. The reciprocal program operator shall be
18 liable only for information provided to the offeror.

19 (8) Audio, written, or visual publications or materials
20 relating to a reciprocal program operator or a reciprocal program
21 and provided by the reciprocal program operator shall be filed
22 with the department within 3 days of their use.

23 (9) The failure of a reciprocal program operator to observe
24 the requirements of this section, or the use of any unfair or
25 deceptive act or practice in connection with the operation of a
26 reciprocal program, is a violation of this act.

1 Sec. 14. (1) A salesperson or tour generator shall purchase
2 an annual license from the department for a fee of \$25.00. The
3 license shall expire on June 30 of each year. A person shall not
4 act as a salesperson or tour generator without a license from the
5 department.

6 (2) Prior to issuing a license required by this section, the
7 department shall receive an application on a form prescribed by
8 the department containing pertinent background information as the
9 department determines is necessary to properly identify the
10 applicant and to attest that the applicant has not been convicted
11 of a crime involving consumer fraud or moral turpitude. The fin-
12 gerprinting of applicants shall not be required. The department
13 shall have a 30-day period to review an application after
14 receipt, after which time the application will be considered
15 approved if not specifically denied by the department pursuant to
16 subsection (3). During the review by the department of an ini-
17 tial application, the applicant shall be permitted to act as if
18 he or she were licensed for a period of 30 days only, and if more
19 information is requested by the department that renders the
20 application unapproved at the end of the 30-day period or in the
21 event of a denial of the application, the applicant shall stop
22 all activity requiring licensure until such a time that the
23 application is approved or is ordered approved.

24 (3) The department may deny, suspend, or revoke an
25 applicant's application or license if the department finds that
26 the applicant has been convicted of a crime involving consumer

1 fraud or moral turpitude or if the applicant has violated this
2 act.

3 (4) A salesperson or tour generator is required to notify
4 the department or his or her place of employment while his or her
5 license is in effect.

6 (5) In addition to or in lieu of a suspension or revocation
7 of a license pursuant to subsection (3), a salesperson or tour
8 generator shall be personally liable for violation of this act
9 and shall be fully subject to the penalties and remedies provided
10 in section 15. Each offeror shall supervise, manage, and control
11 the actions of each salesperson and tour generator who is
12 employed in the promotion, marketing, or sale of the membership
13 camping plan, and a violation of this act by the salesperson or
14 tour generator, of which the offeror knew or reasonably should
15 have known and upon which the offeror could have taken action to
16 have prevented, is a violation by the offeror.

17 Sec. 15. (1) To aid in the enforcement of this act, the
18 department may make necessary public or private investigations
19 within or outside this state to determine whether a person has
20 violated or is about to violate this act.

21 (2) The department may require or permit a person to file a
22 written statement under oath or otherwise, as the department
23 determines, as to the facts and circumstances concerning a matter
24 under investigation.

25 (3) For the purpose of an investigation under this act, the
26 director of the department or any officer or employee designated
27 by the director may administer oaths or affirmations, subpoena

1 witnesses and compel their attendance, take evidence, and require
2 the production of any matter that is relevant to the investiga-
3 tion, including the identity, existence, description, nature,
4 custody, condition, and location of books, documents, or other
5 tangible things and the identity and location of persons having
6 knowledge of relevant facts or other matters reasonably calcu-
7 lated to lead to the discovery of material evidence. Upon fail-
8 ure to obey a subpoena or to answer questions propounded by the
9 investigating officer and upon reasonable notice to all persons
10 affected by the failure, the department may apply to the circuit
11 court for an order compelling compliance.

12 (4) Notwithstanding other remedies available to purchasers,
13 if the department has reasonable cause to believe that a viola-
14 tion of this act has occurred, the department may institute
15 enforcement proceedings in its own name against any person as
16 follows:

17 (a) The department may permit a person whose conduct or
18 actions may be under investigation to waive formal proceedings
19 and enter into a consent proceeding whereby a formal or informal
20 order, rule, or letter of censure or warning may be entered
21 against that person.

22 (b) The department may issue an order requiring a person to
23 cease and desist from an unlawful practice under this act and may
24 take affirmative action that in the judgment of the department
25 will carry out the purposes of this act.

1 (c) The department may bring an action in circuit court for
2 declaratory or injunctive relief or for other appropriate relief,
3 including the appointment of a receiver for restitution.

4 (d) The department may impose a civil penalty against a
5 person for violation of this act. A penalty may be imposed on
6 the basis of each day of continuing violation. A penalty for any
7 offense shall not exceed \$10,000.00. All amounts collected shall
8 be deposited with the state treasurer to the credit of the fund
9 created in section 16. If a person fails to pay an assessed
10 civil penalty, the department shall issue an order directing that
11 the person cease and desist from further operation until such
12 time as the civil penalty is paid, or the department may pursue
13 enforcement of the penalty in a court of competent jurisdiction.

14 (e) In order to permit a penalized person an opportunity
15 either to appeal the penalty administratively or to seek relief
16 in a court of competent jurisdiction, an order imposing a civil
17 penalty or a cease and desist order shall not become effective
18 until 20 days after the date of the order.

19 (f) Any action commenced against the department arising out
20 of this act shall be brought in Ingham county.

21 (5) The department is authorized to promulgate rules pursu-
22 ant to the administrative procedures act of 1969, Act No. 306 of
23 the Public Acts of 1969, being sections 24.201 to 24.328 of the
24 Michigan Compiled Laws, as necessary to implement, enforce, and
25 interpret this act.

26 Sec. 16. Proceeds from the fees and civil fines imposed
27 pursuant to this act shall be deposited into the Michigan real

1 estate time-sharing trust fund which is hereby created in the
2 state treasury. Money in this fund, as appropriated by the leg-
3 islature, may be used to defray the expenses incurred by the
4 department in administering this act.

5 Sec. 17. An action for damages or injunctive or declaratory
6 relief for a violation of this act may be brought by any pur-
7 chaser against an offeror, a trustee, a salesperson, a tour gen-
8 erator, a promotional entity, or a reciprocal program operator.
9 The prevailing party in the action shall be entitled to recover
10 reasonable attorney's fees and costs from the losing party,
11 including all appeals. Relief under this section shall not
12 exclude other remedies provided by law.

13 Sec. 18. A person who willfully violates a provision of
14 this act, other than the provisions of section 6, is guilty of a
15 misdemeanor.

16 Sec. 19. Membership camping plans that have been offered
17 for sale in this state prior to the effective date of this act
18 shall be brought into documentary compliance with this act as
19 follows:

20 (a) Each offeror shall file a copy of its proposed member-
21 ship camping contract with the department pursuant to section
22 5(1), together with the filing fee prescribed by section 5(4), no
23 later than September 1, 1990.

24 (b) The department shall review each filing pursuant to sub-
25 division (a) and either approve it or cite it for deficiencies
26 pursuant to section 5(2), no later than November 1, 1990.

1 (c) Each offeror shall use approved membership camping
2 contracts that fully comply with this act beginning on December
3 1, 1990. Between July 1, 1990 and December 1, 1990, the offeror
4 may use any form contract if the laws of this state are complied
5 with.