

LEGISLATIVE BILL 656

Approved by the Governor April 6, 1990

Introduced by Nelson, 35

AN ACT relating to consumer protection; to amend sections 87-303.09, 87-303.10, and 87-306, Reissue Revised Statutes of Nebraska, 1943, and section 87-303.08, Revised Statutes Supplement, 1988; to adopt the Membership Campground Act; to change and provide penalty provisions for the Uniform Deceptive Trade Practices Act; to harmonize provisions; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 21 of this act shall be known and may be cited as the Membership Campground Act.

Sec. 2. For purposes of the Membership Campground Act:

(1) Advertisement shall mean an attempt by publication, dissemination, solicitation, or circulation to induce, directly or indirectly, any person to enter into an obligation or acquire a title or interest in a membership camping contract;

(2) Affiliate shall mean any person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(3) Blanket encumbrance shall mean any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. Blanket encumbrance shall include the lessor's interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. Blanket encumbrance shall not include a lien for taxes or assessments levied by a public body which are not yet

due and payable:

(4) Business day shall mean any day except Saturday, Sunday, or a legal holiday;

(5) Campground shall mean real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device, and shall include the outdoor recreational facilities located on the real property. Campground shall not include a mobile home park as defined in section 76-1464;

(6) Campsite shall mean a space:

(a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, or other similar device used for camping; and

(b) With no permanent dwelling on it;

(7) Commission shall mean the State Real Estate Commission;

(8) Controlling persons of a membership camping operator shall mean each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation, and each general partner and each owner of twenty-five percent or more of the partnership or other interests, if the operator is a general or limited partnership or other person doing business as a membership camping operator;

(9) Facilities shall mean any of the following amenities provided and located on the campground: Campsites; rental trailers; swimming pools; sport courts; recreation buildings and trading posts; or grocery stores;

(10) Membership camping contract shall mean an agreement offered or sold within this state evidencing a purchaser's right to use a campground of a membership camping operator for more than thirty days during the term of the agreement;

(11) Membership camping operator or operator shall mean any person, other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. Membership camping operator shall not include the operator of a mobile home park as defined in section 76-1464;

(12) Offer shall mean an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract;

(13) Person shall mean any individual.

partnership, firm, corporation, or association;

(14) Purchaser shall mean a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator;

(15) Sale or sell shall mean entering into or other disposition of a membership camping contract for value. For purposes of this subdivision, value shall not include a fee to offset the reasonable costs of a transfer of a membership camping contract; and

(16) Salesperson shall mean any individual, other than a membership camping operator, who is engaged in obtaining commitments of persons to enter into membership camping contracts by making a direct sales presentation to the person but shall not include any individual engaged in the referral of persons without making any representations about the camping program or a direct sales presentation to such persons.

Sec. 3. A person shall not offer or sell a membership camping contract in this state unless the membership camping contract is covered by a membership camping registration as provided in the Membership Campground Act or the transaction is exempt under section 6 of this act.

Sec. 4. No person shall, in connection with the offering, sale, or lease of an interest in a membership campground:

(1) Employ any device, scheme, or artifice to defraud;

(2) Make any untrue statement of a material fact;

(3) Fail to state a material fact necessary to make a statement clear;

(4) Issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements on the literature clear;

(5) Issue, circulate, or publish any advertising matter or make any written representation unless the name of the person issuing, circulating, or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation or issue, circulate, or publish any advertising matter containing any statement that the membership campground has been in any way approved by the commission except in

conjunction with a public report issued by the commission.

Sec. 5. (1) Filing fees as prescribed in section 9 of this act shall accompany the application for registration, the renewal of a registration, or any amendment of a registration of membership camping contracts.

(2) The application for registration shall be filed with the commission and shall include all of the following:

(a) The membership camping operator's name and the address of its principal place of business, the form of its organization, the date of organization, the jurisdiction of its organization, and the name and address of each of its offices in this state;

(b) A copy of the membership camping operator's articles of incorporation, partnership agreement, or joint venture agreement as contemplated or currently in effect;

(c) The name, address, and principal occupation for the past five years of the membership camping operator and of each controlling person of the membership camping operator and the extent of each such person's interest in the membership camping operator as of a specified date within thirty days prior to the filing of the application;

(d) A list of affiliates of the membership camping operator, including the names and addresses of officers and directors;

(e) A legal description of each campground owned or operated by the membership camping operator which is represented to be available for use by purchasers and a statement identifying the existing amenities at each campground and the planned amenities represented as to be available for use by purchasers in the future at each campground. If future amenities are represented, the statement shall include the estimated cost and schedule for completion of those amenities;

(f) A description of the membership camping operator's ownership of or other right to use the campground properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the membership camping operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(g) If a blanket encumbrance materially

adversely affects a campground, a legal description of the encumbrance and a description of the steps taken to protect purchasers in accordance with section 16 of this act in case of failure to discharge the encumbrance;

(h) A description of all payments of a purchaser under a membership camping contract, including initial fees and any additional fees, charges, or assessments, together with any provision for changing the payments;

(i) A description of any restraints on the transfer of membership camping contracts, including a complete description of any resale agreement or policy;

(j) A description of the policies relating to the availability of campsites and whether reservations are required;

(k) A description of any grounds for forfeiture of a purchaser's membership camping contract;

(l) A sample copy of each membership camping contract to be offered or sold in this state and the purchase price of each type and, if the price varies, the reason for the variance;

(m) A sample copy of each instrument which a purchaser will be required to execute, and a copy of the disclosure statement required by section 10 of this act;

(n) A statement of the total number of membership camping contracts for each campground intended to be sold in this state and the method used to determine the number, including a statement of commitment that the number will not be exceeded unless good cause is shown to the commission and subsequent approval is granted by the commission;

(o) A summary or copy of the articles, bylaws, rules, regulations, restrictions, or covenants regulating the purchaser's use of each campground and the facilities located on each property, including a statement of whether and how the articles, bylaws, rules, regulations, restrictions, or covenants may be changed;

(p) A description of any reciprocal agreement allowing purchasers to use campsites, facilities, or other properties owned or operated by any person other than the membership camping operator with whom the purchaser has entered into a membership camping contract; and

(q) Financial statements of the membership camping operator in a form acceptable to the commission and prepared in accordance with generally accepted accounting principles, which statements shall include a financial statement for the most recent fiscal year and

a financial statement for the most recent fiscal quarter. The commission may require an audited financial statement if the commission is not satisfied with the reliability of the submitted statement and the ability of the membership camping operator to meet future commitments.

(3) The application shall be signed by the membership camping operator, by an officer or a general partner of the membership camping operator, or by another person holding a power of attorney for such purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

(4) An application for registration shall be amended within twenty-five days of any material change in the information included in the application. A material change shall include, but not be limited to, any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract but shall not include minor changes covering the use of the campground, its facilities, or the reciprocal program.

(5) The registration of the membership camping operator shall be renewed annually by filing an application for renewal with the required fee prescribed in section 9 of this act not later than thirty days prior to the anniversary of the current registration. The application shall include all changes which have occurred in the information included in the application previously filed.

(6) Registration with the commission shall not constitute approval or endorsement by the commission of the membership camping operator, the membership camping contract, or the campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement shall be unlawful.

Sec. 6. The following transactions shall be exempt from registration:

(1) The offer, sale, or transfer by any one person of not more than one membership camping contract in any twelve-month period;

(2) The offer or sale by a government, government agency, or other subdivision of government;

(3) The bona fide pledge of a membership camping contract; and

(4) Transactions subject to regulation

pursuant to the Nebraska Time-Share Act.

Sec. 7. The application for registration shall become effective automatically upon the expiration of forty-five calendar days following filing of a completed application with the commission unless one of the following occurs:

(1) The application is denied under section 8 of this act;

(2) The commission grants the registration effective as of an earlier date; or

(3) The applicant consents to a delay of the effective date.

If the commission requests additional information with respect to the application, the application shall become effective upon the expiration of fifteen business days following the filing with the commission of the additional information or forty-five days after the original filing, whichever is later, unless an order pursuant to section 8 of this act is issued or unless declared effective on an earlier date by order of the commission.

Sec. 8. The commission may by order deny a membership camping operator's application or suspend or revoke his or her registration if the commission finds that the order is for the protection of prospective purchasers or purchasers of membership camping contracts or that one of the following applies:

(1) The membership camping operator's advertising, sales techniques, or trade practices have been or are deceptive, false, or misleading;

(2) The membership camping operator is not financially responsible or has insufficient capital to warrant its offering or selling membership camping contracts in this state. The commission may require a surety bond or, if one is unobtainable, other evidence of financial assurances satisfactory to the commission;

(3) The membership camping operator's application for registration or an amendment to the registration is incomplete in a material respect;

(4) The membership camping operator has failed to file timely amendments to the application for registration as required by subsection (4) of section 5 of this act;

(5) The membership camping operator has failed to comply with any provision of the Membership Campground Act that materially affects the rights of purchasers, prospective purchasers, or owners of membership camping contracts;

(6) The membership camping operator has made a

false or misleading representation or concealed material facts in any document or information filed with the commission; or

(7) The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility is planned without reasonable expectation that the facility will be completed within a reasonable time or without the apparent means to ensure its completion.

An order denying an application or suspending or revoking a registration shall be sent by certified mail, return receipt requested, to the applicant or registrant. The applicant or registrant shall have thirty calendar days from the date the order was mailed to request a hearing. If a hearing is not requested within thirty days and is not ordered by the commission, the order shall remain in effect until modified or vacated by the commission, except that if the commission finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the order, summary suspension of a membership camping operator's registration may be ordered. If the membership camping operator desires to contest the summary order, the membership camping operator shall request a hearing within fifteen calendar days of service of the summary order. If so requested, the hearing shall be instituted within twenty calendar days of the request, and the contest of the summary order shall be promptly determined.

Sec. 9. Each application for registration and each application for amendment or renewal of a registration shall be accompanied by a fee not to exceed three hundred dollars as determined by the commission which shall be sufficient to defray the costs of administering the Membership Campground Act.

Sec. 10. (1) A membership camping operator subject to the registration requirements of sections 3 and 5 of this act shall provide a disclosure statement to a purchaser or prospective purchaser before the person signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract.

(2) The front cover or first page of the disclosure statement shall contain only the following in the order stated:

(a) Membership camping operator's disclosure statement printed at the top in boldface type of a

minimum size of ten points;

(b) The name and principal business address of the membership camping operator and any material affiliate of the membership camping operator;

(c) A statement that the membership camping operator is in the business of offering for sale membership camping contracts;

(d) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE ONLY SUMMARY IN NATURE. YOU, AS A PROSPECTIVE PURCHASER, SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. ANY ORAL MISREPRESENTATION SHALL BE A VIOLATION OF THE MEMBERSHIP CAMPGROUND ACT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT; and

(e) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:

IF YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL THE CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE THIRD BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED OR THE DATE OF RECEIPT OF THIS DISCLOSURE STATEMENT, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU, AS THE PURCHASER, MUST HAND DELIVER OR MAIL NOTICE OF YOUR INTENT TO CANCEL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEY PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE.

(3) The following pages of the disclosure statement shall contain all of the following in the

order stated:

(a) The name, principal occupation, and address of every director, partner, or controlling person of the membership camping operator;

(b) A description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers;

(c) A description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business;

(d) The location of each of the campgrounds which is to be available for use by purchasers and a description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A description of any facilities that are or will be available to nonpurchasers and a projected date of completion shall also be provided. The description shall include, but not be limited to, the number of campsites in each campground and campsites in each campground with full or partial hookups, swimming pools, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, and grocery stores;

(e) The fees and charges that purchasers are or may be required to pay for the use of the campground or any facilities;

(f) Any initial, additional, or special fee due from the purchaser, together with a description of the purpose and method of calculating the fee;

(g) The extent to which financial arrangements, if any, have been provided for the completion of facilities, together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete the facilities;

(h) The names of the managing entity, if any, and the significant terms of any management contract, including, but not limited to, the circumstances under which the membership camping operator may terminate the management contract;

(i) A statement, whether by way of supplement or otherwise, of the rules, regulations, restrictions, or covenants regulating the purchaser's use of the

campground and the facilities which are to be available for use by the purchaser, including a statement of whether and how the rules, regulations, restrictions, or covenants may be changed;

(j) A statement of the policies covering the availability of campsites, the availability of reservations, and the conditions under which they are made;

(k) A statement of any grounds for forfeiture of a purchaser's membership camping contract;

(l) A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which the withdrawal shall be permitted;

(m) A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent on the continued affiliation of the membership camping operator with that reciprocal program, whether additional costs may be required to use reciprocal facilities, and whether the membership camping operator reserves the right to terminate such affiliation;

(n) As to all memberships offered by the membership camping operator at each campground, all of the following:

(i) The form of membership offered;

(ii) The types of duration of membership along with a summary of the major privileges, restrictions, and limitations applicable to each type;

(iii) Provisions that have been made for public utilities at each campsite, including water, electricity, telephone, and sewage facilities; and

(iv) The number of memberships to be sold to that campground;

(o) A statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts and a detailed description of how any such resale program is operated; and

(p) The following statement printed in double-spaced, boldface type of a minimum size of ten points:

REGISTRATION OF THE MEMBERSHIP CAMPING OPERATOR WITH THE STATE REAL ESTATE COMMISSION SHALL NOT CONSTITUTE AN APPROVAL OR ENDORSEMENT BY THE COMMISSION OF THE MEMBERSHIP CAMPING OPERATOR, THE MEMBERSHIP

CAMPING CONTRACT, OR THE CAMPGROUND.

The membership camping operator shall promptly amend the disclosure statement to reflect any material change and shall promptly file any such amendments with the commission.

Sec. 11. The membership camping operator shall deliver to the purchaser a fully executed copy of a membership camping contract in writing, which contract shall include at least the following information:

(1) The name of the membership camping operator and the address of its principal place of business;

(2) The actual date the membership camping contract was executed by the purchaser;

(3) The total financial obligation imposed on the purchaser by the contract, including the initial purchase price and any additional charge the purchaser may be required to pay;

(4) A statement that the membership camping operator is required by law to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of the contract and that failure to do so is a violation of the law;

(5) The full name of each salesperson involved in the execution of the membership camping contract; and

(6) In immediate proximity to the space reserved for the purchaser's signature, a conspicuous statement printed in double-spaced, boldface type of a minimum size of ten points:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION AT ANY TIME WITHIN THREE BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE CONTRACT OR THE RECEIPT OF THE DISCLOSURE STATEMENT FROM THE MEMBERSHIP CAMPING OPERATOR, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE CONTRACT, HAND DELIVER OR MAIL A POSTAGE PREPAID WRITTEN CANCELLATION TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS LISTED ON THIS CONTRACT. UPON CANCELLATION AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE, YOU WILL RECEIVE A REFUND OF ALL MONEY PAID WITHIN THIRTY CALENDAR DAYS AFTER THE MEMBERSHIP CAMPING OPERATOR RECEIVES NOTICE OF YOUR CANCELLATION.

Sec. 12. A purchaser shall have the right to cancel a membership camping contract within three business days following the date the contract is executed or within three business days following the date of delivery of the written disclosure statement required by section 10 of this act, whichever is later.

The right to cancel may not be waived and any attempt to obtain such a waiver shall be unlawful and considered a violation of the Membership Campground Act.

A purchaser may cancel the contract by hand delivering a written statement of cancellation or by mailing, postage prepaid, such a statement to the membership camping operator. The cancellation shall be deemed effective upon mailing.

Upon cancellation and return of all membership and reciprocal use materials furnished at the time of purchase, the membership camping operator shall refund to the purchaser all payments and other consideration given by the purchaser. The refund shall be made within thirty calendar days after the membership camping operator receives notice of the cancellation and may, when payment has been made by credit card, be made by an appropriate credit to the purchaser's account. If the membership camping operator fails to refund the payment or other consideration given within the thirty-day period, it shall be presumed that the membership camping operator is willfully and wrongfully retaining the payment or other consideration. The willful and wrongful retention of a payment or other consideration in violation of this section shall render the membership camping operator liable for the amount of that portion of the payment or other consideration withheld from the purchaser, together with reasonable attorney's fees and court costs.

The membership camping operator or salesperson shall orally inform the purchaser at the time the contract is executed of the right to cancel the contract as provided in this section.

Sec. 13. A purchaser's remedy for errors in or omissions from the membership camping contract, the materials delivered to the purchaser at the time of sale, or any of the disclosures required in section 17 of this act shall be limited to a right of cancellation and refund of the payment made or consideration given by the purchaser, except that such limitation shall not apply to errors or omissions from the contract or disclosures or other requirements of the Membership Campground Act which are part of a scheme to willfully misstate or omit the information required. Reasonable attorney's fees and court costs shall be awarded to the prevailing party in any action under this section.

Sec. 14. (1) Unless the transaction is exempt under section 6 of this act, it shall be unlawful for any person to act as a salesperson in this state without first registering as a salesperson pursuant to section

15 of this act. Persons licensed as real estate brokers or real estate salespersons under the Nebraska Real Estate License Act shall be exempt from registration under this section.

(2) Any person violating this section shall be guilty of a Class II misdemeanor.

Sec. 15. (1) A salesperson may apply for registration by filing with the commission an application which includes the following information:

(a) A statement detailing whether the applicant within the past five years has been convicted of any misdemeanor or felony involving theft, fraud, or dishonesty or whether the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any law designed to protect consumers; and

(b) A statement describing the applicant's employment history for the past five years and whether any termination of employment during the last five years was occasioned by any theft, fraud, or act of dishonesty.

(2) Each application for initial registration shall provide to the commission as part of the application a recent photograph of the applicant.

(3) The commission may deny a salesperson's application for registration or suspend or revoke his or her registration if the commission finds that the order is necessary for the protection of purchasers or owners of membership camping contracts or that the registrant or applicant within the past five years:

(a) Has been convicted of any misdemeanor or felony involving theft, fraud, or act of dishonesty or has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any law designed to protect consumers;

(b) Has violated any material provision of the Membership Campground Act; or

(c) Has engaged in fraudulent or deceitful practices in any industry involving sales to consumers.

(4) Registration shall be effective for a period of one year. Registration shall be renewed annually by the filing of a form prescribed by the commission for such purpose. The registration application or the renewal application shall be accompanied by a fee of fifty dollars and shall automatically become effective upon the expiration of seven business days following filing with the commission unless:

(a) The application has been denied under

subsection (3) of this section;

(b) The commission allows the registration to become effective on an earlier date; or

(c) The applicant or registrant consents to delay of the effective date.

Sec. 16. (1) With respect to any property in this state acquired and put into operation by a membership camping operator on or after the operative date of this act, the membership camping operator shall not offer or execute a membership camping contract in this state granting the right to use the property until the following requirements are met:

(a) Each person holding an interest in a voluntary blanket encumbrance has executed and delivered to the commission a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located. The agreement shall include all of the following:

(i) That the rights of the holder or holders of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers;

(ii) That any person who acquires the affected campground or any portion of the campground by the exercise of any right of sale or foreclosure contained in the blanket encumbrance takes the campground subject to the rights of purchasers; and

(iii) That the holder or holders of the blanket encumbrance shall not use or cause the campground to be used in a manner which interferes with the right of purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract; and

(b) Each hypothecation lender which has a lien on or security interest in the membership camping operator's ownership interest in the campground has executed and delivered to the commission a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender has executed, delivered, and recorded an instrument stating that such person will give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this section:

(i) Hypothecation lender shall mean a financial institution which provides a major

hypothecation loan to a membership camping operator:

(ii) Major hypothecation loan shall mean a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts; and

(iii) Nondisturbance agreement shall mean an instrument by which a hypothecation lender agrees to conditions substantially the same as those set forth in subdivision (a) of this subsection.

(2) In lieu of compliance with subsection (1) of this section, a surety bond or letter of credit satisfying the requirements of this subsection may be delivered to and accepted by the commission. The surety bond or letter of credit shall be issued to the commission for the benefit of purchasers and shall be in an amount which is not less than one hundred five percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. The bond shall be issued by a surety which is authorized to do business in this state and which has sufficient net worth to satisfy the indebtedness. The aggregate liability of the surety for all damages shall not exceed the amount of the bond. The letter of credit shall be irrevocable, shall be drawn upon a bank, savings and loan association, or other financial institution, and shall be in form and content acceptable to the commission. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lienholder, if for any reason the blanket encumbrance is enforced.

Sec. 17. (1) Any advertisement, communication, or sales literature relating to membership camping contracts, including oral statements by a salesperson or any other person, shall not contain:

(a) Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which the statements were made;

(b) Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible; or

(c) Any statement or representation or pictorial presentation of proposed improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

(2) A person shall not by any means, as part of an advertising program, offer any item of value as an

inducement to the recipient to visit a location, attend a sales presentation, or contact a salesperson unless the person clearly and conspicuously discloses in writing in the offer in readily understandable language each of the following:

(a) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of such visit, sales presentation, or contact with a salesperson;

(b) A general description of the business of the owner or provider identified and the purpose of any requested visit, sales presentation, or contact with a salesperson, including a general description of the facilities or proposed facilities or services which are the subject of the sales presentation;

(c) A statement of the odds, in arabic numerals, of receiving each item offered;

(d) All restrictions, qualifications, and other conditions that shall be satisfied before the recipient is entitled to receive the item, including all of the following:

(i) Any deadline by which the recipient shall visit the location, attend the sales presentation, or contact the salesperson in order to receive the item;

(ii) The approximate duration of any visit and sales presentation; and

(iii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both husband and wife be present in order to receive the item;

(e) A statement that the owner or provider reserves the right to provide a rain check or a substitute or like item if these rights are reserved;

(f) A statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient; and

(g) All other rules, terms, and conditions of the offer, plan, or program.

(3) A person making an offer subject to registration under sections 3 and 5 of this act or the person's employee or agent shall not offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(4) A person making an offer subject to

registration under sections 3 and 5 of this act or the person's employee or agent shall not fail to provide any offered item which a recipient is entitled to receive, unless the failure to provide the item is due to a higher than reasonably anticipated response to the offer which caused the item to be unavailable and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

(5) If the person making an offer subject to registration under sections 3 and 5 of this act is unable to provide an offered item because of limitations of supply not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered or receive a like or substitute item of equal or greater value at no additional cost or obligation to the recipient.

(6) If a rain check is provided, the person making an offer subject to registration under sections 3 and 5 of this act, within a reasonable time, and in any event not later than thirty calendar days after the rain check is issued, shall deliver the agreed item to the recipient's address without additional cost or obligation to the recipient unless the item for which the rain check is provided remains unavailable because of limitations of supply not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for such reasons, the person, not later than thirty days after the expiration of the thirty-day period, shall deliver a like or substitute item of equal or greater retail value to the recipient.

(7) On the request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to registration under sections 3 and 5 of this act shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(8) A person making an offer subject to registration under sections 3 and 5 of this act or the person's employee or agent shall not do any of the following:

(a) Misrepresent the size, quantity, identity, or quality of any prize, gift, money, or other item of value offered;

(b) Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value;

(c) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive a particular prize, gift, money, or other item of value, unless the representation is true;

(d) Label any offer a notice of termination or notice of cancellation; and

(e) Misrepresent in any manner the offer, plan, or program.

Sec. 18. Whenever in the judgment of the commission any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of the Membership Campground Act, the Attorney General may maintain an action in the name of the State of Nebraska in the district court of the county in which such violation or threatened violation occurred or in the district court of Lancaster County to abate and temporarily and permanently enjoin such acts and practices and to enforce compliance with the Membership Campground Act. The Attorney General shall not be required to give any bond nor shall any court costs be adjudged against the state.

Sec. 19. The Attorney General may seek a civil penalty of not more than ten thousand dollars for each violation of the Membership Campground Act in the district court of Lancaster County. Each day of continued violation shall constitute a separate offense.

Sec. 20. A membership camping contract or an offer or a sale of a membership camping contract shall not be subject to the Securities Act of Nebraska or the Nebraska Time-Share Act.

Sec. 21. The commission may adopt and promulgate rules and regulations to carry out the Membership Campground Act.

Sec. 22. That section 87-303.08, Revised Statutes Supplement, 1988, be amended to read as follows:

87-303.08. Any person who violates subdivision (a){14} of section 87-302 the Uniform Deceptive Trade Practices Act or sections 87-308 to 87-312 shall be guilty of a Class II misdemeanor except as otherwise provided in the act or such sections. Any person who violates any of the other provisions of section 87-302 or 87-303-01 shall be guilty of a Class III misdemeanor

Sec. 23. That section 87-303.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-303.09. Any person who willfully violates

the terms of an injunction or declaratory judgment of the court or the terms of a written assurance of voluntary compliance entered into pursuant to ~~sections 87-301 to 87-306~~ the Uniform Deceptive Trade Practices Act shall be guilty of a Class IV felony, and shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars, or by imprisonment in the Department of Correctional Services adult correctional facility not more than five years, or by both such fine and imprisonment.

Sec. 24. That section 87-303.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-303.10. A civil or ~~criminal~~ action arising under ~~sections 87-301 to 87-306~~, the Uniform Deceptive Trade Practices Act may be brought only within ~~one year~~ four years from the date of the purchase of goods or services.

Sec. 25. Any person who violates section 87-302, except subdivision (a)(14) of such section, or section 87-303.01 or who willfully violates the terms of an injunction or declaratory judgment of a district court or the terms of a written assurance of voluntary compliance entered into pursuant to the Uniform Deceptive Trade Practices Act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General, acting in the name of the state, may seek recovery of such civil penalties in a civil action. For purposes of this section, the district court which issues any injunction shall retain jurisdiction and the cause shall be continued while the Attorney General seeks the recovery of such civil penalties.

Sec. 26. That section 87-306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-306. Sections 87-301 to 87-306 and section 25 of this act shall be known and may be cited as the Uniform Deceptive Trade Practices Act.

Sec. 27. Sections 1 to 21 of this act shall become operative on January 1, 1991. The other sections of this act shall become operative on their effective date.

Sec. 28. That original sections 87-303.09, 87-303.10, and 87-306, Reissue Revised Statutes of Nebraska, 1943, and section 87-303.08, Revised Statutes Supplement, 1988, are repealed.