

HOUSE BILL REPORT

ESHB 2688

As Amended by Senate

Title: An act relating to sellers of travel.

Brief Description: Modifying the duties and responsibilities of sellers of travel.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives G. Cole and King; by request of Attorney General).

Brief History:

Reported by House Committee on:
Commerce & Labor, February 1, 1994, DPS;
Appropriations, February 5, 1994, DPS(CL-A APP);
Passed House, February 12, 1994, 57-37;
Amended by Senate.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Conway; Horn; King; Springer and Veloria.

Minority Report: Do not pass. Signed by 2 members: Representatives Lisk, Ranking Minority Member; and Chandler, Assistant Ranking Minority Member.

Staff: Jim Kelley (786-7166).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill as amended by Committee on Appropriations do pass. Signed by 19 members: Representatives Sommers, Chair; Valle, Vice Chair; Carlson, Assistant Ranking Minority Member; Appelwick; Basich; Dellwo; Dorn; Dunshee; G. Fisher; Foreman; Jacobsen; Lemmon; Linville; H. Myers; Peery; Rust; Wang; Wineberry and Wolfe.

Minority Report: Do not pass. Signed by 7 members: Representatives Silver, Ranking Minority Member; Ballasiotes; Cooke; Sehlin; Sheahan; Stevens and Talcott.

Staff: Susan Nakagawa (786-7145).

Background: In 1989 the Department of Licensing, in response to a request by the House Commerce & Labor Committee, conducted a sunrise review of the travel industry. The department made the following recommendations:

- 1) that all travel firms be required to register with the state;
- 2) that a financial analysis of the impact of trust accounts be undertaken to determine whether a trust account regulation would produce a significant number of business failures in the travel industry;
- 3) that all travel firms be included under the provisions of the Travel Charter and Tour Operators Act requiring a written disclosure to customers; and
- 4) that investigation and enforcement of existing fair business practice regulations be enhanced in order to produce a deterrent impact on fraudulent practices in the travel industry.

Washington has a statute regulating travel charter and tour operators. The statute specifically exempts travel agents from its coverage. The statute contains such provisions as: advertising restrictions; written disclosure requirements; a right to cancellation and refund in case of a material misrepresentation; and a trust account or bond requirement. However, a travel charter or tour operator need not comply with the trust account or bond requirement if a written agreement to provide full service in the event of default exists between the travel charter or tour operator and another travel charter or tour operator business that meets certain minimum standards.

Summary of Bill: The statute regulating travel charter or tour operators is expanded to apply to sellers of travel. A "seller of travel" includes a person, firm or corporation that transacts business with Washington consumers, including a travel agency that sells, provides, furnishes contracts for, arranges or advertises to arrange for any travel services. "Seller of travel" does not include any common carrier.

Registration requirement

Sellers of travel must be registered with the Department of Licensing. Registration numbers must be conspicuously posted in the place of business and in all advertisements.

Registrations are not assignable or transferable.
Registrations must be renewed every two years.

Applications

Applications for registration must be in the form prescribed by the director and must include certain listed information, including: (1) name, address and phone number; (2) proof of a valid business license; (3) a copy of the required bond; (4) verification that the seller of travel maintains the required trust account; (5) the required registration fee; and (6) the name, address and phone numbers of all employees covered by the registration.

Denial, suspension, or revocation of registration

The director may deny, suspend or revoke the registration of a seller of travel if the applicant for registration or renewal: (1) was previously the holder of a revoked or suspended registration and is not entitled to reinstatement; (2) has been found guilty of a felony involving moral turpitude, a misdemeanor concerning fraud or conversion, or a civil judgment involving willful fraud, misrepresentation, or conversion; (3) has made a false statement of material fact in an application; (4) has violated this act or rules adopted under this act; (5) has failed to display the registration as required; (6) has published a misleading or fraudulent statement; (7) has committed a fraudulent practice in the operation of a travel business; or (8) has aided or abetted another person's unregistered practice. The director may revoke the registration of a seller of travel after a violation of this act or the Consumer Protection Act.

Bond requirement

Each registrant must file an adequate surety bond of at least \$10,000 running to the state as obligee and running to the benefit of the state and any person who suffers a loss by reason of violations of this chapter. In lieu of a surety bond, the applicant may file with the director a certificate of deposit, an irrevocable letter of credit or other instrument approved by the director for an amount equal to the required bond. A person injured by a violation of this chapter may bring an action against the bond.

Trust account requirement

Within three business days of receipt, a seller of travel must deposit all sums received for travel services in a trust account maintained in a federally-insured financial institution in Washington. This does not apply, however, to

airline sales when payments are made through the airline reporting corporation either by cash or credit card sale. The seller of travel may not encumber the amount in the account or withdraw money from the account, except for the following purposes: (1) partial or full payment to the provider; (2) refunds as required by this chapter; (3) the amount of the sales commission; (4) interest earned and credited to the trust account; or (5) remaining funds of a purchaser once all travel services or tickets have been provided. If the seller of travel maintains its principal place of business in another state, maintains a trust account in that state and has transacted more than \$5 million worth of business in Washington in the preceding year, the out-of-state trust account may be substituted for the required in-state trust account.

Advertising

A seller of travel may not advertise that travel services are available unless he or she has determined that the services advertised are available at the time the advertisement is placed. The seller of travel must maintain written documentation for at least two years of the steps taken to verify that the advertised offer was available at the time of the advertisement.

Disclosure to customers

At the time of booking, a seller of travel must provide to each customer the following information: (1) the seller's name and business address; (2) the amount paid, date of payment, purpose of payment and an itemized statement of the balance due; (3) the seller's registration number; (4) the travel vendor or provider's name and all pertinent information known at the time; (5) conditions for cancellation; and (6) a specified statement of the customer's right to a refund if the services are not performed in conformance with the contract.

Cancellation and refund

If the services contracted for are canceled, the seller shall refund the money due to the customer within 30 days of receiving the funds from the vendor or within 14 days if the funds were not yet forwarded to the vendor. Any material misrepresentation about the services offered is deemed to be a cancellation. If the services are paid for by credit card, any refund to the credit card must be applied for within 10 days from the cancellation.

Director's powers and duties

The director has the following powers and duties: (1) to adopt, amend and repeal rules; (2) to issue, renew and deny registrations; (3) to suspend or revoke registrations; (4) to establish fees; (5) to inspect and audit books and records relating to the trust account and bond requirements; and (6) to do all things necessary to carry out the purposes of the act.

The director may, in his or her discretion: (1) conduct investigations; (2) publish information concerning violations of the chapter; and (3) investigate complaints concerning practices by sellers of travel for which registration is required. The director may administer oaths, subpoena witnesses, require the production of documents and issue cease and desist orders. The director also may assess against a person who violates this act, a civil penalty of not more than \$1,000 per violation and restitution.

Injunctions

The attorney general, a county prosecuting attorney, the director or any other person as authorized by law may maintain an action in the name of the state to enjoin a person selling travel services for which registration is required from engaging in the practice until the registration is secured. A person who violates an injunction issued under this act must pay a civil penalty of up to \$25,000.

Service of process on out-of-state sellers of travel

The director is deemed to be the agent of a nonresident seller of travel for the purpose of service of process.

Criminal penalties

It is a gross misdemeanor to knowingly violate this act or knowingly give false or incorrect information to the director, attorney general or county prosecuting attorney in statements required to be filed under this act. It is a misdemeanor to violate the act if knowledge is not proven.

Public disclosure

All information, documents and reports filed with the director under this act are matters of public record and are open to public inspection, subject to reasonable regulation.

Consumer protection act

A violation of this act is deemed to be a violation of the Consumer Protection Act.

Sunset

On January 1, 2001, the new provisions regulating sellers of travel expire and the prior law regulating travel charter and tour operators takes effect again.

EFFECT OF SENATE AMENDMENT(S): The definitions of persons and companies excluded from the registration requirements are made more specific. The exemptions include affiliates of common carriers if they are primarily engaged in selling travel services provided by the carrier.

Very large corporations who issue stock and any corporation whose stock is listed on a national securities exchange and their subsidiaries are exempted from the requirement of including their registration number on all advertisements and the requirement of listing all employees on their registration application.

The application requirements are amended to reflect changes in the underlying requirements of the bill.

The bonding requirement is stricken. Instead, the department must examine the possible establishment of a cost recovery fund, surety bond, or other requirement to indemnify consumers. The department must report on this study to the Legislature by December 1, 1994.

Language is added providing that the seller of travel need not refund cancellation penalties imposed by the vendor if the penalties were disclosed to the customer in the disclosure statement.

The requirement that a seller of travel report to the department, within 45 days, any changes regarding employees is deleted.

The requirement that payments received from customers must be deposited in the trust account is changed to require the deposit within five days rather than three days.

The sections repealing the new registration requirements and reestablishing the registration of travel charter and tour operators as of January 1, 2001 are stricken.

Fiscal Note: Available.

Effective Date: Sections 1 through 29 of the bill take effect January 1, 1996. Sections 30 through 38 of the bill take effect January 1, 2001. The director of licensing, beginning July 1, 1995, may take such steps as are necessary to ensure that this act is implemented on its effective dates.

Testimony For: (Commerce & Labor) This bill protects consumers and legitimate travel services. It is the result of long negotiations. Travel complaints are among the top ten categories of complaints received by the Attorney General. The registration provision is critical. The advertising restrictions, bond requirement, trust account requirement and inclusion of out-of-state businesses are also important. It is a simple, straightforward and consistent bill. If this bill scares away out-of-state companies, there are legitimate Washington companies who can fill the void. The travel coalition supports the bill. Many consumers have been burned by unscrupulous travel agents. It is too bad this bill was not in place in time to protect them.

(Appropriations) This is one of the top 10 consumer complaints received by the Office of the Attorney General. The bill has been developed with both consumers and representatives of the travel industry.

Testimony Against: (Commerce & Labor) The exclusion for carriers includes language that has no relationship to reality. The bond requirement is inadequate in the protection it provides and onerous on the businesses. An indemnification pool would make much more sense. The last thing we need is more regulation on small business. The law could achieve the same purposes with much less burden on business.

(Appropriations) None.

Witnesses: (Commerce & Labor) (In favor) Attorney General Christine Gregoire; Sally Gustafson and Elaine Rose, Office of the Attorney General; Steve Danishek, TMA Inc.; Joe Daniels and Dona Papadimitriou, Washington State Coalition of Travel; and Alicia Demareuz, private citizen. (Opposed) Anthony Thein, Holland-America Westours; and Ross Jones, private citizen.

(Appropriations) Elaine Rose, Office of the Attorney General (pro).

VOTE ON FINAL PASSAGE:

Yeas 57; Nays 37; Excused 4

Nays: Representatives Backlund, Ballard, Basich, Brough, Brumsickle, Chandler, Chappell, Cooke, Dyer, Edmondson, Forner, Fuhrman, Grant, Hansen, Johanson, Lemmon, Lisk, Long, McMorris, Mielke, Padden, Rayburn, Reams, Roland, Schmidt, Schoesler, Sehlin, Sheahan, Sheldon, Shin, Silver, Stevens, Talcott, B. Thomas, L. Thomas, Wood, Zellinsky

Excused: Representatives Ballasiotes, Horn, Riley, Van Luven