
HOUSE BILL 1704

State of Washington

54th Legislature

1995 Regular Session

By Representatives Lisk, L. Thomas, Ballasiotes, Kremen, Chappell, Cooke, Goldsmith, Padden, Radcliff, Mulliken, Pennington, McMorris, Smith, Delvin, Hickel, Mastin, Sehlin, Beeksma, Robertson, Cairnes, Koster, Brumsickle, D. Schmidt, Horn, Reams, Campbell, Chandler, Backlund, McMahan and Elliot

Read first time 02/06/95. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to sellers of travel; amending RCW 19.138.010,
2 19.138.021, 19.138.030, 19.138.040, 19.138.050, 19.138.140, 19.138.150,
3 19.138.160, 19.138.170, 19.138.180, 19.138.190, 19.138.200, 19.138.210,
4 19.138.220, 19.138.230, 19.138.240, 19.138.250, 19.138.270, 19.138.280,
5 19.138.300, and 19.138.310; repealing RCW 19.138.055, 19.138.100,
6 19.138.110, 19.138.120, 19.138.130, 19.138.1701, and 19.138.260;
7 prescribing penalties; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 **Sec. 1.** RCW 19.138.010 and 1994 c 237 s 1 are each amended to read
10 as follows:

11 The legislature finds and declares that advertising, sales, and
12 business practices of certain sellers of travel have worked financial
13 hardship upon the people of this state; that the travel business has a
14 significant impact upon the economy and well-being of this state and
15 its people; that problems have arisen regarding certain sales of
16 travel; and that the public welfare requires (~~registration of sellers~~
17 ~~of travel~~) vigorous enforcement of consumer protection statutes in
18 order to eliminate unfair advertising, sales and business practices.
19 The legislature further finds it necessary to establish standards that

1 will safeguard the people against financial hardship and to encourage
2 fair dealing and prosperity in the travel business.

3 **Sec. 2.** RCW 19.138.021 and 1994 c 237 s 2 are each amended to read
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter.

7 ~~(1) ("Department" means the department of licensing.~~

8 ~~(2) "Director" means the director of licensing or the director's~~
9 ~~designee.~~

10 ~~(3))~~ "Seller of travel" means a person, firm, or corporation both
11 inside and outside the state of Washington, who transacts business with
12 Washington consumers, including, but not limited to, travel agencies,
13 who sell, provide, furnish contracts for, arrange, or advertise, either
14 directly or indirectly, by any means or method, to arrange or book any
15 travel services including travel reservations or accommodations,
16 tickets for domestic or foreign travel by air, rail, ship, bus, or
17 other medium of transportation or hotel or other lodging accommodation
18 and vouchers or coupons to be redeemed for future travel or
19 accommodations for a fee, commission, or other valuable consideration.

20 ~~((a))~~ "Seller of travel" includes a travel agent and any person
21 who is an independent contractor or outside agent for a travel agency
22 or other seller of travel whose principal duties include consulting
23 with and advising persons concerning travel arrangements or
24 accommodations in the conduct or administration of its business. ~~((If~~
25 ~~a seller of travel is employed by a seller of travel who is registered~~
26 ~~under this chapter, the employee need not also be registered.~~

27 ~~(b) "Seller of travel" does not include:~~

28 ~~(i) An air carrier;~~

29 ~~(ii) An owner or operator of a vessel including an ocean common~~
30 ~~carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of~~
31 ~~a vessel that is required to establish its financial responsibility in~~
32 ~~accordance with the requirements of the federal maritime commission, 46~~
33 ~~U.S.C. App. 817 (e), and a steamboat company as defined in RCW~~
34 ~~84.12.200 whether or not operating over and upon the waters of this~~
35 ~~state;~~

36 ~~(iii) A motor carrier;~~

37 ~~(iv) A rail carrier;~~

1 ~~(v) A charter party carrier of passengers as defined in RCW~~
2 ~~81.70.020;~~

3 ~~(vi) An auto transportation company as defined in RCW 81.68.010;~~

4 ~~(vii) A hotel or other lodging accommodation;~~

5 ~~(viii) An affiliate of any person or entity described in (i)~~
6 ~~through (vii) of this subsection (3)(b) that is primarily engaged in~~
7 ~~the sale of travel services provided by the person or entity. For~~
8 ~~purposes of this subsection (3)(b)(viii), an "affiliate" means a person~~
9 ~~or entity owning, owned by, or under common ownership, with "owning,"~~
10 ~~"owned," and "ownership" referring to equity holdings of at least~~
11 ~~eighty percent.~~

12 ~~(4))~~ (2) "Travel services" includes transportation by air, sea, or
13 rail ground transportation, hotel or any lodging accommodations, or
14 package tours, whether offered or sold on a wholesale or retail basis.

15 ~~((5))~~ (3) "Advertisement" includes, but is not limited to, a
16 written or graphic representation in a card, brochure, newspaper,
17 magazine, directory listing, or display, and oral, written, or graphic
18 representations made by radio, television, or cable transmission that
19 relates to travel services.

20 **Sec. 3.** RCW 19.138.030 and 1994 c 237 s 10 are each amended to
21 read as follows:

22 A seller of travel shall not advertise that air, sea, or land
23 transportation either separately or in conjunction with other services
24 is or may be available unless he or she has, prior to the
25 advertisement, determined that the product advertised was available at
26 the time the advertising was placed. This determination can be made by
27 the seller of travel either by use of an airline computer reservation
28 system, or by formal written confirmation from the vendor whose program
29 is being advertised.

30 It is the responsibility of the seller of travel to keep written or
31 printed documentation of the steps taken to verify that the advertised
32 offer was available at the time the advertising was placed. These
33 records are to be maintained for at least two years after the placement
34 of the advertisement.

35 **Sec. 4.** RCW 19.138.040 and 1994 c 237 s 11 are each amended to
36 read as follows:

1 At or prior to the time of full or partial payment for air, sea, or
2 land transportation or any other services offered by the seller of
3 travel in conjunction with the transportation, the seller of travel
4 shall furnish to the person making the payment a written statement
5 conspicuously setting forth the following information:

6 (1) The name and business address and telephone number of the
7 seller of travel.

8 (2) The amount paid, the date of such payment, the purpose of the
9 payment made, and an itemized statement of the balance due, if any.

10 (3) ~~((The registration number of the seller of travel required by
11 this chapter.~~

12 ~~(4))~~ The name of the vendor with whom the seller of travel has
13 contracted to provide travel arrangements for a consumer and all
14 pertinent information relating to the travel as known by the seller of
15 travel at the time of booking. The seller of travel will make known
16 further details as soon as received from the vendor. All information
17 will be provided with final documentation.

18 ~~((5))~~ (4) The conditions, if any, upon which the contract between
19 the seller of travel and the passenger may be canceled, and the rights
20 and obligations of all parties in the event of cancellation.

21 ~~((6))~~ (5) A statement in eight-point boldface type in
22 substantially the following form:

23 "If transportation or other services are canceled by the seller of
24 travel, all sums paid to the seller of travel for services not
25 performed in accordance with the contract between the seller of travel
26 and the purchaser will be refunded within thirty days of receiving the
27 funds from the vendor with whom the services were arranged, or if the
28 funds were not sent to the vendor, the funds shall be returned within
29 fourteen days after cancellation by the seller of travel to the
30 purchaser unless the purchaser requests the seller of travel to apply
31 the money to another travel product and/or date."

32 **Sec. 5.** RCW 19.138.050 and 1994 c 237 s 12 are each amended to
33 read as follows:

34 (1) If the transportation or other services contracted for are
35 canceled, or if the money is to be refunded for any reason, the seller
36 of travel shall refund to the person with whom it contracts for travel
37 services, the money due the person within thirty days of receiving the
38 funds from the vendor with whom the services were arranged. If the

1 funds were not sent to the vendor and remain in the possession of the
2 seller of travel, the funds shall be refunded within fourteen days.

3 (2) Any material misrepresentation with regard to the
4 transportation and other services offered shall be deemed to be a
5 cancellation necessitating the refund required by this section.

6 (3) When travel services are paid to a vendor and charged to a
7 consumer's credit card by the seller of travel, and the arrangements
8 are subsequently canceled by the consumer, the vendor, or the seller of
9 travel, any refunds to the consumer's credit card must be applied for
10 within ten days from the date of cancellation.

11 (4) The seller of travel (~~shall~~) is not (~~be~~) obligated to
12 refund any cancellation penalties imposed by (~~the~~) a vendor (~~with~~
13 ~~whom the services were arranged~~) if these penalties were disclosed in
14 the statement required under RCW 19.138.040.

15 **Sec. 6.** RCW 19.138.140 and 1994 c 237 s 8 are each amended to read
16 as follows:

17 (1) Within five business days of receipt, a seller of travel shall
18 deposit all sums received from a person or entity, for travel services
19 offered by the seller of travel, in a trust account or other
20 (~~approved~~) account maintained in a state or federally insured
21 financial institution located in Washington state. Exempted are
22 airline sales made by a seller of travel, when payments for the airline
23 tickets are made through the airline reporting corporation either by
24 cash or credit card sale.

25 (2) The trust account or other (~~approved~~) account required by
26 this section shall be established and maintained for the benefit of any
27 person or entity paying money to the seller of travel. The seller of
28 travel shall not in any manner encumber the amounts in trust and shall
29 not withdraw money from the account except the following amounts may be
30 withdrawn at any time:

31 (a) Partial or full payment for travel services to the entity
32 directly providing the travel service;

33 (b) Refunds as required by this chapter;

34 (c) The amount of the sales commission;

35 (d) Interest earned and credited to the trust account or other
36 approved account; or

1 (e) Remaining funds of a purchaser once all travel services have
2 been provided or once tickets or other similar documentation binding
3 upon the ultimate provider of the travel services have been provided.

4 (3) ~~((At the time of registration, the seller of travel shall file
5 with the department the account number and the name of the financial
6 institution at which the trust account or other approved account is
7 held as set forth in RCW 19.138.110. The seller of travel shall notify
8 the department of any change in the account number or location within
9 one business day of the change.))~~ Upon reasonable doubt that a
10 violation of this chapter has or is about to occur, the attorney
11 general may require the seller of travel to furnish the account number
12 and the name of the financial institution at which the trust account or
13 other account is held. If a seller of travel is required to furnish
14 information in accordance with this subsection, the seller of travel
15 must notify the attorney general of any change in the account number or
16 location of the account within one business day of the change.

17 (4) The ~~((director))~~ attorney general, by rule, may allow for the
18 use of other types of funds or accounts only if the protection for
19 consumers is no less than that provided by this section.

20 (5) The seller of travel need not comply with the requirements of
21 this section if all of the following apply, except as exempted in
22 subsection (1) of this section:

23 (a) The payment is made by credit card;

24 (b) The seller of travel does not deposit, negotiate, or factor the
25 credit card charge or otherwise seek to obtain payment of the credit
26 card charge to any account over which the seller of travel has any
27 control; and

28 (c) If the charge includes transportation, the carrier that is to
29 provide the transportation processes the credit card charge, or if the
30 charge is only for services, the provider of services processes the
31 credit card charges.

32 (6) If the seller of travel maintains its principal place of
33 business in another state and maintains a trust account or other
34 ~~((approved))~~ account in that state consistent with the requirement of
35 this section, and if that seller of travel has transacted business
36 within the state of Washington in an amount exceeding five million
37 dollars for the preceding year, the out-of-state trust account or other
38 ~~((approved))~~ account may be substituted for the in-state account
39 required under this section.

1 **Sec. 7.** RCW 19.138.150 and 1994 c 237 s 9 are each amended to read
2 as follows:

3 A seller of travel shall perform (~~its~~) the seller's duties
4 reasonably and with ordinary care in providing travel services.

5 **Sec. 8.** RCW 19.138.160 and 1994 c 237 s 14 are each amended to
6 read as follows:

7 (1) A nonresident seller of travel soliciting business or selling
8 travel in the state of Washington, by mail, telephone, or otherwise,
9 either directly or indirectly, shall register with the department of
10 revenue and is deemed, absent any other appointment, to have appointed
11 the (~~director~~) secretary of state to be the seller of travel's true
12 and lawful attorney upon whom may be served any legal process against
13 that nonresident arising or growing out of a transaction involving
14 travel services. That solicitation signifies the nonresident's
15 agreement that process against the nonresident that is served as
16 provided in this chapter is of the same legal force and validity as if
17 served personally on the nonresident seller of travel.

18 (2) Service of process upon a nonresident seller of travel shall be
19 made by leaving a copy of the process with the (~~director~~) secretary
20 of state. The fee for the service of process shall be determined by
21 the (~~director~~) secretary of state by rule. That service is
22 sufficient service upon the nonresident if the plaintiff or plaintiff's
23 attorney of record sends notice of the service and a copy of the
24 process by certified mail before service or immediately after service
25 to the defendant at the address given by the nonresident in a
26 solicitation furnished by the nonresident, and the sender's post office
27 receipt of sending and the plaintiff's or plaintiff's attorney's
28 affidavit of compliance with this section are returned with the process
29 in accordance with Washington superior court civil rules.
30 Notwithstanding the foregoing requirements, however, once service has
31 been made on the (~~director~~) secretary of state as provided in this
32 section, in the event of failure to comply with the requirement of
33 notice to the nonresident, the court may order that notice be given
34 that will be sufficient to apprise the nonresident.

35 **Sec. 9.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to
36 read as follows:

1 The ~~((director))~~ attorney general has the following powers and
2 duties:

3 (1) To adopt, amend, and repeal rules to carry out the purposes of
4 this chapter;

5 ~~(2) ((To issue and renew registrations under this chapter and to
6 deny or refuse to renew for failure to comply with this chapter;~~

7 ~~(3) To suspend or revoke a registration for a violation of this
8 chapter;~~

9 ~~(4) To establish fees;~~

10 ~~(5) Upon receipt of a complaint, to))~~ Upon receipt of complaints
11 evidencing a pattern of possible deceptive practices or upon becoming
12 aware of advertising programs that could potentially be evidence of
13 deceptive practices, the attorney general may inspect and audit the
14 books and records of a seller of travel. The seller of travel shall
15 immediately make available to the ~~((director))~~ attorney general those
16 books and records as may be requested at the seller of travel's place
17 of business or at a location designated by the ~~((director))~~ attorney
18 general. For that purpose, the ~~((director))~~ attorney general shall
19 have full and free access to the office and places of business of the
20 seller of travel during regular business hours; and

21 ~~((+6))~~ (3) To do all things necessary to carry out the functions,
22 powers, and duties set forth in this chapter.

23 **Sec. 10.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to
24 read as follows:

25 The ~~((director))~~ attorney general, in the ~~((director's))~~ attorney
26 general's discretion, may:

27 (1) ~~((Annually, or more frequently))~~ For good cause, make public or
28 private investigations within or without this state as the ~~((director))~~
29 attorney general deems necessary to determine whether ~~((a registration~~
30 ~~should be granted, denied, revoked, or suspended, or whether))~~ a person
31 has violated or is about to violate this chapter or a rule adopted or
32 order issued under this chapter, or to aid in the enforcement of this
33 chapter or in the prescribing of rules and forms of this chapter;

34 (2) Publish information concerning a violation of this chapter or
35 a rule adopted or order issued under this chapter; and

36 (3) Investigate complaints concerning practices by sellers of
37 travel ~~((for which registration is required by this chapter))~~.

1 **Sec. 11.** RCW 19.138.190 and 1994 c 237 s 16 are each amended to
2 read as follows:

3 For the purpose of an investigation or proceeding under this
4 chapter, the ((~~director~~)) attorney general or any officer designated by
5 the ((~~director~~)) attorney general may administer oaths and
6 affirmations, subpoena witnesses, compel their attendance, take
7 evidence, and require the production of any books, papers,
8 correspondence, memoranda, agreements, or other documents or records
9 which the ((~~director~~)) attorney general deems relevant or material to
10 the inquiry.

11 **Sec. 12.** RCW 19.138.200 and 1994 c 237 s 20 are each amended to
12 read as follows:

13 The ((~~director~~)) attorney general or individuals acting on the
14 ((~~director's~~)) attorney general's behalf are immune from suit in any
15 action, civil or criminal, based on disciplinary proceedings or other
16 official acts performed in the course of their duties in the
17 administration and enforcement of this chapter.

18 **Sec. 13.** RCW 19.138.210 and 1994 c 237 s 17 are each amended to
19 read as follows:

20 If it appears to the ((~~director~~)) attorney general that a person
21 has engaged in an act or practice constituting a violation of this
22 chapter or a rule adopted or order issued under this chapter, the
23 ((~~director~~)) attorney general may, in the ((~~director's~~)) attorney
24 general's discretion, issue an order directing the person to cease and
25 desist from continuing the act or practice. Reasonable notice of an
26 opportunity for a hearing shall be given. The ((~~director~~)) attorney
27 general may issue a temporary order pending the hearing, which shall
28 remain in effect until ten days after the hearing is held and which
29 shall become final if the person to whom the notice is addressed does
30 not request a hearing within fifteen days after the receipt of the
31 notice.

32 **Sec. 14.** RCW 19.138.220 and 1994 c 237 s 18 are each amended to
33 read as follows:

34 The attorney general, a county prosecuting attorney, ((~~the~~
35 ~~director~~)) or any person may, in accordance with the law of this state
36 governing injunctions, maintain an action in the name of this state to

1 enjoin a person or entity selling travel services (~~for which~~
2 ~~registration is required by this chapter without registration from~~
3 ~~engaging in the practice until the required registration is secured~~)
4 if there is probable cause shown that violation of this section has or
5 is about to occur. However, the injunction shall not relieve the
6 person or entity selling travel services (~~without registration~~) from
7 criminal prosecution therefor, but the remedy by injunction shall be in
8 addition to any criminal liability.

9 **Sec. 15.** RCW 19.138.230 and 1994 c 237 s 19 are each amended to
10 read as follows:

11 A person or business that violates an injunction issued under this
12 chapter shall pay a civil penalty, as determined by the court, of not
13 more than twenty-five thousand dollars, that shall be paid to the
14 (~~department~~) attorney general. For the purpose of this section, the
15 superior court issuing an injunction shall retain jurisdiction and the
16 cause shall be continued, and in such cases the attorney general acting
17 in the name of the state may petition for the recovery of civil
18 penalties.

19 **Sec. 16.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to
20 read as follows:

21 (1) The (~~director~~) attorney general or county prosecuting
22 attorney may assess against a person or organization that violates this
23 chapter, or a rule adopted under this chapter, a civil penalty of not
24 more than (~~one~~) two thousand dollars for each violation.

25 (2) The person or organization shall be afforded the opportunity
26 for a hearing, upon request made to the (~~director~~) attorney general
27 within thirty days after the date of issuance of the notice of
28 assessment. The hearing shall be conducted in accordance with chapter
29 34.05 RCW.

30 (3) A civil penalty shall be imposed by the court for each
31 violation of this chapter in an amount not less than five hundred
32 dollars nor more than two thousand dollars per violation.

33 (4) If a person fails to pay an assessment after it has become a
34 final and unappealable order, or after the court has entered final
35 judgment in favor of the state, the (~~director~~) attorney general may
36 recover the amount assessed by action in the appropriate superior

1 court. In the action, the validity and appropriateness of the final
2 order imposing the penalty shall not be subject to review.

3 **Sec. 17.** RCW 19.138.250 and 1994 c 237 s 22 are each amended to
4 read as follows:

5 The (~~director~~) attorney general or county prosecuting attorney
6 may assess against a person or organization that violates this chapter,
7 or a rule adopted under this chapter, the full amount of restitution as
8 may be necessary to restore to a person an interest in money or
9 property, real or personal, that may have been acquired by means of an
10 act prohibited by or in violation of this chapter.

11 **Sec. 18.** RCW 19.138.270 and 1994 c 237 s 24 are each amended to
12 read as follows:

13 (1) Each person who knowingly violates this chapter or who
14 knowingly gives false or incorrect information to the (~~director~~)
15 attorney general(~~()~~) or county prosecuting attorney in filing
16 (~~statements~~) information required by this chapter, whether or not the
17 (~~statement or report~~) information is verified, is guilty of a gross
18 misdemeanor punishable under chapter 9A.20 RCW.

19 (2) A person who violates this chapter or who gives false or
20 incorrect information to the (~~director~~) attorney general(~~()~~) or
21 county prosecuting attorney in filing statements required by this
22 chapter, whether or not the statement or report is verified, is guilty
23 of a misdemeanor punishable under chapter 9A.20 RCW.

24 **Sec. 19.** RCW 19.138.280 and 1994 c 237 s 28 are each amended to
25 read as follows:

26 In addition to any other penalties or remedies under chapter 19.86
27 RCW, a person (~~who is~~) injured by a violation of this chapter may
28 bring an action for recovery of actual damages, including court costs
29 and attorneys' fees. No provision in this chapter shall be construed
30 to limit any right or remedy provided under chapter 19.86 RCW.

31 **Sec. 20.** RCW 19.138.300 and 1994 c 237 s 25 are each amended to
32 read as follows:

33 The administrative procedure act, chapter 34.05 RCW, (~~shall~~)
34 wherever applicable, governs the rights, remedies, and procedures
35 respecting the administration of this chapter.

1 **Sec. 21.** RCW 19.138.310 and 1994 c 237 s 26 are each amended to
2 read as follows:

3 All information, documents, and reports filed with the ((~~director~~))
4 attorney general or county prosecuting attorney under this chapter are
5 matters of public record and shall be open to public inspection,
6 subject to reasonable regulation. The ((~~director~~)) attorney general or
7 county prosecuting attorney may make public, on a periodic or other
8 basis, the information as may be necessary or appropriate in the public
9 interest concerning the registration, reports, and information filed
10 with the ((~~director~~)) attorney general or county prosecuting attorney
11 or any other matters to the administration and enforcement of this
12 chapter.

13 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
14 each repealed:

- 15 (1) RCW 19.138.055 and 1994 c 237 s 31;
- 16 (2) RCW 19.138.100 and 1994 c 237 s 3;
- 17 (3) RCW 19.138.110 and 1994 c 237 s 4;
- 18 (4) RCW 19.138.120 and 1994 c 237 s 5;
- 19 (5) RCW 19.138.130 and 1994 c 237 s 6;
- 20 (6) RCW 19.138.1701 and 1994 c 237 s 30; and
- 21 (7) RCW 19.138.260 and 1994 c 237 s 23.

22 NEW SECTION. **Sec. 23.** This act shall take effect January 1, 1996.

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