
SENATE BILL 6132

State of Washington

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By Senators Schow, Wojahn, Loveland, Heavey, Roach, Newhouse, Wood, T. Sheldon and Winsley

Read first time 01/12/98. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to travel sales; amending RCW 19.138.040,
2 19.138.100, 19.138.110, 19.138.120, 19.138.140, 19.138.170, 19.138.180,
3 19.138.190, 19.138.200, 19.138.210, 19.138.240, 19.138.250, and
4 19.138.310; adding a new section to chapter 19.138 RCW; adding new
5 sections to chapter 43.131 RCW; creating a new section; and prescribing
6 penalties.

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

8 **Sec. 1.** RCW 19.138.040 and 1996 c 180 s 3 are each amended to read
9 as follows:

10 At or prior to the time of full or partial payment for any travel
11 services, the seller of travel shall furnish to the person making the
12 payment a written statement conspicuously setting forth the information
13 contained in subsections (1) through (6) of this section. However, if
14 ~~((the sale of travel services is made over the telephone or by other~~
15 ~~electronic media and payment is made by credit or debit card))~~ payment
16 is made other than in person, the seller of travel shall transmit to
17 the person making the payment the written statement required by this
18 section within three business days of ~~((the consumer's credit or debit~~

1 ~~card authorization))~~ receipt or processing of the payment. The written
2 statement shall contain the following information:

3 (1) The name and business address and telephone number of the
4 seller of travel.

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

7 (3) The registration number of the seller of travel required by
8 this chapter.

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

15 (5) ~~((The conditions, if any, upon which the contract between the
16 seller of travel and the passenger may be canceled, and the rights and
17 obligations of all parties in the event of cancellation.))~~ An advisory
18 regarding the penalties that would be charged in the event of a
19 cancellation or change by the customer. This may contain either: (a)
20 The specific amount of cancellation and change penalties; or (b) the
21 following statement: "Cancellation and change penalties apply to these
22 arrangements. Details will be provided upon request."

23 (6) A statement in eight-point boldface type in substantially the
24 following form:

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

34 **Sec. 2.** RCW 19.138.100 and 1996 c 180 s 4 are each amended to read
35 as follows:

36 No person, firm, or corporation may act or hold itself out as a
37 seller of travel unless, prior to engaging in the business of selling
38 or advertising to sell travel services, the person, firm, or

1 corporation registers with the director under this chapter and rules
2 adopted under this chapter.

3 (1) The registration number must be conspicuously posted in the
4 place of business and must be included in all advertisements. (~~Any~~
5 ~~corporation which issues a class of equity securities registered under~~
6 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
7 ~~the majority of voting stock of which is owned by such corporation~~
8 ~~including any wholly owned subsidiary of such corporation are not~~
9 ~~required to include company registration numbers in advertisements.))
10 Sellers of travel are not required to include registration numbers on
11 institutional advertising. For the purposes of this subsection,
12 "institutional advertising" is advertising that does not include prices
13 or dates for travel services.~~

14 (2) (~~The director shall issue duplicate registrations upon payment~~
15 ~~of a nominal duplicate registration fee to valid registration holders~~
16 ~~operating more than one office.)) Separate offices or business
17 locations with two or more employees must be individually registered
18 under this chapter.~~

19 (3) No registration is assignable or transferable.

20 (4) If a registered seller of travel sells his or her business,
21 when the new owner becomes responsible for the business, the new owner
22 must comply with all provisions of this chapter, including
23 registration.

24 (5) If a seller of travel is employed by or under contract as an
25 independent contractor or an outside agent of a seller of travel who is
26 registered under this chapter, the employee, independent contractor, or
27 outside agent need not also be registered if:

28 (a) The employee, independent contractor, or outside agent is
29 conducting business as a seller of travel in the name of and under the
30 registration of the registered seller of travel; and

31 (b) All money received for travel services by the employee,
32 independent contractor, or outside agent is collected in the name of
33 the registered seller of travel and (~~deposited directly into~~)
34 processed by the registered seller of (~~travel's trust account~~) travel
35 as required under this chapter.

36 **Sec. 3.** RCW 19.138.110 and 1996 c 180 s 5 are each amended to read
37 as follows:

1 An application for registration as a seller of travel shall be
2 submitted in the form prescribed by rule by the director, and shall
3 contain but not be limited to the following:

4 (1) The name, address, and telephone number of the seller of
5 travel;

6 (2) Proof that the seller of travel holds a valid business license
7 in the state of its principal state of business;

8 (3) A registration fee in an amount (~~determined under RCW~~
9 ~~43.24.086~~) not to exceed one hundred dollars;

10 (4) The names, business addresses, and business phone numbers of
11 all employees, independent contractors, or outside agents who sell
12 travel and are covered by the seller of travel's registration(~~. This~~
13 ~~subsection shall not apply to the out-of-state employees of a~~
14 ~~corporation that issues a class of equity securities registered under~~
15 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
16 ~~the majority of voting stock of which is owned by the corporation));~~
17 and

18 (5) For those sellers of travel required to maintain a trust
19 account under RCW 19.138.140, a report prepared and signed by a bank
20 officer, licensed public accountant, or certified public accountant or
21 other report, approved by the director, that verifies that the seller
22 of travel maintains a trust account at a federally insured financial
23 institution located in Washington state, or other approved account, the
24 location and number of that trust account or other approved account,
25 and verifying that the account ((exists as)) required by RCW 19.138.140
26 exists. The director, by rule, may permit alternatives to the report
27 that provides for at least the same level of verification.

28 **Sec. 4.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read
29 as follows:

30 (1) Each seller of travel shall renew its registration on or before
31 July 1 of every (~~other~~) year or as otherwise determined by the
32 director.

33 (2) Renewal of a registration is subject to the same provisions
34 covering issuance, suspension, and revocation of a registration
35 originally issued.

36 (3) The director may refuse to renew a registration for any of the
37 grounds set out under RCW 19.138.130, and where the past conduct of the
38 applicant affords reasonable grounds for belief that the applicant will

1 not carry out the applicant's duties in accordance with law and with
2 integrity and honesty. The director shall promptly notify the
3 applicant in writing by certified mail of its intent to refuse to renew
4 the registration. The registrant may, within twenty-one days after
5 receipt of that notice or intent, request a hearing on the refusal.
6 The director may permit the registrant to honor commitments already
7 made to its customers, but no new commitments may be incurred, unless
8 the director is satisfied that all new commitments are completely
9 bonded or secured to insure that the general public is protected from
10 loss of money paid to the registrant. It is the responsibility of the
11 registrant to contest the decision regarding conditions imposed or
12 registration denied through the process established by the
13 administrative procedure act, chapter 34.05 RCW.

14 **Sec. 5.** RCW 19.138.140 and 1996 c 180 s 7 are each amended to read
15 as follows:

16 (1) A seller of travel shall deposit in a trust account maintained
17 in a federally insured financial institution located in Washington
18 state, or other account approved by the director, all sums held for
19 more than five business days that are received from a person or entity,
20 for retail travel services offered by the seller of travel. This
21 subsection does not apply to travel services sold by a seller of
22 travel, when payments for the travel services are made through the
23 airlines reporting corporation (~~either by cash or credit or debit card~~
24 ~~sale~~)).

25 (2) The trust account or other approved account required by this
26 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;

37 (e) Remaining funds of a purchaser once all travel services have
38 been provided or once tickets or other similar documentation binding

1 upon the ultimate provider of the travel services have been provided;
2 or

3 (f) Reimbursement to the seller of travel for agency operating
4 funds that are advanced for a customer's travel services.

5 (3) At the time of registration, the seller of travel shall file
6 with the department the account number and the name of the financial
7 institution at which the trust account or other approved account is
8 held as set forth in RCW 19.138.110. The seller of travel shall notify
9 the department of any change in the account number or location within
10 one business day of the change.

11 (4) The director, by rule, may allow for the use of other types of
12 funds or accounts only if the protection for consumers is no less than
13 that provided by this section.

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

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

18 (b) The seller of travel does not deposit, negotiate, or factor the
19 credit card charge or otherwise seek to obtain payment of the credit
20 card charge to any account over which the seller of travel has any
21 control; and

22 (c) If the charge includes transportation, the carrier that is to
23 provide the transportation processes the credit card charge, or if the
24 charge is only for services, the provider of services processes the
25 credit card charges.

26 (6) The seller of travel need not maintain a trust account nor
27 comply with the trust account provisions of this section if the seller
28 of travel:

29 (a)(i) Files and maintains a surety bond approved by the director
30 in an amount of not less than ten thousand nor more than fifty thousand
31 dollars, as determined by the director based on the volume of business
32 conducted by the seller of travel during the prior year. The bond
33 shall be executed by the applicant as obligor and by a surety company
34 authorized to do business in this state.

35 (ii) The bond must run to the state of Washington as obligee, and
36 must run to the benefit of the state and any person or persons who
37 suffer loss by reason of the seller of travel's violation of this
38 chapter or a rule adopted under this chapter.

1 (iii) The bond must be conditioned that the seller of travel will
2 faithfully conform to and abide by this chapter and all rules adopted
3 under this chapter, and shall reimburse all persons who suffer loss by
4 reason of a violation of this chapter or a rule adopted under this
5 chapter.

6 (iv) The bond must be continuous and may be canceled by the surety
7 upon the surety giving written notice to the director of the surety's
8 intent to cancel the bond. The cancellation is effective thirty days
9 after the notice is received by the director.

10 (v) The applicant may obtain the bond directly from the surety or
11 through a camp bonding arrangement involving a professional
12 organization comprised of sellers of travel if the arrangement provides
13 at least as much coverage as is required under this subsection.

14 (vi) In lieu of a surety bond, the applicant may, upon approval by
15 the director, file with the director a certificate of deposit, an
16 irrevocable letter of credit, or such other instrument as is approved
17 by the director by rule, drawn in favor of the director for an amount
18 equal to the required bond.

19 (vii) A person injured by a violation of this chapter may bring an
20 action against the surety bond or approved alternative of the seller of
21 travel who committed the violation or who employed the seller of travel
22 who committed the violation; or

23 (b) Is a member in good standing in a professional association,
24 such as the United States tour operators association or national tour
25 association, that is approved by the director and that provides a
26 minimum of one million dollars in errors and professional liability
27 insurance or provides a surety bond or equivalent protection in an
28 amount of at least two hundred fifty thousand dollars for its member
29 companies.

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

1 **Sec. 6.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to
2 read as follows:

3 The director has the following powers and duties:

4 (1) To adopt, amend, and repeal rules to carry out the ~~((purposes))~~
5 registration and trust account provisions of this chapter;

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

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

10 (4) To establish fees not exceeding one hundred dollars; and

11 (5) ~~((Upon receipt of a complaint, to inspect and audit the books
12 and records of a seller of travel. The seller of travel shall
13 immediately make available to the director those books and records as
14 may be requested at the seller of travel's place of business or at a
15 location designated by the director. For that purpose, the director
16 shall have full and free access to the office and places of business of
17 the seller of travel during regular business hours; and~~

18 (6)) To do all things necessary to carry out the functions,
19 powers, and duties set forth in this chapter.

20 **Sec. 7.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to
21 read as follows:

22 The director, in the director's discretion, may(~~(:~~

23 (1) ~~Annually, or more frequently,~~) upon receipt of a complaint
24 make public or private investigations within or without this state as
25 the director deems necessary to determine whether a registration should
26 be granted, denied, revoked, or suspended(~~(, or whether a person has
27 violated or is about to violate this chapter or a rule adopted or order
28 issued under this chapter, or to aid in the enforcement of this chapter
29 or in the prescribing of rules and forms of this chapter;~~

30 (2) ~~Publish information concerning a violation of this chapter or
31 a rule adopted or order issued under this chapter; and~~

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

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 19.138 RCW
35 to read as follows:

36 (1) For the purposes of this chapter, the attorney general has the
37 following powers and duties:

1 (a) Upon receipt of a complaint, to inspect and audit the books and
2 records of a seller of travel. The seller of travel shall immediately
3 make available to the attorney general those books and records as may
4 be requested at the seller of travel's place of business or at a
5 location designated by the attorney general. For that purpose, the
6 seller of travel shall provide to the attorney general full and free
7 access to the office and places of business of the seller of travel
8 during regular business hours;

9 (b) To do all things necessary to carry out the functions, powers,
10 and duties set forth in this chapter;

11 (c) Upon receipt of a complaint, to investigate whether a person
12 has violated or is about to violate this chapter or a rule adopted or
13 order issued under this chapter, or to aid in the enforcement of this
14 chapter or in the prescribing of rules and forms of this chapter;

15 (d) To publish information concerning a violation of this chapter
16 or a rule adopted or order issued under this chapter; and

17 (e) To investigate complaints concerning practices by sellers of
18 travel for which registration is required by this chapter.

19 (2) For the purpose of an investigation or proceeding under this
20 chapter, the attorney general or any officer designated by the attorney
21 general may administer oaths, subpoena witnesses, compel witnesses'
22 attendance, take evidence, and require the production of any books,
23 papers, correspondence, memoranda, agreements, or other documents or
24 records that the attorney general deems relevant or material to the
25 inquiry.

26 **Sec. 9.** RCW 19.138.190 and 1994 c 237 s 16 are each amended to
27 read as follows:

28 For the purpose of an investigation or proceeding under this
29 chapter, the ((director)) attorney general or any officer designated by
30 the ((director)) attorney general may administer oaths and
31 affirmations, subpoena witnesses, compel their attendance, take
32 evidence, and require the production of any books, papers,
33 correspondence, memoranda, agreements, or other documents or records
34 which the ((director)) attorney general deems relevant or material to
35 the inquiry.

36 **Sec. 10.** RCW 19.138.200 and 1994 c 237 s 20 are each amended to
37 read as follows:

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

6 **Sec. 11.** RCW 19.138.210 and 1994 c 237 s 17 are each amended to
7 read as follows:

8 If it appears to the (~~director~~) attorney general that a person
9 has engaged in an act or practice constituting a violation of this
10 chapter or a rule adopted or order issued under this chapter, the
11 (~~director~~) attorney general may, in the (~~director's~~) attorney
12 general's discretion, issue an order directing the person to cease and
13 desist from continuing the act or practice. Reasonable notice of an
14 opportunity for a hearing shall be given. The (~~director~~) attorney
15 general may issue a temporary order pending the hearing, which shall
16 remain in effect until ten days after the hearing is held and which
17 shall become final if the person to whom the notice is addressed does
18 not request a hearing within fifteen days after the receipt of the
19 notice.

20 **Sec. 12.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to
21 read as follows:

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

26 (2) The person or organization shall be afforded the opportunity
27 for a hearing, upon request made to the (~~director~~) attorney general
28 within thirty days after the date of issuance of the notice of
29 assessment. The hearing shall be conducted in accordance with chapter
30 34.05 RCW.

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

34 (4) If a person fails to pay an assessment after it has become a
35 final and unappealable order, or after the court has entered final
36 judgment in favor of the state, the (~~director~~) attorney general may
37 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. 13.** RCW 19.138.250 and 1994 c 237 s 22 are each amended to
4 read as follows:

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

11 **Sec. 14.** RCW 19.138.310 and 1994 c 237 s 26 are each amended to
12 read as follows:

13 All information, documents, and reports filed with the director or
14 the attorney general under this chapter are matters of public record
15 and shall be open to public inspection, subject to reasonable
16 regulation. The director or the attorney general may make public, on
17 a periodic or other basis, the information as may be necessary or
18 appropriate in the public interest concerning the registration,
19 reports, and information filed with the director or the attorney
20 general or any other matters to the administration and enforcement of
21 this chapter.

22 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131
23 RCW to read as follows:

24 The sellers of travel regulatory program shall be terminated June
25 30, 2001, as provided in section 16 of this act.

26 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.131
27 RCW to read as follows:

28 The following acts or parts of acts, as now existing or hereafter
29 amended, are each repealed, effective June 30, 2002:

30 (1) RCW 19.138.010 and 1994 c 237 s 1 & 1986 c 283 s 1;

31 (2) RCW 19.138.021 and 1996 c 180 s 1 & 1994 c 237 s 2;

32 (3) RCW 19.138.030 and 1996 c 180 s 2, 1994 c 237 s 10, & 1986 c
33 283 s 3;

34 (4) RCW 19.138.040 and 1998 c . . . s 1 (section 1 of this act),
35 1996 c 180 s 3, 1994 c 237 s 11, & 1986 c 283 s 4;

1 (5) RCW 19.138.050 and 1994 c 237 s 12 & 1986 c 283 s 5;
2 (6) RCW 19.138.090 and 1986 c 283 s 9;
3 (7) RCW 19.138.100 and 1998 c . . . s 2 (section 2 of this act),
4 1996 c 180 s 4, & 1994 c 237 s 3;
5 (8) RCW 19.138.110 and 1998 c . . . s 3 (section 3 of this act),
6 1996 c 180 s 5, & 1994 c 237 s 4;
7 (9) RCW 19.138.120 and 1998 c . . . s 4 (section 4 of this act) &
8 1994 c 237 s 5;
9 (10) RCW 19.138.130 and 1997 c 58 s 852, 1996 c 180 s 6, & 1994 c
10 237 s 6;
11 (11) RCW 19.138.140 and 1998 c . . . s 5 (section 5 of this act),
12 1996 c 180 s 7, & 1994 c 237 s 8;
13 (12) RCW 19.138.150 and 1994 c 237 s 9;
14 (13) RCW 19.138.160 and 1994 c 237 s 14;
15 (14) RCW 19.138.170 and 1998 c . . . s 6 (section 6 of this act) &
16 1994 c 237 s 13;
17 (15) RCW 19.138.1701 and 1994 c 237 s 30;
18 (16) RCW 19.138.180 and 1998 c . . . s 7 (section 7 of this act) &
19 1994 c 237 s 15;
20 (17) RCW 19.138.--- and 1998 c . . . s 8 (section 8 of this act);
21 (18) RCW 19.138.190 and 1998 c . . . s 9 (section 9 of this act) &
22 1994 c 237 s 16;
23 (19) RCW 19.138.200 and 1998 c . . . s 10 (section 10 of this act)
24 & 1994 c 237 s 20;
25 (20) RCW 19.138.210 and 1998 c . . . s 11 (section 11 of this act)
26 & 1994 c 237 s 17;
27 (21) RCW 19.138.220 and 1994 c 237 s 18;
28 (22) RCW 19.138.230 and 1994 c 237 s 19;
29 (23) RCW 19.138.240 and 1998 c . . . s 12 (section 12 of this act)
30 & 1994 c 237 s 21;
31 (24) RCW 19.138.250 and 1998 c . . . s 13 (section 13 of this act)
32 & 1994 c 237 s 22;
33 (25) RCW 19.138.260 and 1994 c 237 s 23;
34 (26) RCW 19.138.270 and 1994 c 237 s 24;
35 (27) RCW 19.138.280 and 1994 c 237 s 28;
36 (28) RCW 19.138.290 and 1994 c 237 s 27;
37 (29) RCW 19.138.300 and 1994 c 237 s 25;
38 (30) RCW 19.138.310 and 1998 c . . . s 14 (section 14 of this act)
39 & 1994 c 237 s 26;

- 1 (31) RCW 19.138.900 and 1986 c 283 s 11;
2 (32) RCW 19.138.901 and 1986 c 283 s 12;
3 (33) RCW 19.138.902 and 1994 c 237 s 32;
4 (34) RCW 19.138.903 and 1994 c 237 s 33; and
5 (35) RCW 19.138.904 and 1994 c 237 s 35.

6 NEW SECTION. **Sec. 17.** If specific funding for the purposes of
7 this act, referencing this act by bill or chapter number, is not
8 provided by June 30, 1998, in the omnibus appropriations act, this act
9 is null and void.

10 NEW SECTION. **Sec. 18.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

--- END ---