
SUBSTITUTE HOUSE BILL 2090

State of Washington

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By House Committee on Commerce & Labor (originally sponsored by Representatives Clements, Lisk, Reardon, Cooper, McMorris, Talcott, B. Chandler and Gombosky)

Read first time 03/02/1999.

1 AN ACT Relating to sellers of travel; and amending RCW 19.138.030,
2 19.138.040, 19.138.100, 19.138.110, 19.138.120, 19.138.130, and
3 19.138.140.

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

5 **Sec. 1.** RCW 19.138.030 and 1996 c 180 s 2 are each amended to read
6 as follows:

7 A seller of travel shall not advertise that any travel services are
8 or may be available unless he or she has, prior to the advertisement,
9 determined that the product advertised was available at the time the
10 advertising was placed. This determination can be made by the seller
11 of travel either by use of an airline computer reservation system, or
12 by written confirmation from the vendor whose program is being
13 advertised.

14 It is the responsibility of the seller of travel to keep written or
15 printed documentation of the steps taken to verify that the advertised
16 offer was available at the time the advertising was placed. These
17 records are to be maintained for at least ~~((two))~~ one year~~((s))~~ after
18 the placement of the advertisement.

1 **Sec. 2.** RCW 19.138.040 and 1996 c 180 s 3 are each amended to read
2 as follows:

3 At or prior to the time of full or partial payment for any travel
4 services, the seller of travel shall furnish to the person making the
5 payment a written statement conspicuously setting forth the information
6 contained in subsections (1) through (6) of this section. However, if
7 ~~((the sale of travel services is made over the telephone or by other~~
8 ~~electronic media and payment is made by credit or debit card))~~ payment
9 is made other than in person, the seller of travel shall transmit to
10 the person making the payment the written statement required by this
11 section within three business days of ~~((the consumer's credit or debit~~
12 ~~card authorization))~~ receipt or processing of the payment. The written
13 statement shall contain the following information:

14 (1) The name and business address and telephone number of the
15 seller of travel.

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

18 (3) The registration number of the seller of travel required by
19 this chapter.

20 (4) The name of the vendor with whom the seller of travel has
21 contracted to provide travel arrangements for a consumer and all
22 pertinent information relating to the travel as known by the seller of
23 travel at the time of booking. The seller of travel will make known
24 further details as soon as received from the vendor. All information
25 will be provided with final documentation.

26 (5) ~~((The conditions, if any, upon which the contract between the~~
27 ~~seller of travel and the passenger may be canceled, and the rights and~~
28 ~~obligations of all parties in the event of cancellation.))~~ An advisory
29 regarding the penalties that would be charged in the event of a
30 cancellation or change by the customer. This may contain either: (a)
31 The specific amount of cancellation and change penalties; or (b) the
32 following statement: "Cancellation and change penalties apply to these
33 arrangements. Details will be provided upon request."

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

36 "If transportation or other services are canceled by the seller of
37 travel, all sums paid to the seller of travel for services not
38 performed in accordance with the contract between the seller of travel
39 and the purchaser will be refunded within thirty days of receiving the

1 funds from the vendor with whom the services were arranged, or if the
2 funds were not sent to the vendor, the funds shall be returned within
3 fourteen days after cancellation by the seller of travel to the
4 purchaser unless the purchaser requests the seller of travel to apply
5 the money to another travel product and/or date."

6 **Sec. 3.** RCW 19.138.100 and 1996 c 180 s 4 are each amended to read
7 as follows:

8 No person, firm, or corporation may act or hold itself out as a
9 seller of travel unless, prior to engaging in the business of selling
10 or advertising to sell travel services, the person, firm, or
11 corporation registers with the director under this chapter and rules
12 adopted under this chapter.

13 (1) The registration number must be conspicuously posted in the
14 place of business and must be included in all advertisements. (~~Any~~
15 ~~corporation which issues a class of equity securities registered under~~
16 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
17 ~~the majority of voting stock of which is owned by such corporation~~
18 ~~including any wholly owned subsidiary of such corporation are not~~
19 ~~required to include company registration numbers in advertisements.))
20 Sellers of travel are not required to include registration numbers on
21 institutional advertising. For the purposes of this subsection,
22 "institutional advertising" is advertising that does not include prices
23 or dates for travel services.~~

24 (~~The director shall issue duplicate registrations upon payment~~
25 ~~of a nominal duplicate registration fee to valid registration holders~~
26 ~~operating more than one office.)) Separate offices or business
27 locations with two or more employees must be individually registered
28 under this chapter.~~

29 (3) No registration is assignable or transferable.

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

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

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

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

9 **Sec. 4.** RCW 19.138.110 and 1996 c 180 s 5 are each amended to read
10 as follows:

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

14 (1) The name, address, and telephone number of the seller of
15 travel;

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

18 (3) A registration fee in an amount determined under RCW 43.24.086;

19 (4) The names, business addresses, and business phone numbers of
20 all employees, independent contractors, or outside agents who sell
21 travel and are covered by the seller of travel's registration(~~((This~~
22 ~~subsection shall not apply to the out of state employees of a~~
23 ~~corporation that issues a class of equity securities registered under~~
24 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~
25 ~~the majority of voting stock of which is owned by the corporation))~~);
26 and

27 (5) For those sellers of travel required to maintain a trust
28 account under RCW 19.138.140, a report prepared and signed by a bank
29 officer, licensed public accountant, or certified public accountant or
30 other report, approved by the director, that verifies that the seller
31 of travel maintains a trust account at a federally insured financial
32 institution located in Washington state, or other approved account, the
33 location and number of that trust account or other approved account,
34 and verifying that the account ((exists as)) required by RCW 19.138.140
35 exists. The director, by rule, may permit alternatives to the report
36 that provides for at least the same level of verification.

1 **Sec. 5.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read
2 as follows:

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

6 (2) Renewal of a registration is subject to the same provisions
7 covering issuance, suspension, and revocation of a registration
8 originally issued.

9 (3) The director may refuse to renew a registration for any of the
10 grounds set out under RCW 19.138.130, and where the past conduct of the
11 applicant affords reasonable grounds for belief that the applicant will
12 not carry out the applicant's duties in accordance with law and with
13 integrity and honesty. The director shall promptly notify the
14 applicant in writing by certified mail of its intent to refuse to renew
15 the registration. The registrant may, within twenty-one days after
16 receipt of that notice or intent, request a hearing on the refusal.
17 The director may permit the registrant to honor commitments already
18 made to its customers, but no new commitments may be incurred, unless
19 the director is satisfied that all new commitments are completely
20 bonded or secured to insure that the general public is protected from
21 loss of money paid to the registrant. It is the responsibility of the
22 registrant to contest the decision regarding conditions imposed or
23 registration denied through the process established by the
24 administrative procedure act, chapter 34.05 RCW.

25 **Sec. 6.** RCW 19.138.130 and 1997 c 58 s 852 are each amended to
26 read as follows:

27 (1) The director may deny, suspend, or revoke the registration of
28 a seller of travel if the director finds that the applicant:

29 (a) Was previously the holder of a registration issued under this
30 chapter, and the registration was revoked for cause and never reissued
31 by the director, or the registration was suspended for cause and the
32 terms of the suspension have not been fulfilled;

33 (b) Has been found guilty of a felony within the past ((~~five~~)) ten
34 years involving moral turpitude, or of a misdemeanor concerning fraud
35 or conversion, or suffers a judgment in a civil action involving
36 willful fraud, misrepresentation, or conversion;

37 (c) Has made a false statement of a material fact in an application
38 under this chapter or in data attached to it;

1 (d) Has violated this chapter or failed to comply with a rule
2 adopted by the director under this chapter;

3 (e) Has failed to display the registration as provided in this
4 chapter;

5 (f) Has published or circulated a statement with the intent to
6 deceive, misrepresent, or mislead the public; or

7 (g) Has committed a fraud or fraudulent practice in the operation
8 and conduct of a travel agency business, including, but not limited to,
9 intentionally misleading advertising.

10 (2) If the seller of travel is found in violation of this chapter
11 or in violation of the consumer protection act, chapter 19.86 RCW, by
12 the entry of a judgment or by settlement of a claim, the director may
13 revoke the registration of the seller of travel, and the director may
14 reinstate the registration at the director's discretion.

15 (3) The director shall immediately suspend the license or
16 certificate of a person who has been certified pursuant to RCW
17 74.20A.320 by the department of social and health services as a person
18 who is not in compliance with a support order or a residential or
19 visitation order. If the person has continued to meet all other
20 requirements for reinstatement during the suspension, reissuance of the
21 license or certificate shall be automatic upon the director's receipt
22 of a release issued by the department of social and health services
23 stating that the licensee is in compliance with the order.

24 **Sec. 7.** RCW 19.138.140 and 1996 c 180 s 7 are each amended to read
25 as follows:

26 (1) A seller of travel shall deposit in a trust account maintained
27 in a federally insured financial institution located in Washington
28 state, or other account approved by the director, all sums held for
29 more than five business days that are received from a person or entity,
30 for retail travel services offered by the seller of travel. This
31 subsection does not apply to travel services sold by a seller of
32 travel, when payments for the travel services are made through the
33 airlines reporting corporation (~~either by cash or credit or debit card~~
34 ~~sale~~)).

35 (2) The trust account or other approved account required by this
36 section shall be established and maintained for the benefit of any
37 person or entity paying money to the seller of travel. The seller of
38 travel shall not in any manner encumber the amounts in trust and shall

1 not withdraw money from the account except the following amounts may be
2 withdrawn at any time:

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

5 (b) Refunds as required by this chapter;

6 (c) The amount of the sales commission;

7 (d) Interest earned and credited to the trust account or other
8 approved account;

9 (e) Remaining funds of a purchaser once all travel services have
10 been provided or once tickets or other similar documentation binding
11 upon the ultimate provider of the travel services have been provided;
12 or

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

15 (3) At the time of registration, the seller of travel shall file
16 with the department the account number and the name of the financial
17 institution at which the trust account or other approved account is
18 held as set forth in RCW 19.138.110. The seller of travel shall notify
19 the department of any change in the account number or location within
20 one business day of the change.

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

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

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

28 (b) The seller of travel does not deposit, negotiate, or factor the
29 credit card charge or otherwise seek to obtain payment of the credit
30 card charge to any account over which the seller of travel has any
31 control; and

32 (c) If the charge includes transportation, the carrier that is to
33 provide the transportation processes the credit card charge, or if the
34 charge is only for services, the provider of services processes the
35 credit card charges.

36 (6) The seller of travel need not maintain a trust account nor
37 comply with the trust account provisions of this section if the seller
38 of travel:

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

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

11 (iii) The bond must be conditioned that the seller of travel will
12 faithfully conform to and abide by this chapter and all rules adopted
13 under this chapter, and shall reimburse all persons who suffer loss by
14 reason of a violation of this chapter or a rule adopted under this
15 chapter.

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

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

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

29 (vii) A person injured by a violation of this chapter may bring an
30 action against the surety bond or approved alternative of the seller of
31 travel who committed the violation or who employed the seller of travel
32 who committed the violation; or

33 (b) Is a member in good standing in a professional association,
34 such as the United States tour operators association or national tour
35 association, that is approved by the director and that provides a
36 minimum of one million dollars in errors and professional liability
37 insurance and provides a surety bond or equivalent protection in an
38 amount of at least two hundred fifty thousand dollars for its member
39 companies.

1 (7) If the seller of travel maintains its principal place of
2 business in another state and maintains a trust account or other
3 approved account in that state consistent with the requirement of this
4 section, and if that seller of travel has transacted business within
5 the state of Washington in an amount exceeding five million dollars for
6 the preceding year, the out-of-state trust account or other approved
7 account may be substituted for the in-state account required under this
8 section.

9 NEW SECTION. **Sec. 8.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

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