
HOUSE BILL 2090

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By Representatives Clements, Lisk, Reardon, Cooper, McMorris, Talcott, B. Chandler and Gombosky

Read first time 02/15/1999. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to sellers of travel; amending RCW 19.138.030,
2 19.138.040, 19.138.100, 19.138.110, 19.138.120, 19.138.130, 19.138.140,
3 19.138.170, 19.138.190, 19.138.200, and 19.138.240; adding a new
4 section to chapter 19.138 RCW; adding new sections to chapter 43.131
5 RCW; and repealing RCW 19.138.180.

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

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

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

16 It is the responsibility of the seller of travel to keep written or
17 printed documentation of the steps taken to verify that the advertised
18 offer was available at the time the advertising was placed. These

1 records are to be maintained for at least ~~((two))~~ one year~~((s))~~ after
2 the placement of the advertisement.

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

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

16 (1) The name and business address and telephone number of the
17 seller of travel.

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

20 (3) The registration number of the seller of travel required by
21 this chapter.

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

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

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

1 "If transportation or other services are canceled by the seller of
2 travel, all sums paid to the seller of travel for services not
3 performed in accordance with the contract between the seller of travel
4 and the purchaser will be refunded within thirty days of receiving the
5 funds from the vendor with whom the services were arranged, or if the
6 funds were not sent to the vendor, the funds shall be returned within
7 fourteen days after cancellation by the seller of travel to the
8 purchaser unless the purchaser requests the seller of travel to apply
9 the money to another travel product and/or date."

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

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

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

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

33 (3) No registration is assignable or transferable.

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

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

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

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

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

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

18 (1) The name, address, and telephone number of the seller of
19 travel;

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

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

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

31 (5) For those sellers of travel required to maintain a trust
32 account under RCW 19.138.140, a report prepared and signed by a bank
33 officer, licensed public accountant, or certified public accountant or
34 other report, approved by the director, that verifies that the seller
35 of travel maintains a trust account at a federally insured financial
36 institution located in Washington state, or other approved account, the
37 location and number of that trust account or other approved account,
38 and verifying that the account ((exists as)) required by RCW 19.138.140

1 exists. The director, by rule, may permit alternatives to the report
2 that provides for at least the same level of verification.

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

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

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

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

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

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

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

35 (b) Has been found guilty of a felony within the past ((~~five~~)) ten
36 years involving moral turpitude, or of a misdemeanor concerning fraud

1 or conversion, or suffers a judgment in a civil action involving
2 willful fraud, misrepresentation, or conversion;

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

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

7 (e) Has failed to display the registration as provided in this
8 chapter;

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

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

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

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

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

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

1 (2) The trust account or other approved account required by this
2 section shall be established and maintained for the benefit of any
3 person or entity paying money to the seller of travel. The seller of
4 travel shall not in any manner encumber the amounts in trust and shall
5 not withdraw money from the account except the following amounts may be
6 withdrawn at any time:

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

9 (b) Refunds as required by this chapter;

10 (c) The amount of the sales commission;

11 (d) Interest earned and credited to the trust account or other
12 approved account;

13 (e) Remaining funds of a purchaser once all travel services have
14 been provided or once tickets or other similar documentation binding
15 upon the ultimate provider of the travel services have been provided;
16 or

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

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

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

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

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

32 (b) The seller of travel does not deposit, negotiate, or factor the
33 credit card charge or otherwise seek to obtain payment of the credit
34 card charge to any account over which the seller of travel has any
35 control; and

36 (c) If the charge includes transportation, the carrier that is to
37 provide the transportation processes the credit card charge, or if the
38 charge is only for services, the provider of services processes the
39 credit card charges.

1 (6) The seller of travel need not maintain a trust account nor
2 comply with the trust account provisions of this section if the seller
3 of travel:

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

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

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

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

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

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

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

36 (b) Is a member in good standing in a professional association,
37 such as the United States tour operators association or national tour
38 association, that is approved by the director and that provides a
39 minimum of one million dollars in errors and professional liability

1 insurance and provides a surety bond or equivalent protection in an
2 amount of at least two hundred fifty thousand dollars for its member
3 companies.

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

12 **Sec. 8.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to
13 read as follows:

14 The director has the following powers and duties:

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

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

19 (3) To suspend or revoke a registration for a violation of this
20 chapter;

21 (4) To provide technical assistance and training to registered
22 sellers of travel on requirements to comply with this chapter;

23 (5) To establish fees;

24 ~~((5) Upon receipt of a complaint, to inspect and audit the books~~
25 ~~and records of a seller of travel. The seller of travel shall~~
26 ~~immediately make available to the director those books and records as~~
27 ~~may be requested at the seller of travel's place of business or at a~~
28 ~~location designated by the director. For that purpose, the director~~
29 ~~shall have full and free access to the office and places of business of~~
30 ~~the seller of travel during regular business hours; and))~~

31 (6) To do all things necessary to carry out the functions, powers,
32 and duties given to the director as set forth in this chapter; and

33 (7) To publish information concerning violations of this chapter or
34 rules adopted or orders issued under this chapter.

35 NEW SECTION. **Sec. 9.** A new section is added to chapter 19.138 RCW
36 to read as follows:

1 For the purposes of this chapter, the attorney general may, upon
2 receipt of an oral or written complaint, investigate the practices of
3 sellers of travel for which registration is required under this chapter
4 or actions of persons who violate or appear to violate this chapter.

5 **Sec. 10.** RCW 19.138.190 and 1994 c 237 s 16 are each amended to
6 read as follows:

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

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

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

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

24 (1) The director may assess against a person or organization that
25 fails to register under this chapter or otherwise violates this
26 chapter, or a rule adopted under this chapter, a civil penalty of not
27 more than one thousand dollars for each violation.

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

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

35 (4) If a person fails to pay an assessment after it has become a
36 final and unappealable order, or after the court has entered final

1 judgment in favor of the state, the director may recover the amount
2 assessed by action in the appropriate superior court. In the action,
3 the validity and appropriateness of the final order imposing the
4 penalty shall not be subject to review.

5 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.131
6 RCW to read as follows:

7 The sellers of travel regulatory program shall be terminated June
8 30, 2002, as provided in section 14 of this act.

9 NEW SECTION. **Sec. 14.** A new section is added to chapter 43.131
10 RCW to read as follows:

11 The following acts or parts of acts, as now existing or hereafter
12 amended, are each repealed, effective June 30, 2003:

- 13 (1) RCW 19.138.010 and 1994 c 237 s 1 & 1986 c 283 s 1;
- 14 (2) RCW 19.138.021 and 1996 c 180 s 1 & 1994 c 237 s 2;
- 15 (3) RCW 19.138.030 and 1999 c . . . s 1 (section 1 of this act),
16 1996 c 180 s 2, 1994 c 237 s 10, & 1986 c 283 s 3;
- 17 (4) RCW 19.138.040 and 1999 c . . . s 2 (section 2 of this act),
18 1996 c 180 s 3, 1994 c 237 s 11, & 1986 c 283 s 4;
- 19 (5) RCW 19.138.050 and 1994 c 237 s 12 & 1986 c 283 s 5;
- 20 (6) RCW 19.138.090 and 1986 c 283 s 9;
- 21 (7) RCW 19.138.100 and 1999 c . . . s 3 (section 3 of this act),
22 1996 c 180 s 4, & 1994 c 237 s 3;
- 23 (8) RCW 19.138.110 and 1999 c . . . s 4 (section 4 of this act),
24 1996 c 180 s 5, & 1994 c 237 s 4;
- 25 (9) RCW 19.138.120 and 1999 c . . . s 5 (section 5 of this act) &
26 1994 c 237 s 5;
- 27 (10) RCW 19.138.130 and 1999 c . . . s 6 (section 6 of this act),
28 1997 c 58 s 852, 1996 c 180 s 6, & 1994 c 237 s 6;
- 29 (11) RCW 19.138.140 and 1999 c . . . s 7 (section 7 of this act),
30 1996 c 180 s 7, & 1994 c 237 s 8;
- 31 (12) RCW 19.138.150 and 1994 c 237 s 9;
- 32 (13) RCW 19.138.160 and 1994 c 237 s 14;
- 33 (14) RCW 19.138.170 and 1999 c . . . s 8 (section 8 of this act) &
34 1994 c 237 s 13;
- 35 (15) RCW 19.138.1701 and 1994 c 237 s 30;
- 36 (16) RCW 19.138.--- and 1999 c . . . s 9 (section 9 of this act);

- 1 (17) RCW 19.138.190 and 1999 c . . . s 10 (section 10 of this act)
2 & 1994 c 237 s 16;
- 3 (18) RCW 19.138.200 and 1999 c . . . s 11 (section 11 of this act)
4 & 1994 c 237 s 20;
- 5 (19) RCW 19.138.210 and 1994 c 237 s 17;
- 6 (20) RCW 19.138.220 and 1994 c 237 s 18;
- 7 (21) RCW 19.138.230 and 1994 c 237 s 19;
- 8 (22) RCW 19.138.240 and 1999 c . . . s 12 (section 12 of this act)
9 & 1994 c 237 s 21;
- 10 (23) RCW 19.138.250 and 1994 c 237 s 22;
- 11 (24) RCW 19.138.260 and 1994 c 237 s 23;
- 12 (25) RCW 19.138.270 and 1994 c 237 s 24;
- 13 (26) RCW 19.138.280 and 1994 c 237 s 28;
- 14 (27) RCW 19.138.290 and 1994 c 237 s 27;
- 15 (28) RCW 19.138.300 and 1994 c 237 s 25;
- 16 (29) RCW 19.138.310 and 1994 c 237 s 26;
- 17 (30) RCW 19.138.900 and 1986 c 283 s 11;
- 18 (31) RCW 19.138.901 and 1986 c 283 s 12;
- 19 (32) RCW 19.138.902 and 1994 c 237 s 32;
- 20 (33) RCW 19.138.903 and 1994 c 237 s 33; and
- 21 (34) RCW 19.138.904 and 1994 c 237 s 35.

22 NEW SECTION. **Sec. 15.** RCW 19.138.180 and 1994 c 237 s 15 are each
23 repealed.

24 NEW SECTION. **Sec. 16.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

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