
HOUSE BILL 1439

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Cole, Rust, R. Fisher, Nelson and Valle.

Read first time January 29, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to travel promoters; amending RCW 19.138.010,
2 19.138.020, 19.138.030, 19.138.040, 19.138.050, 19.138.060, and
3 19.138.080; adding new sections to chapter 19.138 RCW; repealing RCW
4 19.138.070; and prescribing penalties.

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

6 **Sec. 1.** RCW 19.138.010 and 1986 c 283 s 1 are each amended to read
7 as follows:

8 The legislature finds and declares that advertising, sales, and
9 business practices of certain travel (~~charter or tour operators~~)
10 promoters have worked financial hardship upon the people of this state;
11 that the travel business has a significant impact upon the economy and
12 well-being of this state and its people; that problems have arisen
13 regarding certain segments of the travel (~~charter or tour operator~~)
14 promoter business; and that the public welfare requires regulation of
15 travel (~~charter or tour operators~~) promoters in order to eliminate

1 unfair advertising, sales and business practices. The legislature
2 further finds it necessary to establish standards that will safeguard
3 the people against financial hardship and to encourage fair dealing and
4 prosperity in the travel business.

5 **Sec. 2.** RCW 19.138.020 and 1986 c 283 s 2 are each amended to read
6 as follows:

7 (1) "Travel (~~charter or tour operator~~) promoter" means a person
8 who sells, provides, furnishes, contracts for, arranges, or advertises
9 in this state that he or she can or may arrange, or has arranged,
10 whether at wholesale or retail, air, sea, or land transportation either
11 separately or in conjunction with other services. "Travel (~~charter or~~
12 ~~tour operator~~) promoter" does not include:

13 (a) An air carrier;

14 (b) An ocean carrier;

15 (c) A motor carrier;

16 (d) A rail carrier;

17 (e) A (~~charter party carrier~~) public or private educational
18 institution arranging travel solely for students or employees; or

19 (f) An auto transportation carrier(;

20 (~~g) A person who operates a travel agency business and meets~~
21 ~~standards no less than those required on January 1, 1987, for~~
22 ~~authorized agents of the airline reporting corporation;~~

23 (~~h) A person who:~~

24 (~~i) Has operated a travel tour or charter business for at least~~
25 ~~three years under the same ownership or management;~~

26 (~~ii) Has total annual revenue, not including airline transportation~~
27 ~~fares, of at least five hundred thousand dollars;~~

1 ~~(iii) Has a certificate of insurance issued by a company authorized~~
2 ~~to conduct an insurance business under the laws of any state for at~~
3 ~~least one million dollars for errors and omissions; and~~

4 ~~(iv) Has in effect a surety bond for at least one hundred thousand~~
5 ~~dollars to the benefit of any consumer who has made payment to the~~
6 ~~person operating the travel tour or charter business; or~~

7 ~~(i) A person who sells membership in an organization, club, or~~
8 ~~association that entitles the purchaser to obtain transportation or~~
9 ~~other services from a travel charter or tour operator and who does not~~
10 ~~arrange or provide for transportation)).~~

11 (2) "Advertise" means to make any representation in conjunction
12 with, or to effect the sale of, travel services and includes
13 communication with other members of the same partnership, corporation,
14 joint venture, association, organization, group or other entity.

15 (3) "Passenger" is a person who purchases travel arrangements in
16 Washington state and on whose behalf money or other consideration has
17 been given or is to be given to another, including another member of
18 the same partnership, corporation, joint venture, association,
19 organization, group or other entity, for procuring transportation or
20 other travel services.

21 (4) "Adequate bond" means a bond executed by an authorized surety
22 insurer in an amount not less than fifty thousand dollars or an amount
23 equal to ten percent of the total revenue of the two highest
24 consecutive months for the travel ~~((charter or tour operator's))~~
25 promoter's business during the prior calendar year, whichever is
26 greater, but in no case, more than five hundred thousand dollars, for
27 the benefit of every person for whom services have not been delivered
28 by the wrongful act of the principal acting in the course and scope of
29 his or her occupation or business or by any official, agent, or

1 employee of the principal acting in the course or scope of his or her
2 employment or agency.

3 (5) "Department" means the department of licensing.

4 (6) "Director" means the director of the department of licensing or
5 the director's duly authorized representative.

6 (7) "Travel certificate" means a document that represents that the
7 holder is entitled to air, sea, or land transportation at a discount or
8 reduced price or to purchase air, sea, or land transportation at a
9 discount or reduced price from a specified source, whether or not the
10 holder is required to pay additional money or fulfill any requirements
11 to utilize the certificate.

12 **Sec. 3.** RCW 19.138.030 and 1986 c 283 s 3 are each amended to read
13 as follows:

14 A travel (~~(charter or tour operator)~~) promoter shall not advertise
15 that air, sea, or land transportation either separately or in
16 conjunction with other services is or may be available unless he or she
17 has, prior to such advertisement, received written confirmation with a
18 carrier for the transportation advertised. The alphabetized listing of
19 travel promoters appearing in the advertising section of telephone
20 books or other directories, all materials used to directly solicit
21 business, including but not limited to correspondence, cards, and
22 posters, and all other advertising, including by airwave transmission,
23 shall show or announce the travel promoter's current registration
24 number.

25 **Sec. 4.** RCW 19.138.040 and 1986 c 283 s 4 are each amended to read
26 as follows:

27 At or prior to the time of full or partial payment for air, sea, or
28 land transportation or any other services offered by the travel

1 ((~~charter or tour operator~~)) promoter in conjunction with such
2 transportation, the travel ((~~charter or tour operator~~)) promoter shall
3 furnish to the person making the payment a written statement
4 conspicuously setting forth the following information:

5 (1) The name and business address and telephone number of the
6 travel ((~~charter or tour operator.~~)) promoter;

7 (2) The amount paid, the date of such payment, the purpose of the
8 payment made, ((~~and~~)) an itemized statement of the balance due, if
9 any((-)), and a statement disclosing when and under what circumstances
10 a refund of the payment will be made to the person making the payment
11 or that the payment is totally or partially nonrefundable;

12 (3) The location and number of the trust account or bond required
13 by this chapter((-));

14 (4) The name of the carrier with whom the travel ((~~charter or tour~~
15 ~~operator~~)) promoter has contracted to provide the transportation, the
16 type of equipment contracted, and the date, time, and place of each
17 departure: PROVIDED, That the information required in this subsection
18 may be provided at the time of final payment((-));

19 (5) The conditions, if any, upon which the contract between the
20 travel ((~~charter or tour operator~~)) promoter and the ((~~passenger~~))
21 person may be canceled, and the rights and obligations of all parties
22 in the event of such cancellation((-));

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 ((~~travel~~
26 ~~charter or tour operator~~)) supplier, all sums paid to the travel
27 ((~~charter or tour operator~~)) promoter for services not performed in
28 accordance with the contract between the travel ((~~charter or tour~~
29 ~~operator~~)) promoter and the ((~~passenger~~)) person will be refunded,
30 subject to the supplier's refund policy within fourteen days after the

1 (~~((cancellation by the travel charter or tour operator))~~) travel promoter
2 receives the money, to the (~~((passenger))~~) person or the party who
3 contracted for the (~~((passenger))~~) person unless: (a) Mutually
4 acceptable alternative travel arrangements are provided; or (b) the
5 services were disclosed to be partially refundable or nonrefundable."

6 **Sec. 5.** RCW 19.138.050 and 1986 c 283 s 5 are each amended to read
7 as follows:

8 (1) If the transportation or other services contracted for are
9 canceled by the travel promoter, the travel (~~((charter or tour~~
10 ~~operator))~~) promoter shall return to the (~~((passenger))~~) person within
11 fourteen days after the cancellation all moneys paid for services not
12 performed in accordance with the contract unless mutually acceptable
13 alternative travel arrangements are provided.

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

17 **Sec. 6.** RCW 19.138.060 and 1986 c 283 s 6 are each amended to read
18 as follows:

19 (1) Except as otherwise provided in (~~((subsection (3) of))~~) this
20 section, a travel (~~((charter or tour operator))~~) promoter shall deposit
21 (~~((ninety percent of all sums))~~) the net amount received for
22 transportation or any other services offered by the travel (~~((charter or~~
23 ~~tour operator))~~) promoter in conjunction with such transportation in a
24 trust account in a federally insured financial institution.

25 (2) The trust account required by this section shall be created and
26 maintained for the benefit of the passengers paying money to the travel
27 (~~((charter or tour operator))~~) promoter, for the purpose of consumer
28 protection, and a passenger's claim to the trust is prior to the claims

1 of any secured or unsecured creditor in the event of a proceeding in
2 bankruptcy. The travel (~~(charter or tour operator)~~) promoter shall not
3 in any manner encumber the corpus of the account and shall not withdraw
4 money therefrom except: (a) In an amount equal to partial or full
5 payment for the services contracted for the passengers to the carrier
6 or person providing the other services offered by the travel (~~(charter~~
7 ~~or tour operator)~~) promoter; or (b) to make the refunds as required by
8 RCW 19.138.050 or as provided for by written contract between the
9 travel (~~(charter and tour operator)~~) promoter and passengers. A travel
10 (~~(charter and tour operator)~~) promoter may withdraw from the account
11 any interest earned and credited to the trust account for the sole
12 benefit of the travel (~~(charter and tour operator)~~) promoter after all
13 services have been provided as contracted.

14 (3) (~~(A travel charter and tour operator, instead)~~) In lieu of
15 maintaining a trust account as provided in subsections (1) and (2) of
16 this section, a travel promoter may maintain an adequate bond.

17 (4) A violation of any provision of this section shall constitute
18 a gross misdemeanor punishable under RCW 9A.20.021(2).

19 **Sec. 7.** RCW 19.138.080 and 1986 c 283 s 8 are each amended to read
20 as follows:

21 A violation of (~~(RCW 19.138.030 through 19.138.070)~~) this chapter
22 shall constitute a violation of RCW 19.86.020.

23 NEW SECTION. **Sec. 8.** A travel promoter as defined under RCW
24 19.138.020 may not sell, provide, furnish, contract for, arrange, or
25 advertise in this state that he or she can or may arrange, or has
26 arranged, whether at wholesale or retail, air, sea, or land
27 transportation without being registered to conduct such business by the
28 department under this chapter.

1 (6) The director shall establish by rule the procedural
2 requirements and fees for renewal of registration. Renewal of
3 registration also requires a completed application as set forth in
4 subsection (3) of this section.

5 (7) A travel promoter shall notify the department within thirty
6 days after any change in the information on its application regarding
7 the names and addresses of owners, officers, agent for the purpose of
8 service of process, or place of business.

9 NEW SECTION. **Sec. 10.** The department shall cooperate with the
10 office of the attorney general in enforcing this chapter and shall
11 refer to the attorney general or the proper prosecuting attorney any
12 evidence available concerning violations of this chapter. The attorney
13 general or proper prosecuting attorney may in their discretion, in
14 addition to any other action they might commence, bring an action in
15 the name of the state against any person to restrain and prevent the
16 doing of any act or practice prohibited by this chapter.

17 NEW SECTION. **Sec. 11.** Any person who violates this chapter is
18 guilty of a misdemeanor, except for violations of RCW 19.138.060.

19 NEW SECTION. **Sec. 12.** The director may revoke, suspend, or
20 deny issuance of registration to any travel promoter who violates this
21 chapter.

22 NEW SECTION. **Sec. 13.** The rights and remedies under this
23 chapter are in addition to any other rights or remedies provided by
24 law. The provisions of this chapter shall be construed liberally for
25 the accomplishment of its purposes.

1 NEW SECTION. **Sec. 14.** Sections 8 through 13 of this act are
2 each added to chapter 19.138 RCW.

3 NEW SECTION. **Sec. 15.** RCW 19.138.070 and 1986 c 283 s 7 are
4 each repealed.

5 NEW SECTION. **Sec. 16.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.