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ENGROSSED SUBSTITUTE HOUSE BILL 2688

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State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives G. Cole and King; by request of Attorney General)

Read first time 02/04/94.

1 AN ACT Relating to sellers of travel; amending RCW 19.138.010,  
2 19.138.030, 19.138.040, 19.138.050, 19.138.010, 19.138.030, 19.138.040,  
3 and 19.138.050; adding new sections to chapter 19.138 RCW; creating a  
4 new section; repealing RCW 19.138.020, 19.138.060, 19.138.070, and  
5 19.138.080; prescribing penalties; providing effective dates; and  
6 providing an expiration date.

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

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

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

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

3 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
4 otherwise, the definitions in this section apply throughout this  
5 chapter.

6 (1) "Department" means the department of licensing.

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

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

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

26 (b) "Seller of travel" does not include:

27 (i) An air carrier;

28 (ii) An ocean carrier;

29 (iii) A motor carrier;

30 (iv) A rail carrier;

31 (v) A charter party carrier; or

32 (vi) An auto transportation carrier.

33 (4) "Travel services" includes transportation by air, sea, or rail  
34 ground transportation, hotel or any lodging accommodations, or package  
35 tours, whether offered or sold on a wholesale or retail basis.

36 (5) "Advertisement" includes, but is not limited to, a written or  
37 graphic representation in a card, brochure, newspaper, magazine,  
38 directory listing, or display, and oral, written, or graphic

1 representations made by radio, television, or cable transmission that  
2 relates to travel services.

3 NEW SECTION. **Sec. 3.** No person, firm, or corporation may act or  
4 hold itself out as a seller of travel unless, prior to engaging in the  
5 business of selling or advertising to sell travel services, the person,  
6 firm, or corporation registers with the director under this chapter and  
7 rules adopted under this chapter.

8 (1) The registration number must be conspicuously posted in the  
9 place of business and must be included in all advertisements.

10 (2) The director shall issue duplicate registrations upon payment  
11 of a nominal duplicate registration fee to valid registration holders  
12 operating more than one office.

13 (3) No registration is assignable or transferable.

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

18 NEW SECTION. **Sec. 4.** An application for registration as a seller  
19 of travel shall be submitted in the form prescribed by rule by the  
20 director, and shall contain but not be limited to the following:

21 (1) The name, address, and telephone number of the seller of  
22 travel;

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

25 (3) A copy of the bond required by section 7 of this act;

26 (4) A special report prepared and signed by a licensed public  
27 accountant or certified public accountant verifying that the seller of  
28 travel maintains a trust account at a federally insured institution  
29 located in the state of Washington, the location and number of that  
30 trust account, and verifying that the account is maintained and used as  
31 required by section 8 of this act. The director, by rule, may permit  
32 alternatives to the special report that provides for at least the same  
33 level of verification;

34 (5) A registration fee in an amount determined under RCW 43.24.086;

35 (6) The name, address, and social security numbers of all employees  
36 covered by the seller of travel's registration. The seller of travel

1 must notify the department of any changes of employment status within  
2 forty-five days of the change.

3 NEW SECTION. **Sec. 5.** (1) Each seller of travel shall renew its  
4 registration on or before July 1 of every other year or as otherwise  
5 determined by the 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 section 6 of this act, and where the past conduct  
11 of the applicant affords reasonable grounds for belief that the  
12 applicant will not carry out the applicant's duties in accordance with  
13 law and with integrity and honesty. The director shall promptly notify  
14 the applicant in writing by certified mail of its intent to refuse to  
15 renew the registration. The registrant may, within twenty-one days  
16 after receipt of that notice or intent, request a hearing on the  
17 refusal. The director may permit the registrant to honor commitments  
18 already made to its customers, but no new commitments may be incurred,  
19 unless the director is satisfied that all new commitments are  
20 completely bonded or secured to insure that the general public is  
21 protected from loss of money paid to the registrant. It is the  
22 responsibility of the registrant to contest the decision regarding  
23 conditions imposed or registration denied through the process  
24 established by the administrative procedure act, chapter 34.05 RCW.

25 NEW SECTION. **Sec. 6.** (1) The director may deny, suspend, or  
26 revoke the registration of a seller of travel if the director finds  
27 that the applicant:

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

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

36 (c) Has made a false statement of a material fact in an application  
37 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;

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; or

10 (h) Has aided or abetted a person, firm, or corporation that they  
11 know has not registered in this state in the business of conducting a  
12 travel agency or other sale of travel.

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

18 NEW SECTION. **Sec. 7.** Each registrant shall file and maintain a  
19 surety bond, in an amount of not greater than thirty thousand dollars  
20 nor less than ten thousand dollars that the director deems adequate to  
21 protect the public interest, executed by the applicant as obligor and  
22 by a surety company authorize to do business in this state.

23 (1) The director may establish by rule a schedule establishing a  
24 range of bond amounts that shall vary according to the proven financial  
25 stability of the seller of travel, the volume of business of the seller  
26 of travel, and other factors deemed relevant by the director.

27 (2) The bond shall run to the state of Washington as obligee, and  
28 shall run to the benefit of the state and a person or persons who  
29 suffer loss by reason of the seller of travel's violation of this  
30 chapter or rules adopted under this chapter.

31 (3) The bond shall be conditioned that the seller of travel will  
32 faithfully conform to and abide by this chapter and all rules adopted  
33 under this chapter, and shall reimburse all persons who suffer loss by  
34 reason of a violation of this chapter or rules adopted under this  
35 chapter.

36 (4) The bond shall be continuous and may be canceled by the surety  
37 upon the surety giving written notice to the director of its intent to

1 cancel the bond. The cancellation shall be effective thirty days after  
2 the notice is received by the director.

3 (5) The applicant may obtain the bond directly from the surety or  
4 through a group bonding arrangement involving a professional  
5 organization comprised of sellers of travel if the arrangement provides  
6 at least as much coverage as is required under this section.

7 (6) In lieu of a surety bond, the applicant may, upon approval by  
8 the director, file with the director a certificate of deposit, an  
9 irrevocable letter of credit, or other instrument as approved by the  
10 director by rule, drawn in favor of the director for an amount equal to  
11 the required bond.

12 (7) A person injured by a violation of this chapter may bring an  
13 action against the surety bond or approved alternative of the seller of  
14 travel who committed the violation or who employed the seller of travel  
15 who committed the violation.

16 NEW SECTION. **Sec. 8.** (1) Within three business days of receipt,  
17 a seller of travel shall deposit all sums received from a person or  
18 entity, for travel services offered by the seller of travel, in a trust  
19 account maintained in a federally insured financial institution located  
20 in Washington state. Exempted are airline sales made by a seller of  
21 travel, when payments for the airline tickets are made through the  
22 airline reporting corporation either by cash or credit card sale.

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

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

30 (b) Refunds as required by this chapter;

31 (c) The amount of the sales commission;

32 (d) Interest earned and credited to the trust account; or

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

36 (3) At the time of registration, the seller of travel shall file  
37 with the department the account number and the name of the financial  
38 institution at which the trust account is held as set forth in section

1 4 of this act. The seller of travel shall notify the department of any  
2 change in the account number or location within one business day of the  
3 change.

4 (4) The director, by rule, may allow for the use of other types of  
5 funds or accounts; provided that the protection for consumers is no  
6 less than that provided by this section.

7 (5) The seller of travel need not comply with the requirements of  
8 this section if all of the following apply, except as exempted in  
9 section 8(1) of this act:

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

11 (b) The seller of travel does not deposit, negotiate, or factor the  
12 credit card charge or otherwise seek to obtain payment of the credit  
13 card charge to any account over which the seller of travel has any  
14 control; and

15 (c) If the charge includes transportation, the carrier that is to  
16 provide the transportation processes the credit card charge, or if the  
17 charge is only for services, the provider of services processes the  
18 credit card charges.

19 (6) If the seller of travel maintains its principal place of  
20 business in another state and maintains a trust account in that state  
21 consistent with the requirement of this section, and if that seller of  
22 travel has transacted business within the state of Washington in an  
23 amount exceeding five million dollars for the preceding year, the out-  
24 of-state trust account may be substituted for the in-state account  
25 required under this section.

26 NEW SECTION. **Sec. 9.** A seller of travel shall perform its duties  
27 reasonably and with ordinary care in providing travel services.

28 **Sec. 10.** RCW 19.138.030 and 1986 c 283 s 3 are each amended to  
29 read as follows:

30 A (~~travel charter or tour operator~~) seller of travel shall not  
31 advertise that air, sea, or land transportation either separately or in  
32 conjunction with other services is or may be available unless he or she  
33 has, prior to (~~such~~) the advertisement, (~~received written~~  
34 ~~confirmation with a carrier for the transportation advertised~~)  
35 determined that the product advertised was available at the time the  
36 advertising was placed. This determination can be made by the seller  
37 of travel either by use of an airline computer reservation system, or

1 by written confirmation from the vendor whose program is being  
2 advertised.

3 It is the responsibility of the seller of travel to keep written or  
4 printed documentation of the steps taken to verify that the advertised  
5 offer was available at the time the advertising was placed. These  
6 records are to be maintained for at least two years after the placement  
7 of the advertisement.

8 **Sec. 11.** RCW 19.138.040 and 1986 c 283 s 4 are each amended to  
9 read as follows:

10 At or prior to the time of full or partial payment for air, sea, or  
11 land transportation or any other services offered by the seller of  
12 travel (~~((charter or tour operator))~~) in conjunction with (~~((such))~~) the  
13 transportation, the seller of travel (~~((charter or tour operator))~~) shall  
14 furnish to the person making the payment a written statement  
15 conspicuously setting forth the following information:

16 (1) The name and business address and telephone number of the  
17 (~~((travel charter or tour operator))~~) 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 (~~((location and))~~) registration number of the (~~((trust account~~  
21 ~~or bond))~~) seller of travel required by this chapter.

22 (4) The name of the (~~((carrier))~~) vendor with whom the (~~((travel~~  
23 ~~charter or tour operator))~~) seller of travel has contracted to provide  
24 (~~((the transportation, the type of equipment contracted, and the date,~~  
25 ~~time, and place of each departure:— PROVIDED, That the information~~  
26 ~~required in this subsection may be provided at the time of final~~  
27 ~~payment))~~) travel arrangements for a consumer and all pertinent  
28 information relating to the travel as known by the seller of travel at  
29 the time of booking. The seller of travel will make known further  
30 details as soon as received from the vendor. All information will be  
31 provided with final documentation.

32 (5) The conditions, if any, upon which the contract between the  
33 (~~((travel charter or tour operator))~~) seller of travel and the passenger  
34 may be canceled, and the rights and obligations of all parties in the  
35 event of (~~((such))~~) cancellation.

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 (~~travel~~  
2 ~~charter or tour operator~~) seller of travel, all sums paid to the  
3 (~~travel charter or tour operator~~) seller of travel for services not  
4 performed in accordance with the contract between the (~~travel charter~~  
5 ~~or tour operator~~) seller of travel and the (~~passenger~~) purchaser  
6 will be refunded within (~~fourteen~~) thirty days (~~after the~~  
7 ~~cancellation by the travel charter or tour operator to the passenger or~~  
8 ~~the party who contracted for the passenger unless mutually acceptable~~  
9 ~~alternative travel arrangements are provided~~) of receiving the funds  
10 from the vendor with whom the services were arranged, or if the funds  
11 were not sent to the vendor, the funds shall be returned within  
12 fourteen days after cancellation by the seller of travel to the  
13 purchaser unless the purchaser requests the seller of travel to apply  
14 the money to another travel product and/or date."

15 **Sec. 12.** RCW 19.138.050 and 1986 c 283 s 5 are each amended to  
16 read as follows:

17 (1) If the transportation or other services contracted for are  
18 canceled (~~the travel charter or tour operator~~), or if the money is to  
19 be refunded for any reason, the seller of travel shall (~~return~~)  
20 refund to the (~~passenger within fourteen days after the cancellation~~  
21 all moneys paid for services not performed in accordance with the  
22 contract unless mutually acceptable alternative travel arrangements are  
23 provided) person with whom it contracts for travel services, the money  
24 due the person within thirty days of receiving the funds from the  
25 vendor with whom the services were arranged. If the funds were not  
26 sent to the vendor and remain in the possession of the seller of  
27 travel, the funds shall be refunded within fourteen days.

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

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

36 NEW SECTION. **Sec. 13.** The director has the following powers and  
37 duties:

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

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

5 (3) To suspend or revoke a registration for a violation of this  
6 chapter;

7 (4) To establish fees;

8 (5) To inspect and audit the books and records of a seller of  
9 travel as they pertain to the deposits to and withdrawals from the  
10 trust account and representations concerning bond amount  
11 determinations. The seller of travel shall immediately make available  
12 to the director those books and records as may be requested at the  
13 seller of travel's place of business or at a location designated by the  
14 director. For that purpose, the director shall have full and free  
15 access to the office and places of business of the seller of travel  
16 during regular business hours; and

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

19 NEW SECTION. **Sec. 14.** (1) A nonresident seller of travel  
20 soliciting business or selling travel in the state of Washington, by  
21 mail, telephone, or otherwise, either directly or indirectly, is deemed  
22 to have appointed the director to be the seller of travel's true and  
23 lawful attorney upon whom may be served any legal process against that  
24 nonresident arising or growing out of a transaction involving travel  
25 services. That solicitation signifies the nonresident's agreement that  
26 process against the nonresident that is served as provided in this  
27 chapter is of the same legal force and validity as if served personally  
28 on the nonresident seller of travel.

29 (2) Service of process upon a nonresident seller of travel shall be  
30 made by leaving a copy of the process with the director. The fee for  
31 the service of process shall be determined by the director by rule.  
32 That service is sufficient service upon the nonresident if the  
33 plaintiff or plaintiff's attorney of record sends notice of the service  
34 and a copy of the process by certified mail before service or  
35 immediately after service to the defendant at the address given by the  
36 nonresident in a solicitation furnished by the nonresident, and the  
37 sender's post office receipt of sending and the plaintiff's or  
38 plaintiff's attorney's affidavit of compliance with this section are

1 returned with the process in accordance with Washington superior court  
2 civil rules. Notwithstanding the foregoing requirements, however, once  
3 service has been made on the director as provided in this section, in  
4 the event of failure to comply with the requirement of notice to the  
5 nonresident, the court may order that notice be given that will be  
6 sufficient to apprise the nonresident.

7 NEW SECTION. **Sec. 15.** The director, in the director's discretion,  
8 may:

9 (1) Annually, or more frequently, make public or private  
10 investigations within or without this state as the director deems  
11 necessary to determine whether a registration should be granted,  
12 denied, revoked, or suspended, or whether a person has violated or is  
13 about to violate this chapter or a rule adopted or order issued under  
14 this chapter, or to aid in the enforcement of this chapter or in the  
15 prescribing of rules and forms of this chapter;

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

18 (3) Investigate complaints concerning practices by sellers of  
19 travel for which registration is required by this chapter.

20 NEW SECTION. **Sec. 16.** For the purpose of an investigation or  
21 proceeding under this chapter, the director or any officer designated  
22 by the director may administer oaths and affirmations, subpoena  
23 witnesses, compel their attendance, take evidence, and require the  
24 production of any books, papers, correspondence, memoranda, agreements,  
25 or other documents or records which the director deems relevant or  
26 material to the inquiry.

27 NEW SECTION. **Sec. 17.** If it appears to the director that a person  
28 has engaged in or is about to engage in an act or practice constituting  
29 a violation of this chapter or a rule adopted or order issued under  
30 this chapter, the director may, in the director's discretion, issue an  
31 order directing the person to cease and desist from continuing the act  
32 or practice. Reasonable notice of an opportunity for a hearing shall  
33 be given. The director may issue a temporary order pending the  
34 hearing, which shall remain in effect until ten days after the hearing  
35 is held and which shall become final if the person to whom the notice

1 is addressed does not request a hearing within fifteen days after the  
2 receipt of the notice.

3 NEW SECTION. **Sec. 18.** The attorney general, a county prosecuting  
4 attorney, the director, or any person may, in accordance with the law  
5 of this state governing injunctions, maintain an action in the name of  
6 this state to enjoin a person or entity selling travel services for  
7 which registration is required by this chapter without registration  
8 from engaging in the practice until the required registration is  
9 secured. However, the injunction shall not relieve the person or  
10 entity selling travel services without registration from criminal  
11 prosecution therefor, but the remedy by injunction shall be in addition  
12 to any criminal liability.

13 NEW SECTION. **Sec. 19.** A person or business that violates an  
14 injunction issued under this chapter shall pay a civil penalty, as  
15 determined by the court, of not more than twenty-five thousand dollars,  
16 that shall be paid to the department. For the purpose of this section,  
17 the superior court issuing an injunction shall retain jurisdiction and  
18 the cause shall be continued, and in such cases the attorney general  
19 acting in the name of the state may petition for the recovery of civil  
20 penalties.

21 NEW SECTION. **Sec. 20.** The director or individuals acting on the  
22 director's behalf are immune from suit in any action, civil or  
23 criminal, based on disciplinary proceedings or other official acts  
24 performed in the course of their duties in the administration and  
25 enforcement of this chapter.

26 NEW SECTION. **Sec. 21.** (1) The director may assess against a  
27 person or organization that violates this chapter, or a rule adopted  
28 under this chapter, a civil penalty of not more than one thousand  
29 dollars for each violation.

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

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

4 (4) If a person fails to pay an assessment after it has become a  
5 final and unappealable order, or after the court has entered final  
6 judgment in favor of the state, the director may recover the amount  
7 assessed by action in the appropriate superior court. In the action,  
8 the validity and appropriateness of the final order imposing the  
9 penalty shall not be subject to review.

10 NEW SECTION. **Sec. 22.** The director may assess against a person or  
11 organization that violates this chapter, or a rule adopted under this  
12 chapter, the full amount of restitution as may be necessary to restore  
13 to a person an interest in money or property, real or personal, that  
14 may have been acquired by means of an act prohibited by or in violation  
15 of this chapter.

16 NEW SECTION. **Sec. 23.** In order to maintain or defend a lawsuit,  
17 a seller of travel must be registered with the department as required  
18 by this chapter and rules adopted under this chapter.

19 NEW SECTION. **Sec. 24.** (1) Each person who knowingly violates this  
20 chapter or who knowingly gives false or incorrect information to the  
21 director, attorney general, or county prosecuting attorney in filing  
22 statements required by this chapter, whether or not the statement or  
23 report is verified, is guilty of a gross misdemeanor punishable under  
24 chapter 9A.20 RCW.

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

30 NEW SECTION. **Sec. 25.** The administrative procedure act, chapter  
31 34.05 RCW, shall, wherever applicable, govern the rights, remedies, and  
32 procedures respecting the administration of this chapter.

33 NEW SECTION. **Sec. 26.** All information, documents, and reports  
34 filed with the director under this chapter are matters of public record

1 and shall be open to public inspection, subject to reasonable  
2 regulation. The director may make public, on a periodic or other  
3 basis, the information as may be necessary or appropriate in the public  
4 interest concerning the registration, reports, and information filed  
5 with the director or any other matters to the administration and  
6 enforcement of this chapter.

7 NEW SECTION. **Sec. 27.** The legislature finds that the practices  
8 governed by this chapter are matters vitally affecting the public  
9 interest for the purpose of applying the consumer protection act,  
10 chapter 19.86 RCW. Any violation of this chapter is not reasonable in  
11 relation to the development and preservation of business and is an  
12 unfair and deceptive act or practice and unfair method of competition  
13 in the conduct of trade or commerce in violation of RCW 19.86.020.  
14 Remedies provided by chapter 19.86 RCW are cumulative and not  
15 exclusive.

16 NEW SECTION. **Sec. 28.** In addition to any other penalties or  
17 remedies under chapter 19.86 RCW, a person who is injured by a  
18 violation of this chapter may bring an action for recovery of actual  
19 damages, including court costs and attorneys' fees. No provision in  
20 this chapter shall be construed to limit any right or remedy provided  
21 under chapter 19.86 RCW.

22 NEW SECTION. **Sec. 29.** The following acts or parts of acts are  
23 each repealed:

- 24 (1) RCW 19.138.020 and 1986 c 283 s 2;  
25 (2) RCW 19.138.060 and 1986 c 283 s 6;  
26 (3) RCW 19.138.070 and 1986 c 283 s 7; and  
27 (4) RCW 19.138.080 and 1986 c 283 s 8.

28 **Sec. 30.** RCW 19.138.010 and 1994 c ... s 1 (section 1 of this act)  
29 are each amended to read as follows:

30 The legislature finds and declares that advertising, sales, and  
31 business practices of certain (~~sellers of travel~~) travel charter or  
32 tour operators have worked financial hardship upon the people of this  
33 state; that the travel business has a significant impact upon the  
34 economy and well-being of this state and its people; that problems have  
35 arisen regarding certain (~~sales of travel~~) segments of the travel

1 charter or tour operator business; and that the public welfare requires  
2 regulation of (~~sellers of travel~~) travel charter or tour operators in  
3 order to eliminate unfair advertising, sales and business practices.  
4 The legislature further finds it necessary to establish standards that  
5 will safeguard the people against financial hardship and to encourage  
6 fair dealing and prosperity in the travel business.

7 **Sec. 31.** RCW 19.138.030 and 1994 c ... s 10 (section 10 of this  
8 act) are each amended to read as follows:

9 A (~~seller of~~) travel charter or tour operator shall not advertise  
10 that air, sea, or land transportation either separately or in  
11 conjunction with other services is or may be available unless he or she  
12 has, prior to the advertisement, (~~determined that the product~~  
13 ~~advertised was available at the time the advertising was placed. This~~  
14 ~~determination can be made by the seller of travel either by use of an~~  
15 ~~airline computer reservation system, or by written confirmation from~~  
16 ~~the vendor whose program is being advertised.~~

17 It is the responsibility of the seller of travel to keep written or  
18 printed documentation of the steps taken to verify that the advertised  
19 offer was available at the time the advertising was placed. These  
20 records are to be maintained for at least two years after the placement  
21 of the advertisement)) received written confirmation with a carrier for  
22 the transportation advertised.

23 **Sec. 32.** RCW 19.138.040 and 1994 c ... s 11 (section 11 of this  
24 act) are each amended to read as follows:

25 At or prior to the time of full or partial payment for air, sea, or  
26 land transportation or any other services offered by the (~~seller of~~)  
27 travel charter or tour operator in conjunction with the transportation,  
28 the (~~seller of~~) travel charter or tour operator shall furnish to the  
29 person making the payment a written statement conspicuously setting  
30 forth the following information:

31 (1) The name and business address and telephone number of the  
32 (~~seller of~~) travel charter or tour operator.

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

35 (3) The (~~registration~~) location and number of the (~~seller of~~  
36 ~~travel~~) trust account or bond required by this chapter.

1 (4) The name of the (~~vendor~~) carrier with whom the (~~seller of~~)  
2 travel charter or tour operator has contracted to provide (~~travel~~  
3 ~~arrangements for a consumer and all pertinent information relating to~~  
4 ~~the travel as known by the seller of travel at the time of booking.~~  
5 ~~The seller of travel will make known further details as soon as~~  
6 ~~received from the vendor. All information will be provided with final~~  
7 ~~documentation)) the transportation, the type of equipment contracted,  
8 and the date, time, and place of each departure. However, the  
9 information required in this subsection may be provided at the time of  
10 final payment.~~

11 (5) The conditions, if any, upon which the contract between the  
12 (~~seller of~~) travel charter or tour operator and the passenger may be  
13 canceled, and the rights and obligations of all parties in the event of  
14 cancellation.

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

17 "If transportation or other services are canceled by the (~~seller~~  
18 ~~of~~) travel charter or tour operator, all sums paid to the (~~seller~~  
19 ~~of~~) travel charter or tour operator for services not performed in  
20 accordance with the contract between the (~~seller of~~) travel charter  
21 or tour operator and the (~~purchaser~~) passenger will be refunded  
22 within (~~thirty~~) fourteen days (~~of receiving the funds from the~~  
23 ~~vendor with whom the services were arranged, or if the funds were not~~  
24 ~~sent to the vendor, the funds shall be returned within fourteen days~~  
25 ~~after cancellation by the seller of travel to the purchaser unless the~~  
26 ~~purchaser requests the seller of travel to apply the money to another~~  
27 ~~travel product and/or date)) after the cancellation by the travel  
28 charter or tour operator to the passenger or the party who contracted  
29 for the passenger unless mutually acceptable alternative travel  
30 arrangements are provided."~~

31 **Sec. 33.** RCW 19.138.050 and 1994 c ... s 12 (section 12 of this  
32 act) are each amended to read as follows:

33 (1) If the transportation or other services contracted for are  
34 canceled, (~~or if the money is to be refunded for any reason, the~~  
35 ~~seller of~~) the travel charter or tour operator shall (~~refund~~) return  
36 to the (~~person with whom it contracts for travel services, the money~~  
37 ~~due the person within thirty days of receiving the funds from the~~  
38 ~~vendor with whom the services were arranged. If the funds were not~~

1 ~~sent to the vendor and remain in the possession of the seller of~~  
2 ~~travel, the funds shall be refunded within fourteen days))~~ passenger  
3 within fourteen days after the cancellation all moneys paid for  
4 services not performed in accordance with the contract unless mutually  
5 acceptable alternative travel arrangements are provided.

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

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

14 NEW SECTION. Sec. 34. (1) "Travel charter or tour operator" means  
15 a person who sells, provides, furnishes, contracts for, arranges, or  
16 advertises in this state that he or she can or may arrange, or has  
17 arranged air, sea, or land transportation either separately or in  
18 conjunction with other services. "Travel charter or tour operator"  
19 does not include:

- 20 (a) An air carrier;
- 21 (b) An ocean carrier;
- 22 (c) A motor carrier;
- 23 (d) A rail carrier;
- 24 (e) A charter party carrier;
- 25 (f) An auto transportation carrier;
- 26 (g) A person who operates a travel agency business and meets  
27 standards no less than those required on January 1, 1987, for  
28 authorized agents of the airline reporting corporation;
- 29 (h) A person who:
  - 30 (i) Has operated a travel tour or charter business for at least  
31 three years under the same ownership or management;
  - 32 (ii) Has total annual revenue, not including airline transportation  
33 fares, of at least five hundred thousand dollars;
  - 34 (iii) Has a certificate of insurance issued by a company authorized  
35 to conduct an insurance business under the laws of any state for at  
36 least one million dollars for errors and omissions; and

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

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

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

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

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

28 NEW SECTION. **Sec. 35.** (1) Except as otherwise provided in  
29 subsection (3) of this section, a travel charter or tour operator shall  
30 deposit ninety percent of all sums received for transportation or any  
31 other services offered by the travel charter or tour operator in  
32 conjunction with such transportation in a trust account in a federally  
33 insured financial institution.

34 (2) The trust account required by this section shall be created and  
35 maintained for the benefit of the passengers paying money to the travel  
36 charter or tour operator. The travel charter or tour operator shall  
37 not in any manner encumber the corpus of the account and shall not  
38 withdraw money therefrom except: (a) In an amount equal to partial or

1 full payment for the services contracted for the passengers to the  
2 carrier or person providing the other services offered by the travel  
3 charter or tour operator; or (b) to make the refunds as required by RCW  
4 19.138.050 or as provided for by written contract between the travel  
5 charter and tour operator and passengers. A travel charter and tour  
6 operator may withdraw from the account any interest earned and credited  
7 to the trust account for the sole benefit of the travel charter and  
8 tour operator after all services have been provided as contracted.

9 (3) A travel charter and tour operator, instead of maintaining a  
10 trust account as provided in subsections (1) and (2) of this section,  
11 may maintain an adequate bond.

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

14 NEW SECTION. **Sec. 36.** A travel charter or tour operator is not  
15 required to comply with RCW 19.138.060 if a written agreement exists  
16 between the travel charter or tour operator and a person who meets the  
17 requirements of RCW 19.138.020(1)(h) to provide full service in the  
18 event the travel charter or tour operator defaults in providing  
19 services to passengers, and the travel charter or tour operator states  
20 the existence of this agreement in all of its promotional brochures.  
21 Any misleading statement is a violation of this section, and shall  
22 constitute a gross misdemeanor punishable under RCW 9A.20.021(2).

23 NEW SECTION. **Sec. 37.** Any state funds appropriated to the  
24 department of licensing for implementation of chapter . . . , Laws of  
25 1994 (this act) for the biennium ending June 30, 1995, shall be  
26 reimbursed by June 30, 1997, by an assessment of fees sufficient to  
27 cover all costs of implementing chapter . . . , Laws of 1994 (this act).

28 NEW SECTION. **Sec. 38.** A violation of RCW 19.138.030 through  
29 19.138.070 shall constitute a violation of RCW 19.86.020.

30 NEW SECTION. **Sec. 39.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

1        NEW SECTION.   **Sec. 40.**   (1) Sections 1 through 29 of this act shall  
2 take effect January 1, 1996.

3        (2) Sections 30 through 38 of this act shall take effect January 1,  
4 2001.

5        NEW SECTION.   **Sec. 41.**   Sections 2 through 9 and 13 through 28 of  
6 this act shall expire January 1, 2001.

7        NEW SECTION.   **Sec. 42.**   Sections 2 through 9, 13 through 28, and 34  
8 through 38 of this act are each added to chapter 19.138 RCW.

9        NEW SECTION.   **Sec. 43.**   The director of licensing, beginning July  
10 1, 1995, may take such steps as are necessary to ensure that this act  
11 is implemented on its effective dates.

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