

---

ENGROSSED SUBSTITUTE HOUSE BILL 1704

---

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, L. Thomas, Ballasiotes, Kremen, Chappell, Cooke, Goldsmith, Padden, Radcliff, Mulliken, Pennington, McMorris, Smith, Delvin, Hickel, Mastin, Sehlin, Beeksma, Robertson, Cairnes, Koster, Brumsickle, D. Schmidt, Horn, Reams, Campbell, Chandler, Backlund, McMahan and Elliot)

Read first time 02/28/95.

1 AN ACT Relating to sellers of travel; amending RCW 19.138.010,  
2 19.138.021, 19.138.030, 19.138.040, 19.138.050, 19.138.140, 19.138.150,  
3 19.138.160, 19.138.170, 19.138.180, 19.138.190, 19.138.200, 19.138.210,  
4 19.138.220, 19.138.230, 19.138.240, 19.138.250, 19.138.270, 19.138.280,  
5 19.138.300, and 19.138.310; repealing RCW 19.138.100, 19.138.110,  
6 19.138.120, 19.138.130, 19.138.1701, and 19.138.260; prescribing  
7 penalties; and providing an effective date.

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

9 **Sec. 1.** RCW 19.138.010 and 1994 c 237 s 1 are each amended to read  
10 as follows:

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

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

3 **Sec. 2.** RCW 19.138.021 and 1994 c 237 s 2 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 ~~(1) ("Department" means the department of licensing.~~

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

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

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

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

29 (i) An air carrier;

30 (ii) An owner or operator of a vessel including an ocean common  
31 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of  
32 a vessel that is required to establish its financial responsibility in  
33 accordance with the requirements of the federal maritime commission, 46  
34 U.S.C. App. 817 (e), and a steamboat company as defined in RCW  
35 84.12.200 whether or not operating over and upon the waters of this  
36 state;

37 (iii) A motor carrier;

38 (iv) A rail carrier;

1 (v) A charter party carrier of passengers as defined in RCW  
2 81.70.020;

3 (vi) An auto transportation company as defined in RCW 81.68.010;

4 (vii) A hotel or other lodging accommodation;

5 (viii) A person or entity who either packages or operates, or both,  
6 all or a portion of transportation and other travel services and whose  
7 primary distribution of these travel services is through retail travel  
8 agencies;

9 (ix) An affiliate of any person or entity described in (i) through  
10 ~~((vii))~~ (viii) of this subsection ~~((3))~~ (1)(b) that is primarily  
11 engaged in the sale of travel services provided by the person or  
12 entity. For purposes of this subsection ~~((3)(b)(viii))~~ (1)(b)(ix),  
13 an "affiliate" means a person or entity owning, owned by, or under  
14 common ownership, with "owning," "owned," and "ownership" referring to  
15 equity holdings of at least eighty percent.

16 ~~((4))~~ (2) "Travel services" includes transportation by air, sea,  
17 or rail ground transportation, hotel or any lodging accommodations, or  
18 package tours, whether offered or sold on a wholesale or retail basis.

19 ~~((5))~~ (3) "Advertisement" includes, but is not limited to, a  
20 written or graphic representation in a card, brochure, newspaper,  
21 magazine, directory listing, or display, and oral, written, or graphic  
22 representations made by radio, television, or cable transmission that  
23 relates to travel services.

24 **Sec. 3.** RCW 19.138.030 and 1994 c 237 s 10 are each amended to  
25 read as follows:

26 A seller of travel shall not advertise that air, sea, or land  
27 transportation either separately or in conjunction with other services  
28 is or may be available unless he or she has, prior to the  
29 advertisement, determined that the product advertised was available at  
30 the time the advertising was placed. This determination can be made by  
31 the seller of travel either by use of an airline computer reservation  
32 system, or by ~~((written confirmation))~~ relying upon an advertisement,  
33 brochure, or other materials provided by or received from the vendor  
34 whose program is being advertised.

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

1 records are to be maintained for at least two years after the placement  
2 of the advertisement.

3 **Sec. 4.** RCW 19.138.040 and 1994 c 237 s 11 are each amended to  
4 read as follows:

5 At or prior to the time of full or partial payment for air, sea, or  
6 land transportation or any other services offered by the seller of  
7 travel in conjunction with the transportation, the seller of travel  
8 shall furnish to the person making the payment a written statement  
9 conspicuously setting forth the following information:

10 (1) The name and business address and telephone number of the  
11 seller of travel.

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

14 (3) ~~((The registration number of the seller of travel required by  
15 this chapter.~~

16 ~~(4))~~ (4) The name of the vendor with whom the seller of travel has  
17 contracted to provide travel arrangements for a consumer and all  
18 pertinent information relating to the travel as known by the seller of  
19 travel at the time of booking. The seller of travel will make known  
20 further details as soon as received from the vendor. All information  
21 will be provided with final documentation.

22 ~~((5))~~ (4) The conditions, if any, upon which the contract between  
23 the seller of travel and the passenger may be canceled, and the rights  
24 and obligations of all parties in the event of cancellation.

25 ~~((6))~~ (5) A statement in eight-point boldface type in  
26 substantially the following form:

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

36 **Sec. 5.** RCW 19.138.050 and 1994 c 237 s 12 are each amended to  
37 read as follows:

1 (1) If the transportation or other services contracted for are  
2 canceled, or if the money is to be refunded for any reason, the seller  
3 of travel shall refund to the person with whom it contracts for travel  
4 services, the money due the person within thirty days of receiving the  
5 funds from the vendor with whom the services were arranged. If the  
6 funds were not sent to the vendor and remain in the possession of the  
7 seller of travel, the funds shall be refunded within fourteen days.

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

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

16 (4) The seller of travel (~~shall~~) is not (~~be~~) obligated to  
17 refund any cancellation penalties (~~imposed by the vendor with whom the~~  
18 ~~services were arranged~~) if these penalties were disclosed in the  
19 statement required under RCW 19.138.040.

20 **Sec. 6.** RCW 19.138.140 and 1994 c 237 s 8 are each amended to read  
21 as follows:

22 (1) Within five business days of receipt, a seller of travel shall  
23 deposit all sums received from a person or entity, for travel services  
24 offered by the seller of travel, in a trust account or other  
25 (~~approved~~) account maintained in a state or federally insured  
26 financial institution located in Washington state. Exempted are  
27 airline sales made by a seller of travel, when payments for the airline  
28 tickets are made through the airline reporting corporation either by  
29 cash or credit card sale.

30 (2) The trust account or other (~~approved~~) account required by  
31 this section shall be established and maintained for the benefit of any  
32 person or entity paying money to the seller of travel. The seller of  
33 travel shall not in any manner encumber the amounts in trust and shall  
34 not withdraw money from the account except the following amounts may be  
35 withdrawn at any time:

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

38 (b) Refunds as required by this chapter;

1 (c) The amount of the sales commission;  
2 (d) Interest earned and credited to the trust account or other  
3 (~~approved~~) account; or

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

7 (3) (~~At the time of registration, the seller of travel shall file  
8 with the department the account number and the name of the financial  
9 institution at which the trust account or other approved account is  
10 held as set forth in RCW 19.138.110. The seller of travel shall notify  
11 the department of any change in the account number or location within  
12 one business day of the change.~~) If the attorney general has good  
13 cause to believe that a violation of this chapter has or is about to  
14 occur, the attorney general may require the seller of travel to furnish  
15 the account number and the name of the financial institution at which  
16 the trust account or other account is held. If a seller of travel is  
17 required to furnish information in accordance with this subsection, the  
18 seller of travel must notify the attorney general of any change in the  
19 account number or location of the account within one business day of  
20 the change.

21 (4) The (~~director~~) attorney general, by rule, may allow for the  
22 use of other types of funds or accounts only if the protection for  
23 consumers is no less than 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) If the seller of travel maintains its principal place of  
37 business in another state and maintains a trust account or other  
38 (~~approved~~) account in that state consistent with the requirement of  
39 this section, (~~and if that seller of travel has transacted business~~

1 ~~within the state of Washington in an amount exceeding five million~~  
2 ~~dollars for the preceding year,))~~ the out-of-state trust account or  
3 other (~~approved~~) account may be substituted for the in-state account  
4 required under this section.

5 **Sec. 7.** RCW 19.138.150 and 1994 c 237 s 9 are each amended to read  
6 as follows:

7 A seller of travel shall perform (~~its~~) the seller's duties  
8 reasonably and with ordinary care in (~~providing~~) selling, furnishing  
9 contracts for, arranging, advertising, or booking travel services.

10 **Sec. 8.** RCW 19.138.160 and 1994 c 237 s 14 are each amended to  
11 read as follows:

12 (1) A nonresident seller of travel soliciting business or selling  
13 travel in the state of Washington, by mail, telephone, or otherwise,  
14 either directly or indirectly, shall register with the department of  
15 revenue and is deemed, absent any other appointment, to have appointed  
16 the (~~director~~) secretary of state to be the seller of travel's true  
17 and lawful attorney upon whom may be served any legal process against  
18 that nonresident arising or growing out of a transaction involving  
19 travel services. That solicitation signifies the nonresident's  
20 agreement that process against the nonresident that is served as  
21 provided in this chapter is of the same legal force and validity as if  
22 served personally on the nonresident seller of travel.

23 (2) Service of process upon a nonresident seller of travel shall be  
24 made by leaving a copy of the process with the (~~director~~) secretary  
25 of state. The fee for the service of process shall be determined by  
26 the (~~director~~) secretary of state by rule. That service is  
27 sufficient service upon the nonresident if the plaintiff or plaintiff's  
28 attorney of record sends notice of the service and a copy of the  
29 process by certified mail before service or immediately after service  
30 to the defendant at the address given by the nonresident in a  
31 solicitation furnished by the nonresident, and the sender's post office  
32 receipt of sending and the plaintiff's or plaintiff's attorney's  
33 affidavit of compliance with this section are returned with the process  
34 in accordance with Washington superior court civil rules.  
35 Notwithstanding the foregoing requirements, however, once service has  
36 been made on the (~~director~~) secretary of state as provided in this  
37 section, in the event of failure to comply with the requirement of

1 notice to the nonresident, the court may order that notice be given  
2 that will be sufficient to apprise the nonresident.

3 **Sec. 9.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to  
4 read as follows:

5 The ~~((director))~~ attorney general has the following powers and  
6 duties:

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

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

11 ~~(3) To suspend or revoke a registration for a violation of this  
12 chapter;~~

13 ~~(4) To establish fees;~~

14 ~~(5) Upon receipt of a complaint, to))~~ Upon receipt of complaints  
15 evidencing a pattern of possible deceptive practices or upon becoming  
16 aware of advertising programs that could potentially be evidence of  
17 deceptive practices, the attorney general may inspect and audit the  
18 books and records of a seller of travel. The seller of travel shall  
19 immediately make available to the ~~((director))~~ attorney general those  
20 books and records as may be requested at the seller of travel's place  
21 of business or at a location designated by the ~~((director))~~ attorney  
22 general. For that purpose, the ~~((director))~~ attorney general shall  
23 have full and free access to the office and places of business of the  
24 seller of travel during regular business hours; and

25 ~~((+6))~~ (3) To do all things necessary to carry out the functions,  
26 powers, and duties set forth in this chapter.

27 **Sec. 10.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to  
28 read as follows:

29 The ~~((director))~~ attorney general, in the ~~((director's))~~ attorney  
30 general's discretion, may:

31 (1) ~~((Annually, or more frequently))~~ For good cause, make public or  
32 private investigations within or without this state as the ~~((director))~~  
33 attorney general deems necessary to determine whether ~~((a registration~~  
34 ~~should be granted, denied, revoked, or suspended, or whether))~~ a person  
35 has violated or is about to violate this chapter or a rule adopted or  
36 order issued under this chapter, or to aid in the enforcement of this  
37 chapter or in the prescribing of rules and forms of this chapter;

1 (2) Publish information concerning a violation of this chapter or  
2 a rule adopted or order issued under this chapter; and  
3 (3) Investigate complaints concerning practices by sellers of  
4 travel ((for which registration is required by this chapter)).

5 **Sec. 11.** 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. 12.** 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. 13.** RCW 19.138.210 and 1994 c 237 s 17 are each amended to  
23 read as follows:

24 If it appears to the ((director)) attorney general that a person  
25 has engaged in an act or practice constituting a violation of this  
26 chapter or a rule adopted or order issued under this chapter, the  
27 ((director)) attorney general may, in the ((director's)) attorney  
28 general's discretion, issue an order directing the person to cease and  
29 desist from continuing the act or practice. Reasonable notice of an  
30 opportunity for a hearing shall be given. The ((director)) attorney  
31 general may issue a temporary order pending the hearing, which shall  
32 remain in effect until ten days after the hearing is held and which  
33 shall become final if the person to whom the notice is addressed does  
34 not request a hearing within fifteen days after the receipt of the  
35 notice.

1       **Sec. 14.** RCW 19.138.220 and 1994 c 237 s 18 are each amended to  
2 read as follows:

3       The attorney general, a county prosecuting attorney, (~~the~~  
4 ~~director,~~) or any person may, in accordance with the law of this state  
5 governing injunctions, maintain an action in the name of this state to  
6 enjoin a person or entity selling travel services (~~for which~~  
7 ~~registration is required by this chapter without registration from~~  
8 ~~engaging in the practice until the required registration is secured~~)  
9 if there is probable cause shown that violation of this chapter has or  
10 is about to occur. However, the injunction shall not relieve the  
11 person or entity selling travel services (~~without registration~~) from  
12 criminal prosecution therefor, but the remedy by injunction shall be in  
13 addition to any criminal liability.

14       **Sec. 15.** RCW 19.138.230 and 1994 c 237 s 19 are each amended to  
15 read as follows:

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

24       **Sec. 16.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to  
25 read as follows:

26       (1) The (~~director~~) attorney general or county prosecuting  
27 attorney may assess against a person or organization that violates this  
28 chapter, or a rule adopted under this chapter, a civil penalty of not  
29 more than (~~one~~) two thousand 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~~) attorney general  
32 within thirty days after the date of issuance of the notice of  
33 assessment. The hearing shall be conducted in accordance with chapter  
34 34.05 RCW.

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

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

7 **Sec. 17.** RCW 19.138.250 and 1994 c 237 s 22 are each amended to  
8 read as follows:

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

15 **Sec. 18.** RCW 19.138.270 and 1994 c 237 s 24 are each amended to  
16 read as follows:

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

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

28 **Sec. 19.** RCW 19.138.280 and 1994 c 237 s 28 are each amended to  
29 read as follows:

30 In addition to any other penalties or remedies under chapter 19.86  
31 RCW, a person (~~who is~~) injured by a violation of this chapter may  
32 bring an action for recovery of actual damages, including court costs  
33 and attorneys' fees. No provision in this chapter shall be construed  
34 to limit any right or remedy provided under chapter 19.86 RCW.

1       **Sec. 20.** RCW 19.138.300 and 1994 c 237 s 25 are each amended to  
2 read as follows:

3       The administrative procedure act, chapter 34.05 RCW, (~~shall~~)  
4 wherever applicable, governs the rights, remedies, and procedures  
5 respecting the administration of this chapter.

6       **Sec. 21.** RCW 19.138.310 and 1994 c 237 s 26 are each amended to  
7 read as follows:

8       All information, documents, and reports filed with the (~~director~~)  
9 attorney general or county prosecuting attorney under this chapter are  
10 matters of public record and shall be open to public inspection,  
11 subject to reasonable regulation. The (~~director~~) attorney general or  
12 county prosecuting attorney may make public, on a periodic or other  
13 basis, the information as may be necessary or appropriate in the public  
14 interest concerning the registration, reports, and information filed  
15 with the (~~director~~) attorney general or county prosecuting attorney  
16 or any other matters to the administration and enforcement of this  
17 chapter.

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

- 20       (1) RCW 19.138.100 and 1994 c 237 s 3;  
21       (2) RCW 19.138.110 and 1994 c 237 s 4;  
22       (3) RCW 19.138.120 and 1994 c 237 s 5;  
23       (4) RCW 19.138.130 and 1994 c 237 s 6;  
24       (5) RCW 19.138.1701 and 1994 c 237 s 30; and  
25       (6) RCW 19.138.260 and 1994 c 237 s 23.

26       NEW SECTION.   **Sec. 23.** This act shall take effect January 1, 1996.

--- END ---