

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1704

Chapter 180, Laws of 1996

54th Legislature
1996 Regular Session

SELLERS OF TRAVEL--REGISTRATION REQUIREMENTS ELIMINATED

EFFECTIVE DATE: 3/28/96

Passed by the House March 2, 1996
Yeas 90 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate February 28, 1996
Yeas 47 Nays 0

JOEL PRITCHARD
President of the Senate

Approved March 28, 1996

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1704** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 28, 1996 - 3:46 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1704

AS AMENDED BY THE SENATE

Passed Legislature - 1996 Regular Session

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 19.138.021,
2 19.138.030, 19.138.040, 19.138.100, 19.138.110, 19.138.130, and
3 19.138.140; creating a new section; repealing RCW 19.138.055; and
4 declaring an emergency.

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

6 **Sec. 1.** RCW 19.138.021 and 1994 c 237 s 2 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

11 (2) "Director" means the director of licensing or the director's
12 designee.

13 (3) "Seller of travel" means a person, firm, or corporation both
14 inside and outside the state of Washington, who transacts business with
15 Washington consumers(~~(, including, but not limited to, travel agencies,~~
16 ~~who sell, provide, furnish contracts for, arrange, or advertise, either~~
17 ~~directly or indirectly, by any means or method, to arrange or book any~~
18 ~~travel services including travel reservations or accommodations,~~
19 ~~tickets for domestic or foreign travel by air, rail, ship, bus, or~~

1 ~~other medium of transportation or hotel or other lodging accommodation~~
2 ~~and vouchers or coupons to be redeemed for future travel or~~
3 ~~accommodations for a fee, commission, or other valuable consideration))~~
4 for travel services.

5 (a) "Seller of travel" includes a travel agent and any person who
6 is an independent contractor or outside agent for a travel agency or
7 other seller of travel whose principal duties include consulting with
8 and advising persons concerning travel arrangements or accommodations
9 in the conduct or administration of its business. If a seller of
10 travel is employed by a seller of travel who is registered under this
11 chapter, the employee need not also be registered.

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

13 (i) An air carrier;

14 (ii) An owner or operator of a vessel, including an ocean common
15 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of
16 a vessel that is required to establish its financial responsibility in
17 accordance with the requirements of the federal maritime commission, 46
18 U.S.C. App. 817 (e), and a steamboat company as defined in RCW
19 84.12.200 whether or not operating over and upon the waters of this
20 state;

21 (iii) A motor carrier;

22 (iv) A rail carrier;

23 (v) A charter party carrier of passengers as defined in RCW
24 81.70.020;

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

26 (vii) A hotel or other lodging accommodation;

27 (viii) An affiliate of any person or entity described in (i)
28 through (vii) of this subsection (3)(b) that is primarily engaged in
29 the sale of travel services provided by the person or entity. For
30 purposes of this subsection (3)(b)(viii), an "affiliate" means a person
31 or entity owning, owned by, or under common ownership, with "owning,"
32 "owned," and "ownership" referring to equity holdings of at least
33 eighty percent;

34 (ix) Direct providers of transportation by air, sea, or ground, or
35 hotel or other lodging accommodations who do not book or arrange any
36 other travel services.

37 (4) "Travel services" includes transportation by air, sea, or
38 ~~((rail))~~ ground ~~((transportation))~~, hotel or any lodging
39 accommodations, ~~((or))~~ package tours, ~~((whether offered or sold on a~~

1 ~~wholesale or retail basis))~~ or vouchers or coupons to be redeemed for
2 future travel or accommodations for a fee, commission, or other
3 valuable consideration.

4 (5) "Advertisement" includes, but is not limited to, a written or
5 graphic representation in a card, brochure, newspaper, magazine,
6 directory listing, or display, and oral, written, or graphic
7 representations made by radio, television, or cable transmission that
8 relates to travel services.

9 (6) "Transacts business with Washington consumers" means to
10 directly offer or sell travel services to Washington consumers,
11 including the placement of advertising in media based in the state of
12 Washington or that is primarily directed to Washington residents.
13 Advertising placed in national print or electronic media alone does not
14 constitute "transacting business with Washington consumers." Those
15 entities who only wholesale travel services are not "transacting
16 business with Washington consumers" for the purposes of this chapter.

17 **Sec. 2.** RCW 19.138.030 and 1994 c 237 s 10 are each amended to
18 read as follows:

19 A seller of travel shall not advertise that (~~air, sea, or land~~
20 ~~transportation either separately or in conjunction with other~~) any
21 travel services (~~is~~) are or may be available unless he or she has,
22 prior to the advertisement, determined that the product advertised was
23 available at the time the advertising was placed. This determination
24 can be made by the seller of travel either by use of an airline
25 computer reservation system, or by written confirmation from the vendor
26 whose program is being advertised.

27 It is the responsibility of the seller of travel to keep written or
28 printed documentation of the steps taken to verify that the advertised
29 offer was available at the time the advertising was placed. These
30 records are to be maintained for at least two years after the placement
31 of the advertisement.

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

34 At or prior to the time of full or partial payment for (~~air, sea,~~
35 ~~or land transportation or~~) any (~~other~~) travel services (~~offered by~~
36 ~~the seller of travel in conjunction with the transportation~~), the
37 seller of travel shall furnish to the person making the payment a

1 written statement conspicuously setting forth the ((following))
2 information contained in subsections (1) through (6) of this section.
3 If the sale of travel services is made over the telephone or by other
4 electronic media and payment is made by credit or debit card, the
5 seller of travel shall transmit to the person making the payment the
6 written statement required by this section within three business days
7 of the consumer's credit or debit card authorization. The written
8 statement shall contain the following information:

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

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

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

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

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

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

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

35 **Sec. 4.** RCW 19.138.100 and 1994 c 237 s 3 are each amended to read
36 as follows:

37 No person, firm, or corporation may act or hold itself out as a
38 seller of travel unless, prior to engaging in the business of selling

1 or advertising to sell travel services, the person, firm, or
2 corporation registers with the director under this chapter and rules
3 adopted under this chapter.

4 (1) The registration number must be conspicuously posted in the
5 place of business and must be included in all advertisements. Any
6 corporation which issues a class of equity securities registered under
7 section 12 of the securities exchange act of 1934, and any subsidiary,
8 the majority of voting stock of which is owned by such corporation
9 including any wholly owned subsidiary of such corporation are not
10 required to include company registration numbers in advertisements.

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

14 (3) No registration is assignable or transferable.

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

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

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

26 (b) All money received for travel services by the employee,
27 independent contractor, or outside agent is collected in the name of
28 the registered seller of travel and deposited directly into the
29 registered seller of travel's trust account as required under this
30 chapter.

31 **Sec. 5.** RCW 19.138.110 and 1994 c 237 s 4 are each amended to read
32 as follows:

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

36 (1) The name, address, and telephone number of the seller of
37 travel;

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

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

4 (4) The names, ~~((address))~~ business addresses, and ~~((social~~
5 ~~security))~~ business phone numbers of all employees, independent
6 contractors, or outside agents who sell travel and are covered by the
7 seller of travel's registration. This subsection shall not apply to
8 the out-of-state employees of a corporation that issues a class of
9 equity securities registered under section 12 of the securities
10 exchange act of 1934, and any subsidiary, the majority of voting stock
11 of which is owned by the corporation;

12 (5) A report prepared and signed by a bank officer, licensed public
13 accountant, or certified public accountant or other report, approved by
14 the director, that verifies that the seller of travel maintains a trust
15 account at a federally insured financial institution located in
16 Washington state, or other approved account ~~((at a federally insured~~
17 ~~institution located in the state of Washington))~~, the location and
18 number of that trust account or other approved account, and verifying
19 that the account ~~((is maintained and used))~~ exists as required by RCW
20 19.138.140. The director, by rule, may permit alternatives to the
21 report that provides for at least the same level of verification.

22 **Sec. 6.** RCW 19.138.130 and 1994 c 237 s 6 are each amended to read
23 as follows:

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

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

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

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

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

1 (e) Has failed to display the registration as provided in this
2 chapter;

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

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

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

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

16 **Sec. 7.** RCW 19.138.140 and 1994 c 237 s 8 are each amended to read
17 as follows:

18 (1) (~~Within five business days of receipt,~~) A seller of travel
19 shall deposit in a trust account maintained in a federally insured
20 financial institution located in Washington state, or other account
21 approved by the director, all sums held for more than five business
22 days that are received from a person or entity, for retail travel
23 services offered by the seller of travel(~~(, in a trust account or other~~
24 ~~approved account maintained in a federally insured financial~~
25 ~~institution located in Washington state. Exempted are airline sales~~
26 ~~made)). This subsection does not apply to travel services sold by a~~
27 seller of travel, when payments for the ((airline tickets)) travel
28 services are made through the airline reporting corporation either by
29 cash or credit or debit card sale.

30 (2) The trust account or other approved account required by this
31 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 *i*
7 or
- 8 (f) Reimbursement to the seller of travel for agency operating
9 funds that are advanced for a customer's travel services.

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

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

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

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

23 (b) The seller of travel does not deposit, negotiate, or factor the
24 credit card charge or otherwise seek to obtain payment of the credit
25 card charge to any account over which the seller of travel has any
26 control; and

27 (c) If the charge includes transportation, the carrier that is to
28 provide the transportation processes the credit card charge, or if the
29 charge is only for services, the provider of services processes the
30 credit card charges.

31 (6) If the seller of travel maintains its principal place of
32 business in another state and maintains a trust account or other
33 approved account in that state consistent with the requirement of this
34 section, and if that seller of travel has transacted business within
35 the state of Washington in an amount exceeding five million dollars for
36 the preceding year, the out-of-state trust account or other approved
37 account may be substituted for the in-state account required under this
38 section.

1 NEW SECTION. **Sec. 8.** (1) There is created the joint legislative
2 task force on the sale of travel services. The task force shall
3 consider: Options for improving the implementation of chapter 19.138
4 RCW; methods of providing reduction in unnecessary regulatory burdens;
5 methods of improving protections for purchasers of travel services; and
6 review of rule making under the directions provided in the statutes
7 relating to sellers of travel services.

8 (2) The task force shall consist of the following members: Two
9 members of the senate, appointed by the president of the senate, one
10 from the majority and one from the minority caucus; two members of the
11 house of representatives, appointed by the speaker of the house of
12 representatives, one from the majority and one from the minority
13 caucus; a representative from the office of the attorney general; a
14 representative from the department of licensing; and four members of
15 the travel industry. The four members of the travel industry shall be
16 jointly appointed by the president of the senate and the speaker of the
17 house of representatives and shall include: A representative of
18 wholesalers of travel services; a representative of a membership
19 organization that sells travel services; and two retailers of travel
20 services. The retailers of travel services shall represent an economic
21 cross section of the retailers of travel services. Recommendations for
22 appointment of the travel industry representatives may be made by
23 industry representatives.

24 (3) The task force shall meet not more than three times, as a
25 whole. The task force shall submit any recommendations it makes to the
26 legislature by December 1, 1996. The task force may make
27 recommendations for statutory or administrative changes.

28 (4) The legislative members shall be reimbursed for travel and
29 expenses under RCW 43.03.050 and 43.03.060.

30 (5) The task force shall cease to exist on January 1, 1997.

31 NEW SECTION. **Sec. 9.** RCW 19.138.055 and 1994 c 237 s 31 are each
32 repealed.

33 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of the
35 state government and its existing public institutions, and shall take
36 effect immediately.

Passed the House March 2, 1996.
Passed the Senate February 28, 1996.
Approved by the Governor March 28, 1996.
Filed in Office of Secretary of State March 28, 1996.