

CERTIFICATION OF ENROLLMENT

SENATE BILL 5167

Chapter 38, Laws of 2003

58th Legislature
2003 Regular Session

SELLERS OF TRAVEL--TRUST ACCOUNTS

EFFECTIVE DATE: 7/27/03

Passed by the Senate March 7, 2003
YEAS 48 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 8, 2003
YEAS 95 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 17, 2003.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5167** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

April 17, 2003 - 2:27 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5167

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators Regala, Hewitt, Franklin, Winsley and Kohl-Welles

Read first time 01/17/2003. Referred to Committee on Commerce & Trade.

1 AN ACT Relating to sellers of travel; and amending RCW 19.138.140.

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

3 **Sec. 1.** RCW 19.138.140 and 1999 c 238 s 6 are each amended to read
4 as follows:

5 (1) A seller of travel shall deposit in a trust account maintained
6 in a federally insured financial institution located in Washington
7 state, or other account approved by the director, all sums held for
8 more than five business days that are received from a person or entity,
9 for retail travel services offered by the seller of travel. This
10 subsection does not apply to travel services sold by a seller of
11 travel, when payments for the travel services are made through the
12 airlines reporting corporation.

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18 withdrawn at any time:

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

3 (b) Refunds as required by this chapter;

4 (c) The amount of the sales commission;

5 (d) Interest earned and credited to the trust account or other
6 approved account;

7 (e) Remaining funds of a purchaser once all travel services have
8 been provided or once tickets or other similar documentation binding
9 upon the ultimate provider of the travel services have been provided;
10 or

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

13 (3) The seller of travel may deposit noncustomer funds into the
14 trust account as needed in an amount equal to a deficiency resulting
15 from dishonored customer payments made by check, draft, credit card,
16 debit card, or other negotiable instrument.

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

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

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

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

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

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

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

4 (a)(i) Files and maintains a surety bond approved by the director
5 in an amount of not less than ten thousand nor more than fifty thousand
6 dollars, as determined by rule by the director based on the gross
7 income of business conducted for Washington state residents by the
8 seller of travel during the prior year. The bond shall be executed by
9 the applicant as obligor by a surety company authorized to transact
10 business in this state naming the state of Washington as obligee for
11 the benefit of any person or persons who have suffered monetary loss by
12 reason of the seller of travel's violation of this chapter or a rule
13 adopted under this chapter. The bond shall be conditioned that the
14 seller of travel will conform to and abide by this chapter and all
15 rules adopted under this chapter, and shall reimburse any person or
16 persons who suffer monetary loss by reason of a violation of this
17 chapter or a rule adopted under this chapter.

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

22 (iii) The applicant may obtain the bond directly from the surety or
23 through other bonding arrangement as approved by the director.

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

29 (v) Any person or persons who have suffered monetary loss by any
30 act which constitutes a violation of this chapter or a rule adopted
31 under this chapter may bring a civil action in court against the seller
32 of travel and the surety upon such bond or approved alternate security
33 of the seller of travel who committed the violation of this chapter or
34 a rule adopted under this chapter or who employed the seller of travel
35 who committed such violation. A civil action brought in court pursuant
36 to the provisions of this section must be filed no later than one year
37 following the later of the alleged violation of this chapter or a rule

1 adopted under this chapter or completion of the travel by the customer;
2 or

3 (b) Is a member in good standing in a professional association,
4 such as the United States tour operators association or national tour
5 association, that is approved by the director and that provides or
6 requires a member to provide a minimum of one million dollars in errors
7 and professional liability insurance and provides a surety bond or
8 equivalent protection in an amount of at least two hundred fifty
9 thousand dollars for its member companies.

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

Passed by the Senate March 7, 2003.

Passed by the House April 8, 2003.

Approved by the Governor April 17, 2003.

Filed in Office of Secretary of State April 17, 2003.