

FINAL BILL REPORT

ESHB 2688

PARTIAL VETO

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Brief Description: Modifying the duties and responsibilities of sellers of travel.

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

House Committee on Commerce & Labor
House Committee on Appropriations
Senate Committee on Labor & Commerce
Senate Committee on Ways & Means

Background: In 1989 the Department of Licensing, in response to a request by the House Commerce & Labor Committee, conducted a sunrise review of the travel industry. The department made the following recommendations:

- (1) that all travel firms be required to register with the state;
- (2) that a financial analysis of the impact of trust accounts be undertaken to determine whether a trust account regulation would produce a significant number of business failures in the travel industry;
- (3) that all travel firms be included under the provisions of the Travel Charter and Tour Operators Act requiring a written disclosure to customers; and
- (4) that investigation and enforcement of existing fair business practice regulations be enhanced to produce a deterrent impact on fraudulent practices in the travel industry.

Washington has a statute regulating travel charter and tour operators. The statute specifically exempts travel agents from its coverage. The statute contains such provisions as: advertising restrictions; written disclosure requirements; a right to cancellation and refund in case of a material misrepresentation; and a trust account or bond requirement. However, a travel charter or tour operator need not comply with the trust account or bond requirement if a written agreement to provide full service in the event of default

exists between the travel charter or tour operator and another travel charter or tour operator business that meets certain minimum standards.

Summary: Beginning January 1, 1996, the statute regulating travel charter or tour operators is expanded to apply to sellers of travel. A "seller of travel" includes a person, firm or corporation that transacts business with Washington consumers, including a travel agency that sells, provides, furnishes contracts for, arranges or advertises to arrange for any travel services. "Seller of travel" does not include any common carrier or any affiliate of a carrier if the affiliate is primarily engaged in selling travel services provided by the carrier.

Registration requirement

Sellers of travel must be registered with the Department of Licensing. Registration numbers must be conspicuously posted in the place of business and in all advertisements. However, certain large corporations who issue stock and any corporation whose stock is listed on a national securities exchange and their subsidiaries are exempted from the requirement of including their registration number on their advertisements and listing all employees on their registration application.

Registrations are not assignable or transferable and must be renewed every two years.

Applications

Applications for registration must be in the form prescribed by the director and must include certain listed information, including: (1) name, address and phone number; (2) proof of a valid business license; (3) verification that the seller of travel maintains the required trust account; (4) the required registration fee; and (5) the name, address and phone numbers of all employees covered by the registration unless the applicant is exempted from this requirement.

Denial, suspension, or revocation of registration

The director may deny, suspend or revoke the registration of a seller of travel if the applicant for registration or renewal: (1) was previously the holder of a revoked or suspended registration and is not entitled to reinstatement; (2) has been found guilty of a felony involving moral turpitude, a misdemeanor concerning fraud or conversion, or a civil judgment involving willful fraud, misrepresentation, or conversion; (3) has made a false statement of material

fact in an application; (4) has violated the law applying to sellers of travel or rules adopted under that law; (5) has failed to display the registration as required; (6) has published a misleading or fraudulent statement; (7) has committed a fraudulent practice in the operation of a travel business; or (8) has aided or abetted another person's unregistered practice. The director may revoke the registration of a seller of travel after a violation of the law applying to sellers of travel or the Consumer Protection Act.

Consumer indemnification

The department must examine the possible establishment of a cost recovery fund, surety bond, or other requirement to indemnify consumers. The department must report on the study to the Legislature by December 1, 1994.

Trust account requirement

Within five business days of receipt, a seller of travel must deposit all sums received for travel services in a trust account maintained in a federally-insured financial institution in Washington. This does not apply, however, to airline sales when payments are made through the airline reporting corporation either by cash or credit card sale. The seller of travel may not encumber the amount in the account or withdraw money from the account, except for the following purposes: (1) partial or full payment to the provider; (2) refunds as required by law; (3) the amount of the sales commission; (4) interest earned and credited to the trust account; or (5) remaining funds of a purchaser once all travel services or tickets have been provided. If the seller of travel maintains its principal place of business in another state, maintains a trust account in that state and has transacted more than \$5 million worth of business in Washington in the preceding year, the out-of-state trust account may be substituted for the required in-state trust account.

Advertising

Sellers of travel must include their registration number in all advertisements. A seller of travel may not advertise that travel services are available unless he or she has determined that the services advertised are available at the time the advertisement is placed. The seller of travel must maintain written documentation for at least two years of the steps taken to verify that the advertised offer was available at the time of the advertisement.

Disclosure to customers

At the time of booking, a seller of travel must provide to each customer the following information: (1) the seller's name and business address; (2) the amount paid, date of payment, purpose of payment and an itemized statement of the balance due; (3) the seller's registration number; (4) the travel vendor or provider's name and all pertinent information known at the time; (5) conditions for cancellation; and (6) a specified statement of the customer's right to a refund if the services are not performed in conformance with the contract.

Cancellation and refund

If the services contracted for are canceled, the seller must refund the money due to the customer within 30 days of receiving the funds from the vendor or within 14 days if the funds were not yet forwarded to the vendor. Any material misrepresentation about the services offered is deemed to be a cancellation. If the services are paid for by credit card, any refund to the credit card must be applied for within 10 days from the cancellation. The seller of travel need not refund cancellation penalties imposed by the vendor if the penalties were disclosed to the customer in the disclosure statement.

Director's powers and duties

The director has the following powers and duties: (1) to adopt, amend and repeal rules; (2) to issue, renew and deny registrations; (3) to suspend or revoke registrations; (4) to establish fees; (5) to inspect and audit books and records relating to the trust account and bond requirements; and (6) to do all things necessary to carry out the purposes of the act.

The director may, in his or her discretion: (1) conduct investigations; (2) publish information concerning violations of the law applying to sellers of travel; and (3) investigate complaints concerning practices by sellers of travel for which registration is required. The director may administer oaths, subpoena witnesses, require the production of documents and issue cease and desist orders. The director also may assess against a person who violates the law applying to sellers of travel, a civil penalty of not more than \$1,000 per violation and restitution.

Injunctions

The attorney general, a county prosecuting attorney, the director or any other person as authorized by law may maintain an action in the name of the state to enjoin a person selling travel services for which registration is

required from engaging in the practice until the registration is secured. A person who violates an injunction issued under this act must pay a civil penalty of up to \$25,000.

Service of process on out-of-state sellers of travel

The director is deemed to be the agent of a nonresident seller of travel for the purpose of service of process.

Criminal penalties

It is a gross misdemeanor to knowingly violate the law applying to sellers of travel or knowingly give false or incorrect information to the director, attorney general or county prosecuting attorney in statements required to be filed under that law. It is a misdemeanor to violate that law if knowledge is not proven.

Public disclosure

All information, documents and reports filed with the director under the law applying to sellers of travel are matters of public record and are open to public inspection, subject to reasonable regulation.

Consumer protection act

A violation of the law applying to sellers of travel is deemed to be a violation of the Consumer Protection Act.

Votes on Final Passage:

House	57	37	
Senate	28	20	(Senate amended)
House	53	43	(House concurred)

Effective: June 9, 1994
January 1, 1996 (Sections 1-29)

Partial Veto Summary: The Governor's partial veto removes the section of the bill requiring the Department of Licensing to examine various alternatives to indemnify travel consumers and to report its findings to the Legislature by December 1, 1994.