

2 **ESHB 2688** - S COMM AMD  
3 By Committee on Labor & Commerce

4 NOT ADOPTED 3/4/94

5 Strike everything after the enacting clause and insert the  
6 following:

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

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

22 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
23 otherwise, the definitions in this section apply throughout this  
24 chapter.

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

26 (2) "Director" means the director of licensing or the director's  
27 designee.

28 (3) "Seller of travel" means a person, firm, or corporation both  
29 inside and outside the state of Washington, who transacts business with  
30 Washington consumers, including, but not limited to, travel agencies,  
31 who sell, provide, furnish contracts for, arrange, or advertise, either  
32 directly or indirectly, by any means or method, to arrange or book any  
33 travel services including travel reservations or accommodations,  
34 tickets for domestic or foreign travel by air, rail, ship, bus, or  
35 other medium of transportation or hotel or other lodging accommodation

1 and vouchers or coupons to be redeemed for future travel or  
2 accommodations for a fee, commission, or other valuable consideration.

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

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

11 (i) An air carrier;

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

19 (iii) A motor carrier;

20 (iv) A rail carrier;

21 (v) A charter party carrier of passengers as defined in RCW  
22 81.70.020;

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

24 (vii) A hotel or other lodging accommodation;

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

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

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

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

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

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

16        (3) No registration is assignable or transferable.

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

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

24        (1) The name, address, and telephone number of the seller of  
25 travel;

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

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

29        (4) The name, address, and social security numbers of all employees  
30 who sell travel and are covered by the seller of travel's registration.  
31 This subsection shall not apply to the out-of-state employees of a  
32 corporation that issues a class of equity securities registered under  
33 section 12 of the securities exchange act of 1934, and any subsidiary,  
34 the majority of voting stock of which is owned by the corporation.

35        NEW SECTION.    **Sec. 5.** (1) Each seller of travel shall renew its  
36 registration on or before July 1 of every other year or as otherwise  
37 determined by the director.

1 (2) Renewal of a registration is subject to the same provisions  
2 covering issuance, suspension, and revocation of a registration  
3 originally issued.

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

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

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

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

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

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

35 (e) Has failed to display the registration as provided in this  
36 chapter;

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

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

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

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

12 NEW SECTION. **Sec. 7.** The department, in cooperation with the  
13 industry, shall examine the establishment of a cost recovery account to  
14 indemnify industry customers and shall report to the legislature by  
15 December 1, 1994, concerning legislation to establish such an account.

16 NEW SECTION. **Sec. 8.** A seller of travel shall perform its duties  
17 reasonably and with ordinary care in providing travel services.

18 **Sec. 9.** RCW 19.138.030 and 1986 c 283 s 3 are each amended to read  
19 as follows:

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

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

1       **Sec. 10.** RCW 19.138.040 and 1986 c 283 s 4 are each amended to  
2 read as follows:

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

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

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

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

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

31       "If transportation or other services are canceled by the (~~((travel~~  
32 ~~charter or tour operator))~~) seller of travel, all sums paid to the  
33 (~~((travel charter or tour operator))~~) seller of travel for services not  
34 performed in accordance with the contract between the (~~((travel charter~~  
35 ~~or tour operator))~~) seller of travel and the (~~((passenger))~~) purchaser  
36 will be refunded within (~~((fourteen))~~) thirty days (~~((after the~~  
37 ~~cancellation by the travel charter or tour operator to the passenger or~~  
38 ~~the party who contracted for the passenger unless mutually acceptable~~  
39 ~~alternative travel arrangements are provided))~~) of receiving the funds

1 from the vendor with whom the services were arranged, or if the funds  
2 were not sent to the vendor, the funds shall be returned within  
3 fourteen days after cancellation by the seller of travel to the  
4 purchaser unless the purchaser requests the seller of travel to apply  
5 the money to another travel product and/or date."

6 **Sec. 11.** RCW 19.138.050 and 1986 c 283 s 5 are each amended to  
7 read as follows:

8 (1) If the transportation or other services contracted for are  
9 canceled ((the travel charter or tour operator)), or if the money is to  
10 be refunded for any reason, the seller of travel shall ((return))  
11 refund to the ((passenger within fourteen days after the cancellation  
12 all moneys paid for services not performed in accordance with the  
13 contract unless mutually acceptable alternative travel arrangements are  
14 provided)) person with whom it contracts for travel services, the money  
15 due the person within thirty days of receiving the funds from the  
16 vendor with whom the services were arranged. If the funds were not  
17 sent to the vendor and remain in the possession of the seller of  
18 travel, the funds shall be refunded within fourteen days.

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

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

27 (4) The seller of travel shall not be obligated to refund any  
28 cancellation penalties imposed by the vendor with whom the services  
29 were arranged if these penalties were disclosed in the statement  
30 required under RCW 19.138.040.

31 **NEW SECTION. Sec. 12.** The director has the following powers and  
32 duties:

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

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

1 (3) To suspend or revoke a registration for a violation of this  
2 chapter;

3 (4) To establish fees;

4 (5) Upon receipt of a complaint, to inspect and audit the books and  
5 records of a seller of travel. The seller of travel shall immediately  
6 make available to the director those books and records as may be  
7 requested at the seller of travel's place of business or at a location  
8 designated by the director. For that purpose, the director shall have  
9 full and free access to the office and places of business of the seller  
10 of travel during regular business hours; and

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

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

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



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

3 NEW SECTION. **Sec. 14.** The director, in the director's discretion,  
4 may:

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

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

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

16 NEW SECTION. **Sec. 15.** For the purpose of an investigation or  
17 proceeding under this chapter, the director or any officer designated  
18 by the director may administer oaths and affirmations, subpoena  
19 witnesses, compel their attendance, take evidence, and require the  
20 production of any books, papers, correspondence, memoranda, agreements,  
21 or other documents or records which the director deems relevant or  
22 material to the inquiry.

23 NEW SECTION. **Sec. 16.** If it appears to the director that a person  
24 has engaged in an act or practice constituting a violation of this  
25 chapter or a rule adopted or order issued under this chapter, the  
26 director may, in the director's discretion, issue an order directing  
27 the person to cease and desist from continuing the act or practice.  
28 Reasonable notice of an opportunity for a hearing shall be given. The  
29 director may issue a temporary order pending the hearing, which shall  
30 remain in effect until ten days after the hearing is held and which  
31 shall become final if the person to whom the notice is addressed does  
32 not request a hearing within fifteen days after the receipt of the  
33 notice.

34 NEW SECTION. **Sec. 17.** The attorney general, a county prosecuting  
35 attorney, the director, or any person may, in accordance with the law

1 of this state governing injunctions, maintain an action in the name of  
2 this state to enjoin a person or entity selling travel services for  
3 which registration is required by this chapter without registration  
4 from engaging in the practice until the required registration is  
5 secured. However, the injunction shall not relieve the person or  
6 entity selling travel services without registration from criminal  
7 prosecution therefor, but the remedy by injunction shall be in addition  
8 to any criminal liability.

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

17 NEW SECTION. **Sec. 19.** The director or individuals acting on the  
18 director's behalf are immune from suit in any action, civil or  
19 criminal, based on disciplinary proceedings or other official acts  
20 performed in the course of their duties in the administration and  
21 enforcement of this chapter.

22 NEW SECTION. **Sec. 20.** (1) The director may assess against a  
23 person or organization that violates this chapter, or a rule adopted  
24 under this chapter, a civil penalty of not more than one thousand  
25 dollars for each violation.

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

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

33 (4) If a person fails to pay an assessment after it has become a  
34 final and unappealable order, or after the court has entered final  
35 judgment in favor of the state, the director may recover the amount  
36 assessed by action in the appropriate superior court. In the action,

1 the validity and appropriateness of the final order imposing the  
2 penalty shall not be subject to review.

3 NEW SECTION. **Sec. 21.** The director may assess against a person or  
4 organization that violates this chapter, or a rule adopted under this  
5 chapter, the full amount of restitution as may be necessary to restore  
6 to a person an interest in money or property, real or personal, that  
7 may have been acquired by means of an act prohibited by or in violation  
8 of this chapter.

9 NEW SECTION. **Sec. 22.** In order to maintain or defend a lawsuit,  
10 a seller of travel must be registered with the department as required  
11 by this chapter and rules adopted under this chapter.

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

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

23 NEW SECTION. **Sec. 24.** The administrative procedure act, chapter  
24 34.05 RCW, shall, wherever applicable, govern the rights, remedies, and  
25 procedures respecting the administration of this chapter.

26 NEW SECTION. **Sec. 25.** All information, documents, and reports  
27 filed with the director under this chapter are matters of public record  
28 and shall be open to public inspection, subject to reasonable  
29 regulation. The director may make public, on a periodic or other  
30 basis, the information as may be necessary or appropriate in the public  
31 interest concerning the registration, reports, and information filed  
32 with the director or any other matters to the administration and  
33 enforcement of this chapter.

1        NEW SECTION.    **Sec. 26.**    The legislature finds that the practices  
2 governed by this chapter are matters vitally affecting the public  
3 interest for the purpose of applying the consumer protection act,  
4 chapter 19.86 RCW. Any violation of this chapter is not reasonable in  
5 relation to the development and preservation of business and is an  
6 unfair and deceptive act or practice and unfair method of competition  
7 in the conduct of trade or commerce in violation of RCW 19.86.020.  
8 Remedies provided by chapter 19.86 RCW are cumulative and not  
9 exclusive.

10        NEW SECTION.    **Sec. 27.**    In addition to any other penalties or  
11 remedies under chapter 19.86 RCW, a person who is injured by a  
12 violation of this chapter may bring an action for recovery of actual  
13 damages, including court costs and attorneys' fees. No provision in  
14 this chapter shall be construed to limit any right or remedy provided  
15 under chapter 19.86 RCW.

16        NEW SECTION.    **Sec. 28.**    The following acts or parts of acts are  
17 each repealed:

- 18        (1) RCW 19.138.020 and 1986 c 283 s 2;
- 19        (2) RCW 19.138.060 and 1986 c 283 s 6;
- 20        (3) RCW 19.138.070 and 1986 c 283 s 7; and
- 21        (4) RCW 19.138.080 and 1986 c 283 s 8.

22        NEW SECTION.    **Sec. 29.**    Any state funds appropriated to the  
23 department of licensing for implementation of chapter . . . , Laws of  
24 1994 (this act) for the biennium ending June 30, 1995, shall be  
25 reimbursed by June 30, 1997, by an assessment of fees sufficient to  
26 cover all costs of implementing chapter . . . , Laws of 1994 (this act).

27        NEW SECTION.    **Sec. 30.**    A violation of RCW 19.138.030 through  
28 19.138.070 shall constitute a violation of RCW 19.86.020.

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

