

SENATE BILL REPORT

ESHB 2688

AS REPORTED BY COMMITTEE ON WAYS & MEANS, FEBRUARY 28, 1994

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

SPONSORS: 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

Majority Report: Do pass as amended.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, McAuliffe, Pelz, Sutherland and Wojahn.

Staff: Traci Ratzliff (786-7452)

Hearing Dates: February 21, 1994; February 25, 1994

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Labor & Commerce.

Signed by Senators Rinehart, Chairman; Quigley, Vice Chairman; Bauer, Gaspard, Hargrove, Hochstatter, Moyer, Niemi, Owen, Pelz, Roach, L. Smith, Snyder, Spanel, Sutherland, Talmadge and Wojahn.

Staff: Martin Chaw (786-7711)

Hearing Dates: February 28, 1994

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: that all travel firms be required to register with the state; 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; that all travel firms be included under the provisions of the Travel Charter and Tour Operators Act requiring a written disclosure to customers; and that investigation and enforcement of existing fair business practice regulations be enhanced in order 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.

SUMMARY:

Seller of Travel Defined. 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.

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

Applications for registration must be in the form prescribed by the director and must include certain listed information outlined in the bill.

Grounds for Revocation. 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 this act or rules adopted under this act; (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 this act or the Consumer Protection Act.

Bond and Trust Fund Required. Each registrant must file an adequate surety bond of at least \$10,000 running to the state as obligee and running to the benefit of the state and any person who suffers a loss by reason of violations of this chapter. In lieu of a surety bond, the applicant may file with the director a certificate of deposit, an irrevocable letter of credit or other instrument approved by the director for an amount equal to the required bond. A person injured by a violation of this chapter may bring an action against the bond.

Within three 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 specific purposes outlined in the bill.

Advertising and Disclosure. 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.

At the time of booking, a seller of travel must disclose to each customer specific information related to the seller of travel, payment information, cancellation and refund information.

Customer Refund. If the services contracted for are canceled, the seller shall 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.

Powers, Penalties and Violations. The director's powers and duties relating to the regulation of travel sellers are outlined.

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.

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

It is a gross misdemeanor to knowingly violate this act or knowingly give false or incorrect information to the director, Attorney General or county prosecuting attorney in statements required to be filed under this act. It is a misdemeanor to violate the act if knowledge is not proven.

A violation of this act is deemed to be a violation of the Consumer Protection Act.

Sunset. On January 1, 2001, the new provisions regulating sellers of travel expire and the prior law regulating travel charter and tour operators takes effect again.

SUMMARY OF PROPOSED COMMITTEE AMENDMENT:

A new definition for who is not considered a seller of travel is inserted.

Limited exemptions related to the inclusion of a travel agency's registration number in advertisements and reporting requirements for out-of-state employees are provided.

The requirement that a seller of travel report to the department, within 45 days, any changes regarding employees is deleted.

The bonding requirement and trust account requirement for sellers of travel are deleted.

Language is added to clarify that a seller of travel is allowed to retain a portion of a customer's refund as a cancellation penalty if this penalty was included in the initial disclosure provided to the customer at the time the travel service was purchased.

The department, in cooperation with the industry, is directed to study the establishment of an industry cost recovery account to indemnify industry customers. Recommendations regarding legislation to establish such an account must be forwarded to the Legislature by December 1, 1994.

Language is added to allow out-of-state sellers of travel that have a registered agent in this state to use this agent for any service of process.

The sections repealing the new registration requirements for all sellers of travel and reestablishing the current registration program for travel charter and tour operators as of January 1, 2001 are stricken.

Appropriation: none

Revenue: none

Fiscal Note: available

Effective Date: Sections 1 through 29 of the bill take effect January 1, 1996. The director of Licensing, beginning July 1, 1995, may take such steps as are necessary to ensure that this act is implemented on its effective dates.

TESTIMONY FOR (Labor and Commerce):

This bill will make it more difficult for unscrupulous travel agents to operate in Washington and will provide greater protection to consumers buying travel services in this state.

TESTIMONY AGAINST (Labor and Commerce):

The bonding requirements of this bill could hurt small travel agencies that do not have a large enough volume of business to support the purchase of a bond.

TESTIFIED (Labor and Commerce): PRO: Grace Cole, prime sponsor; Steve Danishek, TMA Inc.; Donna Kehle, citizen; Joe Daniels, Washington State Coalition of Travel; Sally Gustafson, Washington State Attorney General's Office; Robert Clark, citizen; CON: Sylvia Marley, Travel with Sylvia; Tony Thein, Holland America Line/Westours, Inc.

TESTIMONY FOR (Ways and Means):

This measure was reviewed, developed and adopted by the Senate Labor and Commerce Committee.

The measure will provide greater protection for the residents of this state purchasing travel services.

TESTIMONY AGAINST (Ways and Means): None

TESTIFIED (Ways and Means): Joe Daniels, WA State Coalition of Travel; Sally Gustafson, WA State Attorney General's Office