

2 **ESHB 1704** - S COMM AMD

3 By Committee on Labor, Commerce & Trade

4 ADOPTED 2/28/96

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

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

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

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

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

14 (3) "Seller of travel" means a person, firm, or corporation both
15 inside and outside the state of Washington, who transacts business with
16 Washington consumers(~~(, including, but not limited to, travel agencies,~~
17 ~~who sell, provide, furnish contracts for, arrange, or advertise, either~~
18 ~~directly or indirectly, by any means or method, to arrange or book any~~
19 ~~travel services including travel reservations or accommodations,~~
20 ~~tickets for domestic or foreign travel by air, rail, ship, bus, or~~
21 ~~other medium of transportation or hotel or other lodging accommodation~~
22 ~~and vouchers or coupons to be redeemed for future travel or~~
23 ~~accommodations for a fee, commission, or other valuable consideration))~~
24 for travel services.

25 (a) "Seller of travel" includes a travel agent and any person who
26 is an independent contractor or outside agent for a travel agency or
27 other seller of travel whose principal duties include consulting with
28 and advising persons concerning travel arrangements or accommodations
29 in the conduct or administration of its business. If a seller of
30 travel is employed by a seller of travel who is registered under this
31 chapter, the employee need not also be registered.

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

33 (i) An air carrier;

34 (ii) An owner or operator of a vessel, including an ocean common
35 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of
36 a vessel that is required to establish its financial responsibility in

1 accordance with the requirements of the federal maritime commission, 46
2 U.S.C. App. 817 (e), and a steamboat company as defined in RCW
3 84.12.200 whether or not operating over and upon the waters of this
4 state;

5 (iii) A motor carrier;

6 (iv) A rail carrier;

7 (v) A charter party carrier of passengers as defined in RCW
8 81.70.020;

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

10 (vii) A hotel or other lodging accommodation;

11 (viii) An affiliate of any person or entity described in (i)
12 through (vii) of this subsection (3)(b) that is primarily engaged in
13 the sale of travel services provided by the person or entity. For
14 purposes of this subsection (3)(b)(viii), an "affiliate" means a person
15 or entity owning, owned by, or under common ownership, with "owning,"
16 "owned," and "ownership" referring to equity holdings of at least
17 eighty percent;

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

21 (4) "Travel services" includes transportation by air, sea, or
22 ~~((rail))~~ ground ~~((transportation))~~, hotel or any lodging
23 accommodations, ~~((or))~~ package tours, ~~((whether offered or sold on a~~
24 ~~wholesale or retail basis))~~ or vouchers or coupons to be redeemed for
25 future travel or accommodations for a fee, commission, or other
26 valuable consideration.

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

32 (6) "Transacts business with Washington consumers" means to
33 directly offer or sell travel services to Washington consumers,
34 including the placement of advertising in media based in the state of
35 Washington or that is primarily directed to Washington residents.
36 Advertising placed in national print or electronic media alone does not
37 constitute "transacting business with Washington consumers." Those
38 entities who only wholesale travel services are not "transacting
39 business with Washington consumers" for the purposes of this chapter.

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

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

11 It is the responsibility of the seller of travel to keep written or
12 printed documentation of the steps taken to verify that the advertised
13 offer was available at the time the advertising was placed. These
14 records are to be maintained for at least two years after the placement
15 of the advertisement.

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

18 At or prior to the time of full or partial payment for ~~((air, sea,~~
19 ~~or land transportation or))~~ any ~~((other))~~ travel services ~~((offered by~~
20 ~~the seller of travel in conjunction with the transportation))~~, the
21 seller of travel shall furnish to the person making the payment a
22 written statement conspicuously setting forth the ~~((following))~~
23 information contained in subsections (1) through (6) of this section.
24 If the sale of travel services is made over the telephone or by other
25 electronic media and payment is made by credit or debit card, the
26 seller of travel shall transmit to the person making the payment the
27 written statement required by this section within three business days
28 of the consumer's credit or debit card authorization. The written
29 statement shall contain the following information:

30 (1) The name and business address and telephone number of the
31 seller of travel.

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

34 (3) The registration number of the seller of travel required by
35 this chapter.

36 (4) The name of the vendor with whom the seller of travel has
37 contracted to provide travel arrangements for a consumer and all
38 pertinent information relating to the travel as known by the seller of

1 travel at the time of booking. The seller of travel will make known
2 further details as soon as received from the vendor. All information
3 will be provided with final documentation.

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

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

9 "If transportation or other services are canceled by the seller of
10 travel, all sums paid to the seller of travel for services not
11 performed in accordance with the contract between the seller of travel
12 and the purchaser will be refunded within thirty days of receiving the
13 funds from the vendor with whom the services were arranged, or if the
14 funds were not sent to the vendor, the funds shall be returned within
15 fourteen days after cancellation by the seller of travel to the
16 purchaser unless the purchaser requests the seller of travel to apply
17 the money to another travel product and/or date."

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

20 No person, firm, or corporation may act or hold itself out as a
21 seller of travel unless, prior to engaging in the business of selling
22 or advertising to sell travel services, the person, firm, or
23 corporation registers with the director under this chapter and rules
24 adopted under this chapter.

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

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

35 (3) No registration is assignable or transferable.

36 (4) If a registered seller of travel sells his or her business,
37 when the new owner becomes responsible for the business, the new owner

1 must comply with all provisions of this chapter, including
2 registration.

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

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

10 (b) All money received for travel services by the employee,
11 independent contractor, or outside agent is collected in the name of
12 the registered seller of travel and deposited directly into the
13 registered seller of travel's trust account as required under this
14 chapter.

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

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

20 (1) The name, address, and telephone number of the seller of
21 travel;

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

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

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

33 (5) A report prepared and signed by a bank officer, licensed public
34 accountant, or certified public accountant or other report, approved by
35 the director, that verifies that the seller of travel maintains a trust
36 account at a federally insured financial institution located in
37 Washington state, or other approved account ~~((at a federally insured~~
38 ~~institution located in the state of Washington))~~, the location and

1 number of that trust account or other approved account, and verifying
2 that the account (~~(is maintained and used)~~) exists as required by RCW
3 19.138.140. The director, by rule, may permit alternatives to the
4 report that provides for at least the same level of verification.

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

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

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

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

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

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

21 (e) Has failed to display the registration as provided in this
22 chapter;

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

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

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

31 (2) If the seller of travel is found in violation of this chapter
32 or in violation of the consumer protection act, chapter 19.86 RCW, by
33 the entry of a judgment or by settlement of a claim, the director may
34 revoke the registration of the seller of travel, and the director may
35 reinstate the registration at the director's discretion.

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

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

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:

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

21 (b) Refunds as required by this chapter;

22 (c) The amount of the sales commission;

23 (d) Interest earned and credited to the trust account or other
24 approved account; (~~or~~)

25 (e) Remaining funds of a purchaser once all travel services have
26 been provided or once tickets or other similar documentation binding
27 upon the ultimate provider of the travel services have been provided i
28 or

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

31 (3) At the time of registration, the seller of travel shall file
32 with the department the account number and the name of the financial
33 institution at which the trust account or other approved account is
34 held as set forth in RCW 19.138.110. The seller of travel shall notify
35 the department of any change in the account number or location within
36 one business day of the change.

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

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

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

5 (b) The seller of travel does not deposit, negotiate, or factor the
6 credit card charge or otherwise seek to obtain payment of the credit
7 card charge to any account over which the seller of travel has any
8 control; and

9 (c) If the charge includes transportation, the carrier that is to
10 provide the transportation processes the credit card charge, or if the
11 charge is only for services, the provider of services processes the
12 credit card charges.

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

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

28 (2) The task force shall consist of the following members: Two
29 members of the senate, appointed by the president of the senate, one
30 from the majority and one from the minority caucus; two members of the
31 house of representatives, appointed by the speaker of the house of
32 representatives, one from the majority and one from the minority
33 caucus; a representative from the office of the attorney general; a
34 representative from the department of licensing; and four members of
35 the travel industry. The four members of the travel industry shall be
36 jointly appointed by the president of the senate and the speaker of the
37 house of representatives and shall include: A representative of
38 wholesalers of travel services; a representative of a membership

1 organization that sells travel services; and two retailers of travel
2 services. The retailers of travel services shall represent an economic
3 cross section of the retailers of travel services. Recommendations for
4 appointment of the travel industry representatives may be made by
5 industry representatives.

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

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

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

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

15 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
16 preservation of the public peace, health, or safety, or support of the
17 state government and its existing public institutions, and shall take
18 effect immediately."

19 **ESHB 1704** - S COMM AMD
20 By Committee on Labor, Commerce & Trade

21 ADOPTED 2/28/96

22 On page 1, line 1 of the title, after "travel;" strike the
23 remainder of the title and insert "amending RCW 19.138.021, 19.138.030,
24 19.138.040, 19.138.100, 19.138.110, 19.138.130, and 19.138.140;
25 creating a new section; repealing RCW 19.138.055; and declaring an
26 emergency."

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