

HOUSE BILL REPORT

ESHB 1704

As Amended by the Senate:

Title: An act relating to sellers of travel.

Brief Description: Eliminating registration requirements for sellers of travel.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Lisk, L. Thomas, Ballasiotes, Kremen, Chappell, Cooke, Goldsmith, Padden, Radcliff, Mulliken, Pennington, McMorris, Smith, Delvin, Hickel, Mastin, Sehlin, Beeksma, Robertson, Cairnes, Koster, Brumsickle, D. Schmidt, Horn, Reams, Campbell, Chandler, Backlund, McMahan and Elliot).

Brief History:

Committee Activity:

Commerce & Labor: 2/16/95, 2/27/95 [DPS];
Appropriations: 3/3/95 [DPS(CL)].

Floor Activity:

Passed House: 3/9/95, 74-21;
Passed House: 1/26/96, 82-14.
Senate Amended.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lisk, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Cairnes; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 4 members: Representatives Romero, Ranking Minority Member; Conway, Assistant Ranking Minority Member; Cody and Cole.

Staff: Pam Madson (786-7166).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Labor be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Basich; Beeksma; Brumsickle; Carlson; Cooke; Crouse; Grant; Lambert; Lisk; McMorris; Poulsen; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 6 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Jacobsen; Rust; Thibaudeau and Wolfe.

Staff: Susan Nakagawa (786-7145).

Background: 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 those who transact business with Washington consumers for travel services. Sellers of travel must register with the Department of Licensing.

A seller of travel must comply with the following practices: (1) deposit all sums received for travel services in a trust account maintained in a federally-insured financial institution in Washington; (2) include their registration number in all advertisements; and (3) disclose information to the customer including conditions for cancellation and the customer's right to refunds. If the services contracted for are canceled, the seller must refund the money to the customer within 30 days of receiving the funds from the vendor or 14 days if the funds were not yet forwarded to the vendor. 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.

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.

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 to the department.

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 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.

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.

Summary of Bill: To safeguard the consumer and encourage fair dealing and prosperity in the travel business, emphasis is placed on vigorous enforcement of the Consumer Protection Act by the Attorney General. The system of registration of travel agents with enforcement by the Department of Licensing is eliminated.

A seller of travel does not include any common carrier or an affiliate of a common carrier if the affiliate is primarily engaged in selling travel services provided by the common carrier. Those who package transportation and travel service and distribute through a retail travel agency are also excluded as a seller of travel.

Moneys received by a seller of travel from the consumer must be deposited in a trust account or other account in a state or federally insured financial institution. If, upon reasonable doubt, the Attorney General believes a violation of the provisions governing the practices of sellers of travel is occurring or is about to occur, she may require the seller of travel to furnish the account number and the name of the financial institution. Any change in this information must be reported to the Attorney General within one business day of the change. The Attorney General may adopt rules to allow for the use of other funds if the consumer can still be protected.

Sellers of travel who advertise that travel services are available must verify such services prior to advertising and may satisfy this requirement by reliance on advertisement brochures or other materials provided by the vendor whose program is advertised.

The Attorney General has the following powers and duties: (1) to adopt, amend and repeal rules; (2) to inspect and audit books and records relating to the trust account and bond requirements after complaints evidencing a pattern of deceptive practices or upon becoming aware of advertising programs that could be deceptive practices; and (3) to do all things necessary to carry out the purposes of the act.

The Attorney General 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. The Attorney General may administer oaths, subpoena witnesses, require the production of documents and issue cease and desist orders. The Attorney General also may assess against a person who violates the law applying to sellers of travel, a civil penalty of not more than \$2,000 per violation and restitution.

The Attorney General, a county prosecuting attorney, 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 if probable cause exists that a violation of laws governing sellers of travel is about to occur. A person who violates an injunction issued under this act must pay a civil penalty of up to \$25,000 to the Attorney General.

The Secretary of State is deemed to be the agent of a nonresident seller of travel for the purpose of service of process. Nonresident sellers of travel must register with the Department of Revenue.

Out-of-state sellers of travel, regardless of the amount of business they transact in this state, may satisfy the trust account or other account requirement if they keep an out-of-state trust account or other account for the purposes required of in-state sellers of travel.

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

EFFECT OF SENATE AMENDMENT(S): The Senate amendments maintain the current system of registration through the Department of Licensing with the following changes and clarifications:

- (1) Sellers of travel include all businesses, inside or outside the state, that transact business with Washington consumer's for travel services. Those who directly provide transportation or lodging and do not book or arrange for any other travel services are not included as sellers of travel.
- (2) "Transacting business" is defined. Merely placing advertising through national media does not constitute transacting business with Washington consumers. Those who wholesale travel services are not considered transacting business with Washington consumers.
- (3) A seller of travel must furnish to the consumer a written disclosure statement. If the sale is by telephone or other electronic media and payment is made by

credit or debit card, the disclosure statement must be furnished within 3 business days.

- (4) Sellers of travel, independent contractors, or outside agents working for or under contract with an agent who is registered, need not also be registered if the employee or contract agents are working under the name of the registered agent and money received is collected in the name of the registered agent and is deposited into the registered agent's trust account.
- (5) Information required for registration is clarified. Social security numbers are not required but name, business address, and phone numbers of employees, independent contractors and outside agents are required.
- (6) Trust account reports can be verified by bank officers or licensed or certified public accountants.
- (7) The director of the Department of Licensing may revoke or suspend a registration; however, the director may no longer base a revocation or suspension on the fact that a person knowingly aided a unregistered seller of travel.
- (8) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services may be withdrawn from a trust account.
- (9) A joint legislative task force is established to consider options for improving the implementation of the sellers of travel registration program. Ten members may serve on the task force: two Senate members, two House members, one representative from the Attorney General's office, one representative from the Department of Licensing, and four members from the industry. The task force may meet up to three times and must submit recommendations to the Legislature by December 1, 1996.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Commerce & Labor) There is a need to protect the public from travel scams. Complaints peaked in 1993 and dropped off significantly. There has been vigorous enforcement by the Attorney General and federal authorities. Travel companies who are approved to sell airline tickets have to meet rigorous

requirements. Travel businesses operate on a narrow margin. They do want to protect the public and their own business reputation. They rely on repeat business. They want to avoid unnecessary rules and regulations. There are two ways to protect consumers, register sellers of travel or enforce consumer protection laws. Registration requirements add costs of doing business and regulate the innocent. Enforcement should be directed toward those who conduct deceptive practices.

(Appropriations) This bill transfers consumer protection to the Office of the Attorney General and relieves travel agents from the burden of registering. The vast majority of complaints are against a small percentage of companies. The attorney general is the more appropriate entity to focus on fraud.

Testimony Against: (Commerce & Labor) The travel industry is not acting to protect consumers. There still are a significant number of complaints. There has been less loss to consumers when they charge their travel on credit cards, however, the loss is then the bank's loss. There is concern over the ability to recover customer funds once a travel service has been paid for but not delivered. The ability to freeze accounts of consumers' money is needed.

(Appropriations) By the time the Office of the Attorney General learns of a problem, it is too late and the money is gone and unrecoverable. That's why last year's legislation was important. The attorney general opposes this legislation. This represents a step back from where the state is now. This is a problem for the consumer and a problem for the attorney general in terms of enforcement.

Testified: (Commerce & Labor) Joe Daniels, Mary Jo Strom Copland, and Dona Papadimitriou, Washington State Coalition of Travel (pro); Wil Doak, National Travel Association (pro); Ted Bottiger, Coalition for Travel (pro); Dan Reid (con); Steve Danishek, TMA Inc. (con); Jerry Farley and Jean Larson, Lets Go Travel (pro); Sally Gustafson, Consumer Protection, Attorney Generals Office (con); Emil Moore (con); and Bev Clausen (con).

(Appropriations) Joe Daniels, Washington State Coalition of Travel (pro); and Sally Gustafson, Consumer Protection, Office of the Attorney General (con).