

2 SSB 6132 - S AMD - 744

3 By Senators Schow and Wojahn

4

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

7 "Sec. 1. RCW 19.138.030 and 1996 c 180 s 2 are each amended to  
8 read as follows:

9 A seller of travel shall not advertise that any travel services are  
10 or may be available unless he or she has, prior to the advertisement,  
11 determined that the product advertised was available at the time the  
12 advertising was placed. This determination can be made by the seller  
13 of travel either by use of an airline computer reservation system, or  
14 by written confirmation from the vendor whose program is being  
15 advertised.

16 It is the responsibility of the seller of travel to keep written or  
17 printed documentation of the steps taken to verify that the advertised  
18 offer was available at the time the advertising was placed. These  
19 records are to be maintained for at least ~~((two))~~ one year~~((s))~~ after  
20 the placement of the advertisement.

21 **Sec. 2.** RCW 19.138.040 and 1996 c 180 s 3 are each amended to read  
22 as follows:

23 At or prior to the time of full or partial payment for any travel  
24 services, the seller of travel shall furnish to the person making the  
25 payment a written statement conspicuously setting forth the information  
26 contained in subsections (1) through (6) of this section. However, if  
27 ~~((the sale of travel services is made over the telephone or by other~~  
28 ~~electronic media and payment is made by credit or debit card))~~ payment  
29 is made other than in person, the seller of travel shall transmit to  
30 the person making the payment the written statement required by this  
31 section within three business days of ~~((the consumer's credit or debit~~  
32 ~~card authorization))~~ receipt or processing of the payment. The written  
33 statement shall contain the following information:

34 (1) The name and business address and telephone number of the  
35 seller of travel.

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

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

5 (4) The name of the vendor with whom the seller of travel has  
6 contracted to provide travel arrangements for a consumer and all  
7 pertinent information relating to the travel as known by the seller of  
8 travel at the time of booking. The seller of travel will make known  
9 further details as soon as received from the vendor. All information  
10 will be provided with final documentation.

11 ~~((The conditions, if any, upon which the contract between the  
12 seller of travel and the passenger may be canceled, and the rights and  
13 obligations of all parties in the event of cancellation.))~~ An advisory  
14 regarding the penalties that would be charged in the event of a  
15 cancellation or change by the customer. This may contain either: (a)  
16 The specific amount of cancellation and change penalties; or (b) the  
17 following statement: "Cancellation and change penalties apply to these  
18 arrangements. Details will be provided upon request."

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

21 "If transportation or other services are canceled by the seller of  
22 travel, all sums paid to the seller of travel for services not  
23 performed in accordance with the contract between the seller of travel  
24 and the purchaser will be refunded within thirty days of receiving the  
25 funds from the vendor with whom the services were arranged, or if the  
26 funds were not sent to the vendor, the funds shall be returned within  
27 fourteen days after cancellation by the seller of travel to the  
28 purchaser unless the purchaser requests the seller of travel to apply  
29 the money to another travel product and/or date."

30 **Sec. 3.** RCW 19.138.100 and 1996 c 180 s 4 are each amended to read  
31 as follows:

32 No person, firm, or corporation may act or hold itself out as a  
33 seller of travel unless, prior to engaging in the business of selling  
34 or advertising to sell travel services, the person, firm, or  
35 corporation registers with the director under this chapter and rules  
36 adopted under this chapter.

37 (1) The registration number must be conspicuously posted in the  
38 place of business and must be included in all advertisements. ~~((Any~~

1 corporation which issues a class of equity securities registered under  
2 section 12 of the securities exchange act of 1934, and any subsidiary,  
3 the majority of voting stock of which is owned by such corporation  
4 including any wholly owned subsidiary of such corporation are not  
5 required to include company registration numbers in advertisements.))  
6 Sellers of travel are not required to include registration numbers on  
7 institutional advertising. For the purposes of this subsection,  
8 "institutional advertising" is advertising that does not include prices  
9 or dates for travel services.

10 (2) ((The director shall issue duplicate registrations upon payment  
11 of a nominal duplicate registration fee to valid registration holders  
12 operating more than one office.)) Separate offices or business  
13 locations with two or more employees must be individually registered  
14 under this chapter.

15 (3) No registration is assignable or transferable.

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

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

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

27 (b) All money received for travel services by the employee,  
28 independent contractor, or outside agent is collected in the name of  
29 the registered seller of travel and ((deposited directly into))  
30 processed by the registered seller of ((travel's trust account)) travel  
31 as required under this chapter.

32 **Sec. 4.** RCW 19.138.110 and 1996 c 180 s 5 are each amended to read  
33 as follows:

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

37 (1) The name, address, and telephone number of the seller of  
38 travel;

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

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

4 (4) The names, business addresses, and business phone numbers of  
5 all employees, independent contractors, or outside agents who sell  
6 travel and are covered by the seller of travel's registration(~~(. This~~  
7 ~~subsection shall not apply to the out of state employees of a~~  
8 ~~corporation that 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 the corporation));~~  
11 and

12 (5) For those sellers of travel required to maintain a trust  
13 account under RCW 19.138.140, a report prepared and signed by a bank  
14 officer, licensed public accountant, or certified public accountant or  
15 other report, approved by the director, that verifies that the seller  
16 of travel maintains a trust account at a federally insured financial  
17 institution located in Washington state, or other approved account, the  
18 location and number of that trust account or other approved account,  
19 and verifying that the account ((exists as)) required by RCW 19.138.140  
20 exists. The director, by rule, may permit alternatives to the report  
21 that provides for at least the same level of verification.

22 **Sec. 5.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read  
23 as follows:

24 (1) Each seller of travel shall renew its registration on or before  
25 July 1 of every ((~~other~~)) year or as otherwise determined by the  
26 director.

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

30 (3) The director may refuse to renew a registration for any of the  
31 grounds set out under RCW 19.138.130, and where the past conduct of the  
32 applicant affords reasonable grounds for belief that the applicant will  
33 not carry out the applicant's duties in accordance with law and with  
34 integrity and honesty. The director shall promptly notify the  
35 applicant in writing by certified mail of its intent to refuse to renew  
36 the registration. The registrant may, within twenty-one days after  
37 receipt of that notice or intent, request a hearing on the refusal.  
38 The director may permit the registrant to honor commitments already

1 made to its customers, but no new commitments may be incurred, unless  
2 the director is satisfied that all new commitments are completely  
3 bonded or secured to insure that the general public is protected from  
4 loss of money paid to the registrant. It is the responsibility of the  
5 registrant to contest the decision regarding conditions imposed or  
6 registration denied through the process established by the  
7 administrative procedure act, chapter 34.05 RCW.

8       **Sec. 6.** RCW 19.138.130 and 1997 c 58 s 852 are each amended to  
9 read as follows:

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

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

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

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

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

24       (e) Has failed to display the registration as provided in this  
25 chapter;

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

28       (g) Has committed a fraud or fraudulent practice in the operation  
29 and conduct of a travel agency business, including, but not limited to,  
30 intentionally misleading advertising.

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       (3) The director shall immediately suspend the license or  
37 certificate of a person who has been certified pursuant to RCW  
38 74.20A.320 by the department of social and health services as a person

1 who is not in compliance with a support order or a residential or  
2 visitation order. If the person has continued to meet all other  
3 requirements for reinstatement during the suspension, reissuance of the  
4 license or certificate shall be automatic upon the director's receipt  
5 of a release issued by the department of social and health services  
6 stating that the licensee is in compliance with the order.

7 **Sec. 7.** RCW 19.138.140 and 1996 c 180 s 7 are each amended to read  
8 as follows:

9 (1) A seller of travel shall deposit in a trust account maintained  
10 in a federally insured financial institution located in Washington  
11 state, or other account approved by the director, all sums held for  
12 more than five business days that are received from a person or entity,  
13 for retail travel services offered by the seller of travel. This  
14 subsection does not apply to travel services sold by a seller of  
15 travel, when payments for the travel services are made through the  
16 airlines reporting corporation (~~either by cash or credit or debit card~~  
17 ~~sale~~)).

18 (2) The trust account or other approved account required by this  
19 section shall be established and maintained for the benefit of any  
20 person or entity paying money to the seller of travel. The seller of  
21 travel shall not in any manner encumber the amounts in trust and shall  
22 not withdraw money from the account except the following amounts may be  
23 withdrawn at any time:

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

26 (b) Refunds as required by this chapter;

27 (c) The amount of the sales commission;

28 (d) Interest earned and credited to the trust account or other  
29 approved account;

30 (e) Remaining funds of a purchaser once all travel services have  
31 been provided or once tickets or other similar documentation binding  
32 upon the ultimate provider of the travel services have been provided;  
33 or

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

36 (3) At the time of registration, the seller of travel shall file  
37 with the department the account number and the name of the financial  
38 institution at which the trust account or other approved account is

1 held as set forth in RCW 19.138.110. The seller of travel shall notify  
2 the department of any change in the account number or location within  
3 one business day of the change.

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

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

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

11 (b) The seller of travel does not deposit, negotiate, or factor the  
12 credit card charge or otherwise seek to obtain payment of the credit  
13 card charge to any account over which the seller of travel has any  
14 control; and

15 (c) If the charge includes transportation, the carrier that is to  
16 provide the transportation processes the credit card charge, or if the  
17 charge is only for services, the provider of services processes the  
18 credit card charges.

19 (6) The seller of travel need not maintain a trust account nor  
20 comply with the trust account provisions of this section if the seller  
21 of travel:

22 (a)(i) Files and maintains a surety bond approved by the director  
23 in an amount of not less than ten thousand nor more than fifty thousand  
24 dollars, as determined by the director based on the volume of business  
25 conducted by the seller of travel during the prior year. The bond  
26 shall be executed by the applicant as obligor and by a surety company  
27 authorized to do business in this state.

28 (ii) The bond must run to the state of Washington as obligee, and  
29 must run to the benefit of the state and any person or persons who  
30 suffer loss by reason of the seller of travel's violation of this  
31 chapter or a rule adopted under this chapter.

32 (iii) The bond must be conditioned that the seller of travel will  
33 faithfully conform to and abide by this chapter and all rules adopted  
34 under this chapter, and shall reimburse all persons who suffer loss by  
35 reason of a violation of this chapter or a rule adopted under this  
36 chapter.

37 (iv) The bond must be continuous and may be canceled by the surety  
38 upon the surety giving written notice to the director of the surety's

1 intent to cancel the bond. The cancellation is effective thirty days  
2 after the notice is received by the director.

3 (v) The applicant may obtain the bond directly from the surety or  
4 through a camp bonding arrangement involving a professional  
5 organization comprised of sellers of travel if the arrangement provides  
6 at least as much coverage as is required under this subsection.

7 (vi) In lieu of a surety bond, the applicant may, upon approval by  
8 the director, file with the director a certificate of deposit, an  
9 irrevocable letter of credit, or such other instrument as is approved  
10 by the director by rule, drawn in favor of the director for an amount  
11 equal to the required bond.

12 (vii) A person injured by a violation of this chapter may bring an  
13 action against the surety bond or approved alternative of the seller of  
14 travel who committed the violation or who employed the seller of travel  
15 who committed the violation; or

16 (b) Is a member in good standing in a professional association,  
17 such as the United States tour operators association or national tour  
18 association, that is approved by the director and that provides a  
19 minimum of one million dollars in errors and professional liability  
20 insurance and provides a surety bond or equivalent protection in an  
21 amount of at least two hundred fifty thousand dollars for its member  
22 companies.

23 (7) If the seller of travel maintains its principal place of  
24 business in another state and maintains a trust account or other  
25 approved account in that state consistent with the requirement of this  
26 section, and if that seller of travel has transacted business within  
27 the state of Washington in an amount exceeding five million dollars for  
28 the preceding year, the out-of-state trust account or other approved  
29 account may be substituted for the in-state account required under this  
30 section.

31 **Sec. 8.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to  
32 read as follows:

33 The director has the following powers and duties:

34 (1) To adopt, amend, and repeal rules to carry out the ((purposes))  
35 registration and trust account provisions of this chapter;

36 (2) To issue and renew registrations under this chapter and to deny  
37 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 provide technical assistance and training to registered  
4 sellers of travel on requirements to comply with this chapter;

5 (5) To establish fees;

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

13 (6) To do all things necessary to carry out the functions, powers,  
14 and duties given to the director as set forth in this chapter; and

15 (7) To publish information concerning violations of this chapter or  
16 rules adopted or orders issued under this chapter.

17 **Sec. 9.** RCW 19.138.180 and 1994 c 237 s 15 are each amended to  
18 read as follows:

19 The director(~~, in the director's discretion, may:~~

20 ~~(1) Annually, or more frequently, make public or private~~  
21 ~~investigations within or without this state as the director deems~~  
22 ~~necessary to determine whether a registration should be granted,~~  
23 ~~denied, revoked, or suspended, or whether a person has violated or is~~  
24 ~~about to violate this chapter or a rule adopted or order issued under~~  
25 ~~this chapter, or to aid in the enforcement of this chapter or in the~~  
26 ~~prescribing of rules and forms of this chapter;~~

27 ~~(2) Publish information concerning a violation of this chapter or~~  
28 ~~a rule adopted or order issued under this chapter; and~~

29 ~~(3) Investigate complaints concerning practices by sellers of~~  
30 ~~travel for which registration is required by this chapter)) shall grant~~  
31 registration as required under this chapter unless the director has  
32 information that justifies denial of registration as required under  
33 this chapter.

34 **NEW SECTION. Sec. 10.** A new section is added to chapter 19.138  
35 RCW to read as follows:

36 For the purposes of this chapter, the attorney general may, upon  
37 receipt of an oral or written complaint, investigate the practices of

1 sellers of travel for which registration is required under this chapter  
2 or actions of persons who violate or appear to violate this chapter.

3 **Sec. 11.** RCW 19.138.190 and 1994 c 237 s 16 are each amended to  
4 read as follows:

5 For the purpose of an investigation or proceeding under this  
6 chapter, the ((director)) attorney general or any officer designated by  
7 the ((director)) attorney general may administer oaths and  
8 affirmations, subpoena witnesses, compel their attendance, take  
9 evidence, and require the production of any books, papers,  
10 correspondence, memoranda, agreements, or other documents or records  
11 which the ((director)) attorney general deems relevant or material to  
12 the inquiry.

13 **Sec. 12.** RCW 19.138.200 and 1994 c 237 s 20 are each amended to  
14 read as follows:

15 The ((director)) attorney general or individuals acting on the  
16 ((director's)) attorney general's behalf are immune from suit in any  
17 action, civil or criminal, based on disciplinary proceedings or other  
18 official acts performed in the course of their duties in the  
19 administration and enforcement of this chapter.

20 **Sec. 13.** RCW 19.138.240 and 1994 c 237 s 21 are each amended to  
21 read as follows:

22 (1) The director may assess against a person or organization that  
23 fails to register under this chapter or otherwise violates this  
24 chapter, or a rule adopted under this chapter, a civil penalty of not  
25 more than one thousand 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. 14.** A new section is added to chapter 43.131  
4 RCW to read as follows:

5 The sellers of travel regulatory program shall be terminated June  
6 30, 2001, as provided in section 15 of this act.

7 NEW SECTION. **Sec. 15.** A new section is added to chapter 43.131  
8 RCW to read as follows:

9 The following acts or parts of acts, as now existing or hereafter  
10 amended, are each repealed, effective June 30, 2002:

- 11 (1) RCW 19.138.010 and 1994 c 237 s 1 & 1986 c 283 s 1;
- 12 (2) RCW 19.138.021 and 1996 c 180 s 1 & 1994 c 237 s 2;
- 13 (3) RCW 19.138.030 and 1998 c . . . s 1 (section 1 of this act),  
14 1996 c 180 s 2, 1994 c 237 s 10, & 1986 c 283 s 3;
- 15 (4) RCW 19.138.040 and 1998 c . . . s 2 (section 2 of this act),  
16 1996 c 180 s 3, 1994 c 237 s 11, & 1986 c 283 s 4;
- 17 (5) RCW 19.138.050 and 1994 c 237 s 12 & 1986 c 283 s 5;
- 18 (6) RCW 19.138.090 and 1986 c 283 s 9;
- 19 (7) RCW 19.138.100 and 1998 c . . . s 3 (section 3 of this act),  
20 1996 c 180 s 4, & 1994 c 237 s 3;
- 21 (8) RCW 19.138.110 and 1998 c . . . s 4 (section 4 of this act),  
22 1996 c 180 s 5, & 1994 c 237 s 4;
- 23 (9) RCW 19.138.120 and 1998 c . . . s 5 (section 5 of this act) &  
24 1994 c 237 s 5;
- 25 (10) RCW 19.138.130 and 1998 c . . . s 6 (section 6 of this act),  
26 1997 c 58 s 852, 1996 c 180 s 6, & 1994 c 237 s 6;
- 27 (11) RCW 19.138.140 and 1998 c . . . s 7 (section 7 of this act),  
28 1996 c 180 s 7, & 1994 c 237 s 8;
- 29 (12) RCW 19.138.150 and 1994 c 237 s 9;
- 30 (13) RCW 19.138.160 and 1994 c 237 s 14;
- 31 (14) RCW 19.138.170 and 1998 c . . . s 8 (section 8 of this act) &  
32 1994 c 237 s 13;
- 33 (15) RCW 19.138.1701 and 1994 c 237 s 30;
- 34 (16) RCW 19.138.180 and 1998 c . . . s 9 (section 9 of this act) &  
35 1994 c 237 s 15;
- 36 (17) RCW 19.138.--- and 1998 c . . . s 10 (section 10 of this act);

- 1 (18) RCW 19.138.190 and 1998 c . . . s 11 (section 11 of this act)  
2 & 1994 c 237 s 16;  
3 (19) RCW 19.138.200 and 1998 c . . . s 12 (section 12 of this act)  
4 & 1994 c 237 s 20;  
5 (20) RCW 19.138.210 and 1994 c 237 s 17;  
6 (21) RCW 19.138.220 and 1994 c 237 s 18;  
7 (22) RCW 19.138.230 and 1994 c 237 s 19;  
8 (23) RCW 19.138.240 and 1998 c . . . s 13 (section 13 of this act)  
9 & 1994 c 237 s 21;  
10 (24) RCW 19.138.250 and 1994 c 237 s 22;  
11 (25) RCW 19.138.260 and 1994 c 237 s 23;  
12 (26) RCW 19.138.270 and 1994 c 237 s 24;  
13 (27) RCW 19.138.280 and 1994 c 237 s 28;  
14 (28) RCW 19.138.290 and 1994 c 237 s 27;  
15 (29) RCW 19.138.300 and 1994 c 237 s 25;  
16 (30) RCW 19.138.310 and 1994 c 237 s 26;  
17 (31) RCW 19.138.900 and 1986 c 283 s 11;  
18 (32) RCW 19.138.901 and 1986 c 283 s 12;  
19 (33) RCW 19.138.902 and 1994 c 237 s 32;  
20 (34) RCW 19.138.903 and 1994 c 237 s 33; and  
21 (35) RCW 19.138.904 and 1994 c 237 s 35.

22 NEW SECTION. **Sec. 16.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 17.** If specific funding for the purposes of  
27 sections 10 through 12 of this act, referencing sections 10 through 12  
28 of this act by bill or chapter number and section numbers, is not  
29 provided by June 30, 1998, in the omnibus appropriations act, sections  
30 10 through 12 of this act are null and void."

31 **SSB 6132** - S AMD - 744  
32 By Senators Schow and Wojahn

33  
34 On page 1, line 1 of the title, after "sales;" strike the remainder  
35 of the title and insert "amending RCW 19.138.030, 19.138.040,

1 19.138.100, 19.138.110, 19.138.120, 19.138.130, 19.138.140, 19.138.170,  
2 19.138.180, 19.138.190, 19.138.200, and 19.138.240; adding a new  
3 section to chapter 19.138 RCW; adding new sections to chapter 43.131  
4 RCW; creating a new section; and prescribing penalties."

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