

2 **ESHB 2090** - S COMM AMD

3 By Committee on Commerce, Trade, Housing & Financial Institutions

4 ADOPTED 4/8/99

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
12 holders operating more than one office. The duplicate registration fee
13 for each office shall be an amount equal to the original registration
14 fee.

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 19.138.120 and 1994 c 237 s 5 are each amended to read
33 as follows:

34 (1) Each seller of travel shall renew its registration on or before
35 July 1 of every ((other)) year or as otherwise determined by the
36 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 RCW 19.138.130, and where the past conduct of the
6 applicant affords reasonable grounds for belief that the applicant will
7 not carry out the applicant's duties in accordance with law and with
8 integrity and honesty. The director shall promptly notify the
9 applicant in writing by certified mail of its intent to refuse to renew
10 the registration. The registrant may, within twenty-one days after
11 receipt of that notice or intent, request a hearing on the refusal.
12 The director may permit the registrant to honor commitments already
13 made to its customers, but no new commitments may be incurred, unless
14 the director is satisfied that all new commitments are completely
15 bonded or secured to insure that the general public is protected from
16 loss of money paid to the registrant. It is the responsibility of the
17 registrant to contest the decision regarding conditions imposed or
18 registration denied through the process established by the
19 administrative procedure act, chapter 34.05 RCW.

20 **Sec. 5.** RCW 19.138.130 and 1997 c 58 s 852 are each amended to
21 read as follows:

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

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25 chapter, and the registration was revoked for cause and never reissued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

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

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

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

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

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

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

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

11 (3) The director shall immediately suspend the license or
12 certificate of a person who has been certified pursuant to RCW
13 74.20A.320 by the department of social and health services as a person
14 who is not in compliance with a support order or a residential or
15 visitation order. If the person has continued to meet all other
16 requirements for reinstatement during the suspension, reissuance of the
17 license or certificate shall be automatic upon the director's receipt
18 of a release issued by the department of social and health services
19 stating that the licensee is in compliance with the order.

20 **Sec. 6.** RCW 19.138.140 and 1996 c 180 s 7 are each amended to read
21 as follows:

22 (1) A seller of travel shall deposit in a trust account maintained
23 in a federally insured financial institution located in Washington
24 state, or other account approved by the director, all sums held for
25 more than five business days that are received from a person or entity,
26 for retail travel services offered by the seller of travel. This
27 subsection does not apply to travel services sold by a seller of
28 travel, when payments for the travel services are made through the
29 airlines reporting corporation (~~either by cash or credit or debit card~~
30 ~~sale~~)).

31 (2) The trust account or other approved account required by this
32 section shall be established and maintained for the benefit of any
33 person or entity paying money to the seller of travel. The seller of
34 travel shall not in any manner encumber the amounts in trust and shall
35 not withdraw money from the account except the following amounts may be
36 withdrawn at any time:

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

1 (b) Refunds as required by this chapter;
2 (c) The amount of the sales commission;
3 (d) Interest earned and credited to the trust account or other
4 approved account;

5 (e) Remaining funds of a purchaser once all travel services have
6 been provided or once tickets or other similar documentation binding
7 upon the ultimate provider of the travel services have been provided;
8 or

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

11 (3) The seller of travel may deposit noncustomer funds into the
12 trust account as needed in an amount equal to a deficiency resulting
13 from dishonored customer payments made by check, draft, credit card,
14 debit card, or other negotiable instrument.

15 (4) At the time of registration, the seller of travel shall file
16 with the department the account number and the name of the financial
17 institution at which the trust account or other approved account is
18 held as set forth in RCW 19.138.110. The seller of travel shall notify
19 the department of any change in the account number or location within
20 one business day of the change.

21 (~~(4)~~) (5) The director, by rule, may allow for the use of other
22 types of funds or accounts only if the protection for consumers is no
23 less than that provided by this section.

24 (~~(5)~~) (6) The seller of travel need not comply with the
25 requirements of this section if all of the following apply, except as
26 exempted in subsection (1) of this section:

27 (a) The payment is made by credit card;
28 (b) The seller of travel does not deposit, negotiate, or factor the
29 credit card charge or otherwise seek to obtain payment of the credit
30 card charge to any account over which the seller of travel has any
31 control; and

32 (c) If the charge includes transportation, the carrier that is to
33 provide the transportation processes the credit card charge, or if the
34 charge is only for services, the provider of services processes the
35 credit card charges.

36 (~~(6)~~) (7) The seller of travel need not maintain a trust account
37 nor comply with the trust account provisions of this section if the
38 seller of travel:

1 (a)(i) Files and maintains a surety bond approved by the director
2 in an amount of not less than ten thousand nor more than fifty thousand
3 dollars, as determined by rule by the director based on the gross
4 income of business conducted by the seller of travel during the prior
5 year. The bond shall be executed by the applicant as obligor by a
6 surety company authorized to transact business in this state naming the
7 state of Washington as obligee for the benefit of any person or persons
8 who have suffered monetary loss by reason of the seller of travel's
9 violation of this chapter or a rule adopted under this chapter. The
10 bond shall be conditioned that the seller of travel will conform to and
11 abide by this chapter and all rules adopted under this chapter, and
12 shall reimburse any person or persons who suffer monetary loss by
13 reason of a violation of this chapter or a rule adopted under this
14 chapter.

15 (ii) The bond must be continuous and may be canceled by the surety
16 upon the surety giving written notice to the director of the surety's
17 intent to cancel the bond. The cancellation is effective thirty days
18 after the notice is received by the director.

19 (iii) The applicant may obtain the bond directly from the surety or
20 through other bonding arrangement as approved by the director.

21 (iv) In lieu of a surety bond, the applicant may, upon approval by
22 the director, file with the director a certificate of deposit, an
23 irrevocable letter of credit, or such other instrument as is approved
24 by the director by rule, drawn in favor of the director for an amount
25 equal to the required bond.

26 (v) Any person or persons who have suffered monetary loss by any
27 act which constitutes a violation of this chapter or a rule adopted
28 under this chapter may bring a civil action in court against the seller
29 of travel and the surety upon such bond or approved alternate security
30 of the seller of travel who committed the violation of this chapter or
31 a rule adopted under this chapter or who employed the seller of travel
32 who committed such violation. A civil action brought in court pursuant
33 to the provisions of this section must be filed no later than one year
34 following the later of the alleged violation of this chapter or a rule
35 adopted under this chapter or completion of the travel by the customer;
36 or

37 (b) Is a member in good standing in a professional association,
38 such as the United States tour operators association or national tour
39 association, that is approved by the director and that provides or

1 requires a member to provide a minimum of one million dollars in errors
2 and professional liability insurance and provides a surety bond or
3 equivalent protection in an amount of at least two hundred fifty
4 thousand dollars for its member companies.

5 (8) If the seller of travel maintains its principal place of
6 business in another state and maintains a trust account or other
7 approved account in that state consistent with the requirement of this
8 section, and if that seller of travel has transacted business within
9 the state of Washington in an amount exceeding five million dollars for
10 the preceding year, the out-of-state trust account or other approved
11 account may be substituted for the in-state account required under this
12 section.

13 **Sec. 7.** RCW 19.138.170 and 1994 c 237 s 13 are each amended to
14 read as follows:

15 The director has the following powers and duties:

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

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

20 (3) To suspend or revoke a registration for a violation of this
21 chapter;

22 (4) To establish fees;

23 (5) Upon receipt of a complaint, to inspect and audit the books and
24 records of a seller of travel. The seller of travel shall immediately
25 make available to the director those books and records as may be
26 requested at the seller of travel's place of business or at a location
27 designated by the director. For that purpose, the director shall have
28 full and free access to the office and places of business of the seller
29 of travel during regular business hours. When ten or more complaints
30 have been received by either the department or the attorney general on
31 a seller of travel within a period of ninety days, the department shall
32 inspect and audit books and records of the seller of travel; and

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

35 NEW SECTION. **Sec. 8.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

3 **ESHB 2090** - S COMM AMD

4 By Committee on Commerce, Trade, Housing & Financial Institutions

5 ADOPTED 4/8/99

6 On page 1, line 1 of the title, after "travel;" strike the
7 remainder of the title and insert "and amending RCW 19.138.030,
8 19.138.040, 19.138.100, 19.138.120, 19.138.130, 19.138.140, and
9 19.138.170."

--- END ---