

HOUSE BILL REPORT

ESHB 2090

As Amended by the Senate

Title: An act relating to sellers of travel.

Brief Description: Modifying and sunseting provisions related to sellers of travel.

Sponsors: By House Committee on Commerce & Labor (Originally sponsored by Representatives Clements, Lisk, Reardon, Cooper, McMorris, Talcott, B. Chandler and Gombosky).

Brief History:

Committee Activity:

Commerce & Labor: 2/25/99, 3/1/99 [DPS].

Floor Activity:

Passed House: 3/17/99, 98-0.

Senate Amended.

Passed Senate: 4/8/99, 45-1.

Brief Summary of Engrossed Substitute Bill

- Relaxes certain record-keeping and disclosure requirements imposed on sellers of travel under the registration program.
- Clarifies that a separate registration fee must be paid for each office or business location having two or more employees operated by a business with multiple business locations.
- Provides an option to the requirement to keep a trust account.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; Wood, Democratic Vice Chair; Hurst and McIntire.

Minority Report: Do not pass. Signed by 3 members: Representatives B. Chandler, Republican Vice Chair; Lisk and McMorris.

Staff: Pam Madson (786-7166).

Background:

Registration of travel sellers. A registration program for sellers of travel was established in 1996, and is administered by the Department of Licensing. The registration fee is set by the department, and the amount of the fee is determined by the cost of the registration program. The registration fee is \$234 and is paid annually. Sellers of travel that operate more than one office are issued a duplicate registration for each office for a fee of \$25 per office.

Posting of registration numbers. Registration numbers must be posted at the travel seller's place of business and in all advertising with limited exceptions.

Maintaining records verifying availability of advertised travel services. Sellers of travel must maintain records documenting their verification that any travel services advertised by them were in fact available at the time of the advertisement. These records must be kept for two years after the advertisement.

Criminal history. The director of the Department of Licensing may deny, suspend or revoke a travel seller's registration if the person has been found guilty within the past five years of a felony involving moral turpitude or a misdemeanor involving fraud or misrepresentation.

Written customer disclosure statement. When a customer arranges for travel services, a written disclosure statement must be provided before the customer pays for the services. The statement must include the travel seller's name, address, phone number and registration number; itemized statement of costs and payment; names of all vendors providing travel services and information on travel arrangements; and the rights and obligations of all parties in the event of cancellation of the travel arrangements.

Audit by the Department of Licensing. Upon receiving a complaint against a seller of travel, the department may immediately inspect and audit books and records of the seller of travel.

Trust accounts. A trust account must be maintained by a seller of travel for money paid by the customer for travel services. Money received from a customer must be deposited in this account within five days of its receipt. Money paid by cash or credit card for airline tickets through the Airline Reporting Corporation (ARC) is exempt

from this requirement. Only specified seller of travel expenses may be withdrawn from the trust account.

Summary of Bill:

Registration of travel sellers. Sellers of travel who operate offices at multiple locations may register all locations with one registration document through the issuance of duplicate registration documents. The fee for each duplicate registration must be the same amount as that for the original registration. Registration is renewed annually unless the director of the Department of Licensing determines otherwise.

Posting of registration numbers. Registration numbers need not be included in institutional advertising which is advertising that does not include prices or dates for travel. For example, registration numbers would not be required in the yellow pages of the telephone book.

Maintaining records verifying availability of advertised travel services. The amount of time that a seller of travel must keep records verifying that advertised travel services are in fact available is reduced from two years to one year.

Criminal history. The director of the Department of Licensing must consider 10 years rather than five years of a person's criminal history for felony convictions involving moral turpitude or misdemeanors involving fraud or misrepresentation as part of the registration process.

Written disclosure statement. Rather than requiring a detailed disclosure statement on the penalties imposed upon cancellation of travel arrangements, the seller of travel has the option to advise the customer that cancellation penalties and penalties for changing arrangements may apply, and additional details will be provided upon request.

Audits by the Department of Licensing. The Department of Licensing must audit books and records of sellers of travel against whom ten or more complaints have been filed with either the department or the attorney general.

Trust account. Sellers of travel may deposit non-customer funds into a trust account to cover payments made by the customer that are subsequently dishonored leaving insufficient funds in the trust account. A trust account is not required for those sellers of travel who file and maintain a surety bond approved by the director of the Department of Licensing in an amount set by the director of not less than \$10,000 nor more than \$50,000, or an alternative form of security approved by the director such as a certificate of deposit or an irrevocable line of credit. A seller of travel who is a member in good standing of a professional association is also exempt from the requirement to maintain a trust account. The association must be approved by the

director and must provide or require its members to provide a minimum of \$1 million in errors and omissions insurance or a surety bond, or its equivalent in the amount of \$250,000.

EFFECT OF SENATE AMENDMENT(S): The Senate striking amendment changes the bonding provisions by: (1) Clarifying that the basis for determining the amount of the surety bond is gross income of the business rather than the volume of business; (2) directing the Department of Licensing to determine the amount of the bond by rule; (3) allowing a person to bring a civil action in any appropriate court rather than limiting suits to superior court; and (4) clarifying that actions must be brought no later than 1 year from the completion of travel or from the alleged violation, whichever is later.

Appropriation: None.

Fiscal Note: Requested on February 17, 1999.

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

Testimony For: (Original bill) The proponents of this bill want a cooperative, constructive relationship with the regulatory agencies and a program that protects the traveling public. Current law is an overly burdensome, ineffective statute with which travel agents have difficulty complying and which does not protect the traveling public. Travel complaints are primarily against travel clubs and those who sell certificates that promise some vague offer of travel in the future. Travel clubs are not part of the statute. Many of these promoters are out-of-state businesses. Complaints are not against traditional sellers of travel. The current law is not being enforced. It is reasonable to expect that quick enforcement action be taken once a complaint is made. The concern is over widespread authority to do random audits of businesses looking for someone who might not be in compliance with trust account requirements. Much of the regulation under this law is not being complied with. However, there are a number of changes in the bill that both the sellers of travel and the regulating agencies agree with. The on-going concern is over enforcement and the level of burdensome and ineffective regulation.

Testimony Against: The attorney general's office is not set up to do the regulatory enforcement of the registration law as directed in this bill. That is what the Department of Licensing is set up to do. The attorney general's office prosecutes the violations. By working together to enforce the sellers of travel's law, the two agencies can leverage what resources they have. Many complaints are against the traditional sellers of travel and this is an industry with a fairly high percentage of

complaints. Many changes made in the bill will help the industry and ease some of the regulatory burden.

Testified: (Original bill) (For) Jerry Farley, Washington State Coalition of Travel; Mary Jo Strom Copland; Chris Erickson; and Ester Robbins Hutton.

(Opposed) Sally Gustafson, the Office of the Attorney General.

(To answer questions) Mary Jelvik, Department of Licensing.