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ENGROSSED SUBSTITUTE HOUSE BILL 2090

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State of Washington

56th Legislature

1999 Regular Session

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

Read first time 03/02/1999.

1 AN ACT Relating to sellers of travel; and amending RCW 19.138.030,  
2 19.138.040, 19.138.100, 19.138.120, 19.138.130, 19.138.140, and  
3 19.138.170.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 19.138.030 and 1996 c 180 s 2 are each amended to read  
6 as follows:

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

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

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

3       At or prior to the time of full or partial payment for any travel  
4 services, the seller of travel shall furnish to the person making the  
5 payment a written statement conspicuously setting forth the information  
6 contained in subsections (1) through (6) of this section. However, if  
7 ~~((the sale of travel services is made over the telephone or by other~~  
8 ~~electronic media and payment is made by credit or debit card))~~ payment  
9 is made other than in person, the seller of travel shall transmit to  
10 the person making the payment the written statement required by this  
11 section within three business days of ~~((the consumer's credit or debit~~  
12 ~~card authorization))~~ receipt or processing of the payment. The written  
13 statement shall contain the following information:

14       (1) The name and business address and telephone number of the  
15 seller of travel.

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

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

20       (4) The name of the vendor with whom the seller of travel has  
21 contracted to provide travel arrangements for a consumer and all  
22 pertinent information relating to the travel as known by the seller of  
23 travel at the time of booking. The seller of travel will make known  
24 further details as soon as received from the vendor. All information  
25 will be provided with final documentation.

26       (5) ~~((The conditions, if any, upon which the contract between the~~  
27 ~~seller of travel and the passenger may be canceled, and the rights and~~  
28 ~~obligations of all parties in the event of cancellation.))~~ An advisory  
29 regarding the penalties that would be charged in the event of a  
30 cancellation or change by the customer. This may contain either: (a)  
31 The specific amount of cancellation and change penalties; or (b) the  
32 following statement: "Cancellation and change penalties apply to these  
33 arrangements. Details will be provided upon request."

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

36       "If transportation or other services are canceled by the seller of  
37 travel, all sums paid to the seller of travel for services not  
38 performed in accordance with the contract between the seller of travel  
39 and the purchaser will be refunded within thirty days of receiving the

1 funds from the vendor with whom the services were arranged, or if the  
2 funds were not sent to the vendor, the funds shall be returned within  
3 fourteen days after cancellation by the seller of travel to the  
4 purchaser unless the purchaser requests the seller of travel to apply  
5 the money to another travel product and/or date."

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

8 No person, firm, or corporation may act or hold itself out as a  
9 seller of travel unless, prior to engaging in the business of selling  
10 or advertising to sell travel services, the person, firm, or  
11 corporation registers with the director under this chapter and rules  
12 adopted under this chapter.

13 (1) The registration number must be conspicuously posted in the  
14 place of business and must be included in all advertisements. (~~Any~~  
15 ~~corporation which issues a class of equity securities registered under~~  
16 ~~section 12 of the securities exchange act of 1934, and any subsidiary,~~  
17 ~~the majority of voting stock of which is owned by such corporation~~  
18 ~~including any wholly owned subsidiary of such corporation are not~~  
19 ~~required to include company registration numbers in advertisements.))  
20 Sellers of travel are not required to include registration numbers on  
21 institutional advertising. For the purposes of this subsection,  
22 "institutional advertising" is advertising that does not include prices  
23 or dates for travel services.~~

24 (2) The director shall issue duplicate registrations upon payment  
25 of a (~~nominal~~) duplicate registration fee to valid registration  
26 holders operating more than one office. The duplicate registration fee  
27 for each office shall be an amount equal to the original registration  
28 fee.

29 (3) No registration is assignable or transferable.

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

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

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

4 (b) All money received for travel services by the employee,  
5 independent contractor, or outside agent is collected in the name of  
6 the registered seller of travel and (~~deposited directly into~~)  
7 processed by the registered seller of (~~travel's trust account~~) travel  
8 as required under this chapter.

9 **Sec. 4.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read  
10 as follows:

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

14 (2) Renewal of a registration is subject to the same provisions  
15 covering issuance, suspension, and revocation of a registration  
16 originally issued.

17 (3) The director may refuse to renew a registration for any of the  
18 grounds set out under RCW 19.138.130, and where the past conduct of the  
19 applicant affords reasonable grounds for belief that the applicant will  
20 not carry out the applicant's duties in accordance with law and with  
21 integrity and honesty. The director shall promptly notify the  
22 applicant in writing by certified mail of its intent to refuse to renew  
23 the registration. The registrant may, within twenty-one days after  
24 receipt of that notice or intent, request a hearing on the refusal.  
25 The director may permit the registrant to honor commitments already  
26 made to its customers, but no new commitments may be incurred, unless  
27 the director is satisfied that all new commitments are completely  
28 bonded or secured to insure that the general public is protected from  
29 loss of money paid to the registrant. It is the responsibility of the  
30 registrant to contest the decision regarding conditions imposed or  
31 registration denied through the process established by the  
32 administrative procedure act, chapter 34.05 RCW.

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

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

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

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

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

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

13 (e) Has failed to display the registration as provided in this  
14 chapter;

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

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

20 (2) If the seller of travel is found in violation of this chapter  
21 or in violation of the consumer protection act, chapter 19.86 RCW, by  
22 the entry of a judgment or by settlement of a claim, the director may  
23 revoke the registration of the seller of travel, and the director may  
24 reinstate the registration at the director's discretion.

25 (3) The director shall immediately suspend the license or  
26 certificate of a person who has been certified pursuant to RCW  
27 74.20A.320 by the department of social and health services as a person  
28 who is not in compliance with a support order or a residential or  
29 visitation order. If the person has continued to meet all other  
30 requirements for reinstatement during the suspension, reissuance of the  
31 license or certificate shall be automatic upon the director's receipt  
32 of a release issued by the department of social and health services  
33 stating that the licensee is in compliance with the order.

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

36 (1) A seller of travel shall deposit in a trust account maintained  
37 in a federally insured financial institution located in Washington  
38 state, or other account approved by the director, all sums held for

1 more than five business days that are received from a person or entity,  
2 for retail travel services offered by the seller of travel. This  
3 subsection does not apply to travel services sold by a seller of  
4 travel, when payments for the travel services are made through the  
5 airlines reporting corporation (~~either by cash or credit or debit card~~  
6 ~~sale~~)).

7 (2) The trust account or other approved account required by this  
8 section shall be established and maintained for the benefit of any  
9 person or entity paying money to the seller of travel. The seller of  
10 travel shall not in any manner encumber the amounts in trust and shall  
11 not withdraw money from the account except the following amounts may be  
12 withdrawn at any time:

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

15 (b) Refunds as required by this chapter;

16 (c) The amount of the sales commission;

17 (d) Interest earned and credited to the trust account or other  
18 approved account;

19 (e) Remaining funds of a purchaser once all travel services have  
20 been provided or once tickets or other similar documentation binding  
21 upon the ultimate provider of the travel services have been provided;  
22 or

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

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

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

35 (~~(4)~~) (5) The director, by rule, may allow for the use of other  
36 types of funds or accounts only if the protection for consumers is no  
37 less than that provided by this section.

1       (~~(5)~~) (6) The seller of travel need not comply with the  
2 requirements of this section if all of the following apply, except as  
3 exempted in 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)~~) (7) The seller of travel need not maintain a trust account  
14 nor comply with the trust account provisions of this section if the  
15 seller of travel:

16       (a)(i) Files and maintains a surety bond approved by the director  
17 in an amount of not less than ten thousand nor more than fifty thousand  
18 dollars, as determined by the director based on the volume of business  
19 conducted by the seller of travel during the prior year. The bond  
20 shall be executed by the applicant as obligor by a surety company  
21 authorized to transact business in this state naming the state of  
22 Washington as obligee for the benefit of any person or persons who have  
23 suffered monetary loss by reason of the seller of travel's violation of  
24 this chapter or a rule adopted under this chapter. The bond shall be  
25 conditioned that the seller of travel will conform to and abide by this  
26 chapter and all rules adopted under this chapter, and shall reimburse  
27 any person or persons who suffer monetary loss by reason of a violation  
28 of this chapter or a rule adopted under this chapter.

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

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

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

1       (v) Any person or persons who have suffered monetary loss by any  
2 act which constitutes a violation of this chapter or a rule adopted  
3 under this chapter may bring a civil action in the superior court  
4 against the seller of travel and the surety upon such bond or approved  
5 alternate security of the seller of travel who committed the violation  
6 of this chapter or a rule adopted under this chapter or who employed  
7 the seller of travel who committed such violation. A civil action  
8 brought in the superior court pursuant to the provisions of this  
9 section must be filed no later than one year following the alleged  
10 violation of this chapter or a rule adopted under this chapter; or

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

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

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

28       The director has the following powers and duties:

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

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

33       (3) To suspend or revoke a registration for a violation of this  
34 chapter;

35       (4) To establish fees;

36       (5) Upon receipt of a complaint, to inspect and audit the books and  
37 records of a seller of travel. The seller of travel shall immediately  
38 make available to the director those books and records as may be



1 requested at the seller of travel's place of business or at a location  
2 designated by the director. For that purpose, the director shall have  
3 full and free access to the office and places of business of the seller  
4 of travel during regular business hours. When ten or more complaints  
5 have been received by either the department or the attorney general on  
6 a seller of travel within a period of ninety days, the department shall  
7 inspect and audit books and records of the seller of travel; and

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

10 NEW SECTION. **Sec. 8.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

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