
SUBSTITUTE SENATE BILL 5219

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Eide, Prentice, Swecker, Rasmussen
and Hochstatter)

READ FIRST TIME 2/6/01.

1 AN ACT Relating to sellers of travel-related benefits; amending RCW
2 19.138.021, 19.138.220, 19.138.100, and 19.138.160; and adding a new
3 section to chapter 19.138 RCW.

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

5 **Sec. 1.** RCW 19.138.021 and 2000 c 171 s 73 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Department" means the department of licensing.

10 (2) "Director" means the director of licensing or the director's
11 designee.

12 (3) "Sale of travel-related benefits" means the sale of travel
13 services if the travel services are not identified at the time of the
14 sale with respect to dates, price, or location and includes:

15 (a) Sales of travel club memberships;

16 (b) Sales of vacation certificates or other documents that purport
17 to grant the holder of the certificate or other document the ability to
18 obtain future travel services, with or without additional
19 consideration; or

1 (c) Sales of travel-industry member benefits including those
2 through either or both the issuance and sale or the consulting with or
3 advising for consideration of persons in connection with the obtaining
4 of international airlines travel agent network identification cards or
5 memberships.

6 (4) "Travel club" means a seller of travel that sells memberships
7 to consumers, where the initial membership or maintenance dues are at
8 least twice the amount of the annual membership or maintenance dues.

9 (5) "Seller of travel-related benefits" means a person, firm, or
10 corporation that transacts business with Washington consumers for the
11 sale of travel-related benefits.

12 (6) "Seller of travel" means a person, firm, or corporation both
13 inside and outside the state of Washington, who transacts business with
14 Washington consumers ((for travel services)).

15 (a) "Seller of travel" includes a travel agent and any person who
16 is an independent contractor or outside agent for a travel agency or
17 other seller of travel whose principal duties include consulting with
18 and advising persons concerning travel arrangements or accommodations
19 in the conduct or administration of its business. If a seller of
20 travel is employed by a seller of travel who is registered under this
21 chapter, the employee need not also be registered.

22 (b) "Seller of travel" does not include:

23 (i) An air carrier;

24 (ii) An owner or operator of a vessel, including an ocean common
25 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of
26 a vessel that is required to establish its financial responsibility in
27 accordance with the requirements of the federal maritime commission, 46
28 U.S.C. App. 817 (e), and a steamboat company whether or not operating
29 over and upon the waters of this state;

30 (iii) A motor carrier;

31 (iv) A rail carrier;

32 (v) A charter party carrier of passengers as defined in RCW
33 81.70.020;

34 (vi) An auto transportation company as defined in RCW 81.68.010;

35 (vii) A hotel or other lodging accommodation;

36 (viii) An affiliate of any person or entity described in (i)
37 through (vii) of this subsection ((+3+)) (6)(b) that is primarily
38 engaged in the sale of travel services provided by the person or
39 entity. For purposes of this subsection ((+3+)) (6)(b)(viii), an

1 "affiliate" means a person or entity owning, owned by, or under common
2 ownership, with "owning," "owned," and "ownership" referring to equity
3 holdings of at least eighty percent;

4 (ix) Direct providers of transportation by air, sea, or ground, or
5 hotel or other lodging accommodations who do not book or arrange any
6 other travel services.

7 (~~(4)~~) (7) "Travel services" includes transportation by air, sea,
8 or ground, hotel or any lodging accommodations, package tours, or
9 vouchers or coupons to be redeemed for future travel or accommodations
10 for a fee, commission, or other valuable consideration.

11 (~~(5)~~) (8) "Advertisement" includes, but is not limited to, a
12 written or graphic representation in a card, brochure, newspaper,
13 magazine, directory listing, or display, and oral, written, or graphic
14 representations made by radio, television, or cable transmission that
15 relates to travel services.

16 (~~(6)~~) (9) "Transacts business with Washington consumers" means to
17 directly offer or sell travel services or travel-related benefits to
18 Washington consumers, including the placement of advertising in media
19 based in the state of Washington or that is primarily directed to
20 Washington residents. Advertising placed in national print or
21 electronic media alone does not constitute "transacting business with
22 Washington consumers." Those entities who only wholesale travel
23 services are not "transacting business with Washington consumers" for
24 the purposes of this chapter.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.138 RCW
26 to read as follows:

27 (1) A contract for the sale of travel-related benefits may be
28 canceled at the option of the purchaser if the purchaser sends notice
29 of the cancellation by certified mail, return receipt requested, to the
30 seller of travel-related benefits at the address contained in the
31 contract and if the notice is postmarked not later than midnight of the
32 seventh calendar day following the day on which the contract is signed
33 or any membership card and all membership materials are received by the
34 purchaser, whichever is later. In addition to this cancellation right,
35 a purchaser who signs a contract for the sale of travel-related
36 benefits of any description from a seller of travel-related benefits
37 without having received the written disclosures required in subsection
38 (2) of this section has cancellation rights until seven calendar days

1 after the receipt of the written disclosures. A purchaser must request
2 cancellation of a contract by sending the notice of cancellation by
3 certified mail, return receipt requested, postmarked not later than
4 midnight of the seventh calendar day following the day on which the
5 contract is signed, any membership card and all membership materials
6 are received by the purchaser, or the day on which the disclosures were
7 actually received, whichever is later, to the seller of travel-related
8 benefits at the address contained in the contract. The purchaser may
9 use the cancellation form prescribed in subsection (2) of this section,
10 however, notice of cancellation is sufficient if it indicates the
11 intention of the purchaser not to be bound by the contract. The
12 purchaser's right of cancellation of a contract for the sale of travel-
13 related benefits may not be waived.

14 (2) A contract for the sale of travel-related benefits must include
15 the following statement in at least ten-point bold-face type
16 immediately before the space for the purchaser's signature:

17 "Purchaser's right to cancel: You may cancel this contract without
18 any cancellation fee or other penalty, or stated reason for doing so,
19 by sending notice of cancellation by certified mail, return receipt
20 requested, to . . . (insert name of the seller of travel-related
21 benefits) at the address indicated below. The notice must be
22 postmarked by midnight of the seventh calendar day following the day on
23 which this contract is signed by you or the day any membership card and
24 all membership materials are received by you, whichever is later. The
25 day on which the contract was signed is not included as a "calendar
26 day," and if the seventh calendar day falls on a Sunday or legal
27 holiday, then the right to cancel this contract expires on the day
28 immediately following that Sunday or legal holiday.

29 TO CANCEL THIS CONTRACT, SEND A COPY OF THIS NOTICE OF CANCELLATION
30 OR OTHER WRITTEN NOTICE OF CANCELLATION TO:

31

32 (Name of Seller)

33

34 (Address of Seller)

35 (Date)

36 I HEREBY CANCEL THIS CONTRACT

37 (Date)

1
2 (Purchaser's Signature)
3
4 (Printed Name)
5
6 (Purchaser's Address)"

7 (3) Within seven calendar days following timely receipt of notice
8 of cancellation from the purchaser, the seller of travel-related
9 benefits shall provide evidence that the contract has been canceled and
10 return any money or other consideration paid by the purchaser.
11 However, the seller of travel-related benefits may retain payments made
12 for specific travel services utilized by the purchaser.

13 **Sec. 3.** RCW 19.138.220 and 1994 c 237 s 18 are each amended to
14 read as follows:

15 The attorney general, a county prosecuting attorney, the director,
16 or any person may, in accordance with the law of this state governing
17 injunctions, maintain an action in the name of this state to enjoin a
18 (~~person or entity selling travel services~~) seller of travel for which
19 registration is required by this chapter without registration from
20 engaging in the practice until the required registration is secured.
21 However, the injunction shall not relieve the person or entity selling
22 travel services or selling travel-related benefits without registration
23 from criminal prosecution therefor, but the remedy by injunction shall
24 be in addition to any criminal liability.

25 **Sec. 4.** RCW 19.138.100 and 1999 c 238 s 3 are each amended to read
26 as follows:

27 No person, firm, or corporation may act or hold itself out as a
28 seller of travel unless, prior to engaging in the business of selling
29 or advertising to sell travel services or travel-related benefits, the
30 person, firm, or corporation registers with the director under this
31 chapter and rules adopted under this chapter.

32 (1) The registration number must be conspicuously posted in the
33 place of business and must be included in all advertisements. Sellers
34 of travel are not required to include registration numbers on
35 institutional advertising. For the purposes of this subsection,

1 "institutional advertising" is advertising that does not include prices
2 or dates for travel services.

3 (2) The director shall issue duplicate registrations upon payment
4 of a duplicate registration fee to valid registration holders operating
5 more than one office. The duplicate registration fee for each office
6 shall be an amount equal to the original registration fee.

7 (3) No registration is assignable or transferable.

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

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

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

19 (b) All money received for travel services by the employee,
20 independent contractor, or outside agent is collected in the name of
21 the registered seller of travel and processed by the registered seller
22 of travel as required under this chapter.

23 **Sec. 5.** RCW 19.138.160 and 1994 c 237 s 14 are each amended to
24 read as follows:

25 (1) A nonresident seller of travel soliciting business or selling
26 travel in the state of Washington, by mail, telephone, or otherwise,
27 either directly or indirectly, is deemed, absent any other appointment,
28 to have appointed the director to be the seller of travel's true and
29 lawful attorney upon whom may be served any legal process against that
30 nonresident arising or growing out of a transaction involving travel
31 services or the sale of travel-related benefits. That solicitation
32 signifies the nonresident's agreement that process against the
33 nonresident that is served as provided in this chapter is of the same
34 legal force and validity as if served personally on the nonresident
35 seller of travel.

36 (2) Service of process upon a nonresident seller of travel shall be
37 made by leaving a copy of the process with the director. The fee for
38 the service of process shall be determined by the director by rule.

1 That service is sufficient service upon the nonresident if the
2 plaintiff or plaintiff's attorney of record sends notice of the service
3 and a copy of the process by certified mail before service or
4 immediately after service to the defendant at the address given by the
5 nonresident in a solicitation furnished by the nonresident, and the
6 sender's post office receipt of sending and the plaintiff's or
7 plaintiff's attorney's affidavit of compliance with this section are
8 returned with the process in accordance with Washington superior court
9 civil rules. Notwithstanding the foregoing requirements, however, once
10 service has been made on the director as provided in this section, in
11 the event of failure to comply with the requirement of notice to the
12 nonresident, the court may order that notice be given that will be
13 sufficient to apprise the nonresident.

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