
HOUSE BILL 2590

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By Representatives Kirby and Ryu

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1 AN ACT Relating to sellers of travel; and amending RCW 19.138.021,
2 19.138.040, 19.138.100, 19.138.120, and 19.138.140.

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

4 **Sec. 1.** RCW 19.138.021 and 2001 c 44 s 1 are each amended to read
5 as follows:

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

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

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

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

14 (a) Sales of travel club memberships;

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

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

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

24 (i) An air carrier;

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

31 (iii) A motor carrier;

32 (iv) A rail carrier;

33 (v) A charter party carrier of passengers as defined in RCW
34 81.70.020;

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

36 (vii) A hotel or other lodging accommodation;

37 (viii) An affiliate of any person or entity described in (i)
38 through (vii) of this subsection ~~((+6))~~ (5)(b) that is primarily

1 engaged in the sale of travel services provided by the person or
2 entity. For purposes of this subsection (~~((+6+))~~) (5)(b)(viii), an
3 "affiliate" means a person or entity owning, owned by, or under common
4 ownership, with "owning," "owned," and "ownership" referring to equity
5 holdings of at least eighty percent;

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

9 (~~((+7+))~~) (6) "Travel services" includes transportation by air, sea,
10 or ground, hotel or any lodging accommodations, package tours, or
11 vouchers or coupons to be redeemed for future travel or accommodations
12 for a fee, commission, or other valuable consideration.

13 (~~((+8+))~~) (7) "Advertisement" includes, but is not limited to, a
14 written or graphic representation in a card, brochure, newspaper,
15 magazine, directory listing, or display, and oral, written, or graphic
16 representations made by radio, television, or cable transmission that
17 relates to travel services.

18 (~~((+9+))~~) (8) "Transacts business with Washington consumers" means to
19 directly offer or sell travel services or travel-related benefits to
20 Washington consumers, including the placement of advertising in media
21 based in the state of Washington or that is primarily directed to
22 Washington residents. Advertising placed in national print or
23 electronic media alone does not constitute "transacting business with
24 Washington consumers." Those entities who only wholesale travel
25 services are not "transacting business with Washington consumers" for
26 the purposes of this chapter.

27 (9) "Seller of travel discount program" means a membership, benefit
28 program, or other arrangement that purports to entitle the purchaser of
29 the seller of travel discount program to future transportation or any
30 travel services at a discount or reduced price or preferential
31 treatment not made generally available to the public.

32 **Sec. 2.** RCW 19.138.040 and 1999 c 238 s 2 are each amended to read
33 as follows:

34 At or prior to the time of full or partial payment for any travel
35 services, the seller of travel shall furnish to the person making the
36 payment a written statement conspicuously setting forth the information
37 contained in subsections (1) through (6) of this section. However, if

1 payment is made other than in person, the seller of travel shall
2 transmit to the person making the payment the written statement
3 required by this section within three business days of receipt or
4 processing of the payment. The written statement shall contain the
5 following information:

6 (1) The name and business address and telephone number of the
7 seller of travel.

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

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

12 (4) The name of the vendor with whom the seller of travel has
13 contracted to provide travel arrangements for a consumer and all
14 pertinent information relating to the travel as known by the seller of
15 travel at the time of booking. The seller of travel will make known
16 further details as soon as received from the vendor. All information
17 will be provided with final documentation.

18 (5) An advisory regarding the penalties that would be charged in
19 the event of a cancellation or change by the customer. This may
20 contain either: (a) The specific amount of cancellation and change
21 penalties; or (b) the following statement: "Cancellation and change
22 penalties apply to these arrangements. Details will be provided upon
23 request."

24 (6) ((A)) The following statements in a minimum of eight-point,
25 boldface type in substantially the following form:

26 "If transportation or other services are canceled by the seller of
27 travel, all sums paid to the seller of travel for services not
28 performed in accordance with the contract between the seller of travel
29 and the purchaser will be refunded within thirty days of receiving the
30 funds from the vendor with whom the services were arranged, or if the
31 funds were not sent to the vendor, the funds shall be returned within
32 fourteen days after cancellation by the seller of travel to the
33 purchaser unless the purchaser requests the seller of travel to apply
34 the money to another travel product and/or date. You also have the
35 option to purchase travel insurance."

36 **Sec. 3.** RCW 19.138.100 and 2001 c 44 s 4 are each amended to read
37 as follows:

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

6 (1) The registration number must be conspicuously posted in the
7 place of business and must be included in all advertisements and on all
8 business cards. (~~Sellers of travel are not required to include~~
9 ~~registration numbers on institutional advertising. For the purposes of~~
10 ~~this subsection, "institutional advertising" is advertising that does~~
11 ~~not include prices or dates for travel services.))~~

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

16 (3) No registration is assignable or transferable.

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

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

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

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

32 **Sec. 4.** RCW 19.138.120 and 2002 c 86 s 277 are each amended to
33 read as follows:

34 (1) Each seller of travel shall renew its registration (~~on or~~
35 ~~before July 1st of every year or as otherwise)) annually determined by
36 the director.~~

1 (2) Renewal of a registration is subject to the same provisions
2 covering disciplinary action as a registration originally issued.

3 (3) The director may refuse to renew a registration for any of the
4 grounds set out under RCW 19.138.130 and 18.235.130, and where the past
5 conduct of the applicant affords reasonable grounds for belief that the
6 applicant will not carry out the applicant's duties in accordance with
7 law and with integrity and honesty. The director shall promptly notify
8 the applicant in writing by certified mail of its intent to refuse to
9 renew the registration. The registrant may request a hearing on the
10 refusal as provided in RCW 18.235.050. The director may permit the
11 registrant to honor commitments already made to its customers, but no
12 new commitments may be incurred, unless the director is satisfied that
13 all new commitments are completely bonded or secured to ensure that the
14 general public is protected from loss of money paid to the registrant.

15 **Sec. 5.** RCW 19.138.140 and 2003 c 38 s 1 are each amended to read
16 as follows:

17 (1) A seller of travel shall deposit in a trust account maintained
18 in a federally insured financial institution located in Washington
19 state, or other account approved by the director, all sums (~~held for~~
20 ~~more than five business days~~) that are received from a person or
21 entity, for retail travel services (~~offered by the seller of travel~~).
22 This subsection does not apply to travel services sold by a seller of
23 travel, when payments for the travel services are made through the
24 airlines reporting corporation.

25 (2) The trust account or other approved account required by this
26 section shall be established and maintained for the benefit of any
27 person or entity paying money to the seller of travel. The seller of
28 travel shall not in any manner encumber the amounts in trust and shall
29 not withdraw money from the account except the following amounts may be
30 withdrawn at any time:

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

33 (b) Refunds as required by this chapter;

34 (c) The amount of the sales commission;

35 (d) Interest earned and credited to the trust account or other
36 approved account;

1 (e) Remaining funds of a purchaser once all travel services have
2 been provided or once tickets or other similar documentation binding
3 upon the ultimate provider of the travel services have been provided;
4 or

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

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

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

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

20 (6) The seller of travel need not comply with the requirements of
21 this section if all of the following apply, except as exempted in
22 subsection (1) of this section:

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

24 (b) The seller of travel does not deposit, negotiate, or factor the
25 credit card charge or otherwise seek to obtain payment of the credit
26 card charge to any account over which the seller of travel has any
27 control; and

28 (c) If the charge includes transportation, the carrier that is to
29 provide the transportation processes the credit card charge, or if the
30 charge is only for services, the provider of services processes the
31 credit card charges.

32 (7) The seller of travel need not maintain a trust account nor
33 comply with the trust account provisions of this section if the seller
34 of travel:

35 (a)(i) Files and maintains a surety bond approved by the director
36 in an amount of not less than ten thousand nor more than fifty thousand
37 dollars, as determined by rule by the director based on the gross
38 income of business conducted for Washington state residents by the

1 seller of travel during the prior year. The bond shall be executed by
2 the applicant as obligor by a surety company authorized to transact
3 business in this state naming the state of Washington as obligee for
4 the benefit of any person or persons who have suffered monetary loss by
5 reason of the seller of travel's violation of this chapter or a rule
6 adopted under this chapter. The bond shall be conditioned that the
7 seller of travel will conform to and abide by this chapter and all
8 rules adopted under this chapter, and shall reimburse any person or
9 persons who suffer monetary loss by reason of a violation of this
10 chapter or a rule adopted under this chapter.

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

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

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

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

33 (b) Is a member in good standing in a professional association,
34 such as the United States tour operators association or national tour
35 association, that is approved by the director and that provides or
36 requires a member to provide a minimum of one million dollars in errors
37 and professional liability insurance and provides a surety bond or

1 equivalent protection in an amount of at least two hundred fifty
2 thousand dollars for its member companies.

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

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