
SENATE BILL 5717

State of Washington 54th Legislature 1995 Regular Session

By Senators Pelz, Rinehart, Prentice, Fraser, Wojahn and Franklin

Read first time 02/02/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to clarifying sellers of travel registration
2 requirements including the establishment of a registered sellers of
3 travel recovery account; amending RCW 19.138.021, 19.138.030,
4 19.138.040, 19.138.050, 19.138.100, 19.138.110, 19.138.120, and
5 19.138.140; adding new sections to chapter 19.138 RCW; repealing RCW
6 19.138.055; and providing an effective date.

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

8 **Sec. 1.** RCW 19.138.021 and 1994 c 237 s 2 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

13 (2) "Director" means the director of licensing or the director's
14 designee.

15 (3) "Seller of travel" means a person, firm, or corporation
16 ~~((both))~~ whose principle place of business is located either inside
17 ~~((and))~~ or outside the state of Washington, who transacts business
18 ~~((with))~~ selling travel services within the state of Washington or who
19 sells travel services to Washington state consumers~~((, including,))~~ or

1 businesses. A seller of travel includes, but is not limited to,
2 (~~travel agencies,~~) a person or entity who sells, provides, furnishes
3 contracts for, arranges, or advertises, either directly or indirectly,
4 by any means or method, to arrange or book any travel services
5 including travel reservations or accommodations, group or individual
6 tours, tickets for domestic or foreign travel by air, rail, ship, bus,
7 or other medium of transportation or hotel or other lodging
8 accommodation and vouchers or coupons to be redeemed for future travel
9 or accommodations for a fee, commission, or other valuable
10 consideration.

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

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

20 (i) An air carrier;

21 (ii) An owner or operator of a vessel including an ocean common
22 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of
23 a vessel that is required to establish its financial responsibility in
24 accordance with the requirements of the federal maritime commission, 46
25 U.S.C. App. 817 (e), and a steamboat company as defined in RCW
26 84.12.200 whether or not operating over and upon the waters of this
27 state;

28 (iii) A motor carrier;

29 (iv) A rail carrier;

30 (v) A charter party carrier of passengers as defined in RCW
31 81.70.020;

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

33 (vii) A hotel or other lodging accommodation;

34 (viii) An affiliate of any person or entity described in (i)
35 through (vii) of this subsection (3)(b) that is primarily engaged in
36 the sale of travel services provided by the person or entity. For
37 purposes of this subsection (3)(b)(viii), an "affiliate" means a person
38 or entity owning, owned by, or under common ownership, with "owning,"

1 "owned," and "ownership" referring to equity holdings of at least
2 eighty percent.

3 (4) "Travel services" includes transportation by air, sea, or
4 (~~rail~~) ground transportation, hotel or any lodging accommodations, or
5 group, individual, or package tours, whether offered or sold on a
6 wholesale or retail basis.

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

12 **Sec. 2.** RCW 19.138.030 and 1994 c 237 s 10 are each amended to
13 read as follows:

14 A seller of travel shall not advertise that (~~air, sea, or land~~
15 ~~transportation either separately or in conjunction with other services~~
16 ~~is~~) travel services are or may be available unless he or she has,
17 prior to the advertisement, determined that the product advertised was
18 available at the time the advertising was placed. This determination
19 can be made by the seller of travel either by use of an airline
20 computer reservation system, or by written confirmation from the vendor
21 whose program is being advertised.

22 It is the responsibility of the seller of travel to keep written or
23 printed documentation of the steps taken to verify that the advertised
24 offer was available at the time the advertising was placed. These
25 records are to be maintained for at least two years after the placement
26 of the advertisement.

27 **Sec. 3.** RCW 19.138.040 and 1994 c 237 s 11 are each amended to
28 read as follows:

29 At or prior to the time of full or partial payment for (~~air, sea,~~
30 ~~or land transportation or any other services~~) travel services offered
31 by the seller of travel (~~in conjunction with the transportation~~), the
32 seller of travel shall furnish to the person making the payment a
33 written statement conspicuously setting forth the following
34 information:

35 (1) The name and business address and telephone number of the
36 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 (5) 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.

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

16 "If transportation or other services are canceled by the seller of
17 travel, all sums paid to the seller of travel for services not
18 performed in accordance with the contract between the seller of travel
19 and the purchaser will be refunded within thirty days of receiving the
20 funds from the vendor with whom the services were arranged, or if the
21 funds were not sent to the vendor, the funds shall be returned within
22 fourteen days after cancellation by the seller of travel to the
23 purchaser unless the purchaser requests the seller of travel to apply
24 the money to another travel product and/or date."

25 **Sec. 4.** RCW 19.138.050 and 1994 c 237 s 12 are each amended to
26 read as follows:

27 (1) If the (~~transportation or other~~) travel services contracted
28 for are canceled, or if the money is to be refunded for any reason, the
29 seller of travel shall refund to the person with whom it contracts for
30 travel services, the money due the person within thirty days of
31 receiving the funds from the vendor with whom the services were
32 arranged. If the funds were not sent to the vendor and remain in the
33 possession of the seller of travel, the funds shall be refunded within
34 fourteen days.

35 (2) Any material misrepresentation with regard to the
36 transportation and other services offered shall be deemed to be a
37 cancellation necessitating the refund required by this section.

1 (3) When travel services are paid to a vendor and charged to a
2 consumer's credit card by the seller of travel, and the arrangements
3 are subsequently canceled by the consumer, the vendor, or the seller of
4 travel, any refunds to the consumer's credit card must be applied for
5 within ten days from the date of cancellation.

6 (4) The seller of travel shall not be obligated to refund any
7 cancellation penalties imposed by the vendor with whom the services
8 were arranged if these penalties were disclosed in the statement
9 required under RCW 19.138.040.

10 **Sec. 5.** RCW 19.138.100 and 1994 c 237 s 3 are each amended to read
11 as follows:

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

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

27 (2) (~~The director shall issue duplicate registrations upon payment~~
28 ~~of a nominal duplicate registration fee to valid registration holders~~
29 ~~operating more than one office.)) Separate offices or business
30 locations licensed separately by the state of Washington must be
31 individually registered under this chapter.~~

32 (3) No registration is assignable or transferable.

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

37 (5) If a seller of travel is employed by or under contract as an
38 independent contractor or an outside agent of a seller of travel who is

1 registered under this chapter, the employee, independent contractor, or
2 outside agent need not also be registered if:

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

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

11 **Sec. 6.** RCW 19.138.110 and 1994 c 237 s 4 are each amended to read
12 as follows:

13 An application for registration as a seller of travel shall be
14 submitted in the form prescribed by rule by the director, and shall
15 contain but not be limited to the following:

16 (1) The name, address, and telephone number of the seller of
17 travel;

18 (2) Proof that the seller of travel holds a valid business license
19 in the state of its principal state of business;

20 (3) A registration fee in an amount determined under RCW 43.24.086;

21 (4) The name, address, and social security numbers of all
22 employees, independent contractors, or outside agents who sell travel
23 and are covered by the seller of travel's registration. This
24 subsection shall not apply to the out-of-state employees of a
25 corporation that issues a class of equity securities registered under
26 section 12 of the securities exchange act of 1934, and any subsidiary,
27 the majority of voting stock of which is owned by the corporation;

28 (5) A report prepared and signed by a licensed public accountant or
29 certified public accountant or other report, approved by the director,
30 that verifies that the seller of travel maintains a trust account or
31 other approved account at a federally insured institution located in
32 the state of Washington, the location and number of that trust account
33 or other approved account, and verifying that the account is maintained
34 and used as required by RCW 19.138.140. The director, by rule, may
35 permit alternatives to the report that provides for at least the same
36 level of verification.

1 **Sec. 7.** RCW 19.138.120 and 1994 c 237 s 5 are each amended to read
2 as follows:

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

6 (2) Renewal of a registration is subject to the same provisions
7 covering issuance, suspension, and revocation of a registration
8 originally issued.

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

25 **Sec. 8.** RCW 19.138.140 and 1994 c 237 s 8 are each amended to read
26 as follows:

27 (1) Within five business days of receipt, a seller of travel shall
28 deposit all sums received from a person or entity, for travel services
29 offered by the seller of travel, in a trust account or other approved
30 account maintained in a federally insured financial institution located
31 in Washington state. Exempted are airline sales made by a seller of
32 travel, when payments for the airline tickets are made through the
33 airline reporting corporation either by cash or credit card sale.

34 (2) The trust account or other approved account required by this
35 section shall be established and maintained for the benefit of any
36 person or entity paying money to the seller of travel. The seller of
37 travel shall not in any manner encumber the amounts in trust and shall

1 not withdraw money from the account except the following amounts may be
2 withdrawn at any time:

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

5 (b) Refunds as required by this chapter;

6 (c) The amount of the sales commission in an amount not to exceed
7 fifteen percent;

8 (d) Interest earned and credited to the trust account or other
9 approved account; or

10 (e) Remaining funds of a purchaser once the travel seller has
11 provided the purchaser verified proof that full and final payment for
12 all travel services ((have been provided or once tickets or other
13 similar documentation binding upon)) has been made to the ultimate
14 provider of the travel services ((have been provided)).

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

24 (5) The seller of travel need not comply with the requirements of
25 this section if all of the following apply, except as exempted in
26 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) If the seller of travel maintains its principal place of
37 business in another state and maintains a trust account or other
38 approved account in that state consistent with the requirement of this
39 section, and if that seller of travel has transacted business within

1 the state of Washington in an amount exceeding five million dollars for
2 the preceding year, the out-of-state trust account or other approved
3 account may be substituted for the in-state account required under this
4 section.

5 NEW SECTION. **Sec. 9.** (1) The registered sellers of travel
6 recovery account is created in the state treasury. All receipts from
7 moneys derived from sections 9 through 17 of this act shall be
8 deposited into the account. Expenditures from the account may be used
9 only for the purposes of sections 10 through 17 of this act. Only the
10 director may authorize expenditures from the account. The account is
11 subject to allotment procedures under chapter 43.88 RCW, but no
12 appropriation is required for expenditures.

13 (2) The director shall adopt rules to set all fees required under
14 this chapter in accordance with RCW 43.24.086. All moneys derived from
15 civil penalties and fines imposed under this chapter must be deposited
16 in the registered sellers of travel recovery account created in this
17 section.

18 (3) The funds in the registered sellers of travel recovery account
19 may be invested only in investments that are legal for domestic life
20 insurance companies under chapter 48.13 RCW and RCW 39.60.010. The
21 interest from these investments must be deposited to the credit of the
22 account and must be available for the same purposes as all other moneys
23 deposited in the account.

24 NEW SECTION. **Sec. 10.** A person aggrieved by an act,
25 representation, transaction, or conduct of a registered seller of
26 travel operating in this state that is in violation of this chapter,
27 the rules adopted by the department under this chapter, or the consumer
28 protection act, chapter 19.86 RCW, may recover from the registered
29 sellers of travel recovery account the actual moneys expended for
30 purchases of travel services, including attorneys' fees incurred to
31 pursue claims under this chapter, subject to the following:

32 (1) The maximum obligation of the account is not more than three
33 thousand dollars per person for each purchase of travel services;

34 (2) The liability of the account for the acts of a registered
35 seller of travel is terminated upon payment in full or three thousand
36 dollars per person for each purchase of travel services, whichever is
37 less, from the account for full payment, or unsatisfied portions of

1 payment, of orders, decrees, or recommendations of administrative,
2 state, or federal courts, in an aggregate amount of two hundred
3 thousand dollars on behalf of the registered seller of travel;

4 (3) A registered seller of travel as a principal in a travel
5 transaction has no claim against the account; and

6 (4) Only a consumer who has been aggrieved by an act,
7 representation, transaction, conduct, or violation of this chapter by
8 a seller of travel registered under this chapter at the time the
9 violations occurred may seek compensation from the account as
10 determined by an order, decree, or recommendation of an administrative,
11 state, or federal court. However, orders of consumer restitution
12 contained in consent decrees and judgments brought by the office of the
13 attorney general in the name of the state of Washington for violations
14 of this chapter must be paid from the account, and orders of consumer
15 restitution contained in the criminal sentencing in a state or federal
16 court of a registered seller of travel convicted for criminal acts
17 committed as a registered seller of travel must be paid from the
18 account.

19 NEW SECTION. **Sec. 11.** When a person or entity applies for an
20 original registration to practice as a registered seller of travel, the
21 person or entity must pay, in addition to the original registration
22 fee, a fee is an amount not to exceed two hundred dollars for deposit
23 in the registered sellers of travel recovery account.

24 NEW SECTION. **Sec. 12.** In addition to the registration fees
25 provided for in this chapter, the department may, based upon the need
26 to ensure that a minimum balance of two hundred thousand dollars is
27 maintained in the registered sellers of travel recovery account, assess
28 each registered seller of travel, only upon renewal of the seller's
29 registration, an amount, not to exceed two hundred dollars, set by rule
30 adopted by the department.

31 NEW SECTION. **Sec. 13.** (1) The director shall order payment from
32 the registered sellers of travel recovery account upon receipt of an
33 order, decree, or recommendation of an administrative, state, or
34 federal court as defined in section 10(4) of this act. However, if the
35 recovery account is depleted at the time of presentation to the

1 director, the director shall order payment as soon as the account has
2 sufficient funds to make the disbursement.

3 (2) The department shall adopt rules for the acceptance and
4 processing of payments from the registered sellers of travel recovery
5 account.

6 NEW SECTION. **Sec. 14.** A qualifying order, decree, recommendation,
7 or judgment must be presented to the director within one year of the
8 date of the order, decree, recommendation, or judgment to be eligible
9 for payment from the registered sellers of travel recovery account.
10 However, if a seller of travel is making payments on an order, decree,
11 recommendation, or judgment, that document must be presented to the
12 director for payment from the recovery account within sixty days of the
13 date of default by a registered seller of travel. The date of default
14 is the date the current payment was due.

15 NEW SECTION. **Sec. 15.** (1) If the department orders payment from
16 the registered sellers of travel recovery account for an amount in
17 settlement of a claim or toward satisfaction of a judgment against a
18 registered seller of travel, the registration of the seller of travel
19 is automatically revoked. If the registration is that of a corporation
20 or partnership, the registration of the qualifying principal or
21 principals of the corporation or partnership is automatically revoked
22 upon revocation of the registration.

23 (2) A seller of travel whose license is revoked under subsection
24 (1) of this section is not eligible to receive a new registration until
25 the seller of travel has repaid the registered sellers of travel
26 recovery account in full the amount of money paid on the seller of
27 travel's behalf, plus interest at the established rate of interest on
28 judgments in the state of Washington at the time of the judgment.

29 (3) A discharge in bankruptcy does not relieve a seller of travel
30 from the obligations of this chapter.

31 NEW SECTION. **Sec. 16.** If the money deposited in the registered
32 sellers of travel recovery account is insufficient to satisfy a duly
33 authorized claim or portion of a claim, the department shall, when
34 sufficient money has been deposited in the account, satisfy the unpaid
35 claim or portion of a claim in the order that the claims or portions of
36 the claims were originally filed, plus interest at the established rate

1 of interest on judgments in the state of Washington at the time the
2 order, decree, recommendation, or judgment was entered.

3 NEW SECTION. **Sec. 17.** When the department has ordered payment
4 from the registered sellers of travel recovery account to the judgment
5 creditor or state on behalf of aggrieved consumers, the department is
6 subrogated to rights of the judgment creditor to the extent the
7 judgment creditor receives payment from the account. The judgment
8 creditor shall assign the rights, title, and interest in the judgment
9 in the amount being received from the registered sellers of travel
10 recovery account before payment is made from the account, and the
11 department shall deposit into the account any amount and interest
12 recovered by the department due to this assignment. If the total
13 amount collected on the assignment by the department exceeds the amount
14 paid from the account to the original judgment creditor plus interest
15 and the cost of collection, the department may pay the overage
16 collected to the original creditor to the extent the original
17 creditor's whole claim has not been previously satisfied. Costs
18 incurred by the department attempting to collect assigned judgments
19 must be paid from the account prior to distributing any excess funds.
20 Further, if the original judgment creditor's claim has been previously
21 wholly satisfied, an overage collected must be deposited in the
22 registered sellers of travel recovery account.

23 NEW SECTION. **Sec. 18.** Sections 9 through 17 of this act are each
24 added to chapter 19.138 RCW.

25 NEW SECTION. **Sec. 19.** RCW 19.138.055 and 1994 c 237 s 31 are each
26 repealed.

27 NEW SECTION. **Sec. 20.** This act shall take effect January 1, 1996.

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