

ACT 145

H.B. NO. 1770

A Bill for an Act Relating to Travel Agencies Recovery Fund Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 468K, Hawaii Revised Statutes, is amended to read as follows:

**“CHAPTER 468K  
TRAVEL AGENCIES**

**§468K-1 Definitions.** As used in this chapter:

- (1) “Department” means the department of regulatory agencies.
- (2) “Director” means the director of regulatory agencies.
- (3) “Travel agency” means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel ser-

VICES and any person seeking to sell travel services. Travel agency does not include an air or ocean carrier.

- (4) "Sales representative" means any employee or agent of a travel agency who arranges for the purchase or sale of travel services but does not include a salaried employee of a registered travel agency.

**§468K-2 Registration required.** Travel agencies and sales representatives shall register with the director prior to engaging in the business of selling travel services.

**§468K-3 Travel agency recovery fund; use of fund; fees.** The director shall establish and maintain a travel agency recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a registered travel agency or registered sales representative, that is in violation of this chapter, may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$8,000 for damages sustained as a result of the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

For purposes of this chapter, "person aggrieved" means and is limited to individuals who have sustained damages as a result of the act, representation, transaction, or conduct of a duly registered travel agency or registered sales representative.

Every travel agency shall pay at the time of original registration a non-refundable fee of \$50 for deposit in the travel agency recovery fund.

Every sales representative shall pay at the time of original registration a non-refundable fee of \$25 for deposit in the travel agency recovery fund.

**§468K-4 Additional payments to fund.** If, on December 31 of any year, the balance remaining in the travel agency recovery fund is less than \$30,000, every travel agency and sales representative shall be assessed the appropriate fee for deposit in the travel agency recovery fund.

**§468K-5 Statute of limitations; recovery from fund.** (a) No action for a judgment which may subsequently result in an order for collection from the travel agency recovery fund shall be commenced later than six years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the travel agency recovery fund, the aggrieved person shall notify the director in writing to this effect at the time of the commencement of such action. The director shall have the right to intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any travel agency or sales representative for such act, representation, transaction, or conduct which is in violation of this chapter or its adopted rules which occurred after January 1, 1981, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the director, may apply to the court for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section.

(c) The court shall proceed upon such application in a summary manner, and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) He or she is not a spouse of the judgment debtor, or the personal representative of such spouse.
- (2) He or she has complied with all the requirements of this section.
- (3) He or she has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.
- (4) He or she has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.
- (5) That by such search he or she has discovered no personal or real property or other assets liable to be sold or applied, or that he or she has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he or she has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(d) The court shall make an order directed to the director requiring payment from the travel agency recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to the aggrieved person for recovering the amount awarded by the judgment of the court.

(e) Should the director pay from the travel agency recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a registered travel agency or sales representative, registration shall be automatically terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. No such travel agency or sales representative shall be eligible to re-register to do business until the fund is repaid in full, plus interest at the rate of ten per cent a year, the amount paid from the travel agency recovery fund on the account of the travel agency or sales representative. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(f) If, at any time, the money deposited in the travel agency recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the director shall, when sufficient money has been deposited in the travel agency recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed.

**§468K-6 Management of fund.** The sums received by the director for deposit in the travel agency recovery fund shall be held by the director in trust for carrying out the purposes of the travel agency recovery fund. The director, as trustee of the recovery fund, may retain private legal counsel to represent the director in any action which may result in collection from the travel agency recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees'

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retirement system, and the interest from these investments shall be deposited to the credit of the travel agency education fund, which is hereby created, and which shall be available to the director for educational purposes.

**§468K-7 False statement.** It shall constitute a misdemeanor for any person or his or her agent to file with the director any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact.

**§468K-8 The director has standing in court.** When the director receives notice, as provided in section 468K-5, the director may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action it may deem appropriate. The director or the legal representative of the director shall be served with all pleadings in an action which may result in a recovery from the travel agency recovery fund.

Settlement of any claim against the travel agency recovery fund shall be made only by agreement of the director and attorney general that settlement is in the best interest of the travel agency recovery fund.

**§468K-9 Subrogation to rights of creditor.** When, upon the order of the court, the director has paid from the travel agency recovery fund any sum to the judgment creditor, the director shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all his or her right, title, and interest in the judgment to the director and any amount and interest so recovered by the director on the judgment shall be deposited to the credit of the travel agency recovery fund.

**§468K-10 Waiver of rights.** The failure of an aggrieved person to comply with this chapter relating to the travel agency recovery fund shall constitute a waiver of any right hereunder.

**§468K-11 Maximum liability.** Notwithstanding any other provision, the liability of the travel agency recovery fund shall not exceed \$8,000 for any travel agency or sales representative.

**§468K-12 Disciplinary action against registrant.** Nothing contained herein shall limit the authority of the director to take disciplinary action against any person for a violation of this chapter, or of its rules; nor shall the repayment in full of all obligations to the travel agency recovery fund by any travel agency or sales representative nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or its rules.

**§468K-13 Records and reports.** Every travel agency shall keep accurate and up-to-date records on all travel arrangements made for customers. The records required by law or rules shall be preserved by the agency for a period of at least two years.

**§468K-14 Restitution.** Any person who engages in an unlawful act or practice which violates any provision of this chapter or rules promulgated pursuant thereto may be ordered by court of proper jurisdiction to make restitution to all individual consumers injured by the act or practice.

**§468K-15 Penalties.** Any person who engages in an unlawful act or practice which violates any provision of this chapter or rules promulgated pursuant thereto

shall be fined a sum of not less than \$500 nor more than \$2,500 for each unlawful act or practice, which sum shall be collected in a civil suit brought by the office of consumer protection.”

SECTION 2. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1981.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.