

**ACT 179**

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**H.B. NO. 2497-84**

**A Bill for an Act Relating to Travel Agencies.**

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

SECTION 1. Section 468K-3, Hawaii Revised Statutes, is amended to read as follows:

**“§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[,] or rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, 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.”

SECTION 2. Section 468K-5, Hawaii Revised Statutes, is amended to read as follows:

**“§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, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, 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,] of the application, 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] of the judgment and the amount owing [thereon] on the judgment 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.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 26, 1984.)