

A Bill for an Act Relating to Travel Agencies.

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

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

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

[1] “Department” means the department of commerce and consumer affairs.

[2] “Director” means the director of commerce and consumer affairs.

[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 services 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.]

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“Trustees” means trustees of the travel agency recovery fund appointed pursuant to the provisions of this chapter.”

SECTION 2. 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] There shall be established and maintained a travel agency recovery fund from which any person aggrieved by an act, representa-

tion, 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.

The director shall appoint three trustees, all of whom shall be registered under this chapter, to maintain the travel agency recovery fund. The terms of the trustees shall be four years, provided that the terms of the initial trustees shall be two, three and four years respectively. The director may remove any trustee for good cause.

For the¹ 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 nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

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

SECTION 3. Section 468K-4, Hawaii Revised Statutes, is amended to read as follows:

"§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, the trustees shall order that every travel agency and sales representative [shall] be assessed the appropriate fee for deposit in the travel agency recovery fund."

SECTION 4. 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 no¹ later than six years from the accrual of the cause of action. 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] trustees in writing to this effect at the time of the commencement of such action. The [director] trustees 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,] trustees, 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 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), stating the amount of the judgment and the amount owing 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[.]; and
- (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] trustees 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) 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) For purposes of this chapter, an order for restitution obtained by the office of consumer protection on behalf of a person aggrieved against a registered travel agency or registered sales representative shall be the judgment obtained by the person aggrieved against the registered travel agency or registered sales representative. For purposes of this chapter, any written notification to the director as required by subsection (a) by the office of consumer protection or any action to recover restitution on behalf of the person aggrieved by the office of consumer protection shall be the actions of the person aggrieved.

(f) Subject to the limitations and requirements of this chapter, the office of consumer protection may apply to the court for an order directing payment out of the travel agency recovery fund on behalf of a person aggrieved; provided that the office of consumer protection obtains a court order directing the payment of restitution to the person aggrieved. The office of consumer protection shall not receive costs or attorney fees from the travel agency recovery fund.

[(e)] (g) Should the [director] trustees 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)~~] (h) 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] trustees 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 5. Section 468K-6, Hawaii Revised Statutes, is amended to read as follows:

"**§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] trustees in trust for carrying out the purposes of the travel agency recovery fund. The [director, as trustee of the recovery fund,] trustees may retain private legal counsel to represent the [director] trustees 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' 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] trustees for educational purposes."

SECTION 6. Section 468K-8, Hawaii Revised Statutes, is amended to read as follows:

"**§468K-8 The [director has] trustees have standing in court.** When the [director receives] trustees receive notice, as provided in section 468K-5, the [director] trustees may enter an appearance, file an answer, appear at the court hearing, defend the action or take whatever other action [it] they may deem appropriate. The [director] trustees or the legal representative of the [director] trustees 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] trustees and attorney general that settlement is in the best interest of the travel agency recovery fund."

SECTION 7. Section 468K-9, Hawaii Revised Statutes, is amended to read as follows:

"**§468K-9 Subrogation of² rights of creditor.** When, upon the order of the court, the [director has] trustees have paid from the travel agency recovery fund any sum to the judgment creditor, the [director] trustees 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] trustees and any amount and interest so recovered by the [director] trustees on the judgment shall be deposited to the credit of the travel agency recovery fund."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved April 30, 1985.)

Notes

1. Word should be underscored.
2. Prior to amendment, "of" read "to".