

ACT 321

H.B. NO. 2523

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 by adding three new definitions to be appropriately inserted and to read as follows:

“ “Airline award” means any coupon, certificate, voucher, benefit, or tangible thing which is promised, given, sold, or otherwise transferred by an airline to a consumer in exchange for mileage, credits, bonuses, segments, or other units of value credited to the consumer as an incentive to fly on the airline.

“Person aggrieved” means a person who has sustained damages as a result of the act, omission, representation, transaction, or conduct of a licensee.

“Travel services” includes transportation by air, sea, or rail, ground transportation, hotel accommodations, or package tours, whether offered or sold on a wholesale or retail basis.”

SECTION 2. Section 468K-1, Hawaii Revised Statutes, is amended by amending the definition of “sales representative” to read:

“ “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] licensed travel agency[.] who does not receive a commission for arranging the purchase or sale of travel services.”

SECTION 3. Section 468K-1.5, Hawaii Revised Statutes, is amended to read as follows:

“[§468K-1.5] Powers and duties of the director. The director shall have the following powers and duties:

- (1) Adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Issue, renew, terminate, and revoke [registrations;] licenses;
- (3) Establish fees; and
- (4) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter.”

SECTION 4. Section 468K-2, Hawaii Revised Statutes, is amended to read as follows:

“§468K-2 [Registration] License required. Travel agencies and sales representatives shall [register with] obtain a license from the director prior to engaging in the business of selling travel services.”

SECTION 5. Section 468K-2.5, Hawaii Revised Statutes, is amended to read as follows:

“[§468K-2.5] [Registration] License renewal. [Every travel agency and sales representative registered under this chapter] Each licensee shall [register] renew its license with the director and pay a renewal fee, as provided in rules adopted by the director in accordance with chapter 91, on or before December 31 of each odd-numbered year. Failure to pay the renewal fee as required by this section shall constitute a termination of [registration] the license as of the date the renewal fee is due. Any [registration] license terminated under this section may be restored within one year after the date of termination upon the filing of an application and payment of a restoration fee as provided in rules adopted by the director in accordance with chapter 91.”

SECTION 6. Section 468K-3, Hawaii Revised Statutes, is amended to read as follows:

“§468K-3 Travel agency recovery fund; use of fund; fees. There shall be established and maintained a travel agency recovery fund from which any person aggrieved by an act, omission of material fact, representation, transaction, or conduct of a [registered travel agency or registered sales representative,] licensee, 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[.] of each licensee. 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] licensed 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 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] licensure a nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

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

SECTION 7. 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 or proceeding for a consent judgment under section 480-22 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.

(b) When any person aggrieved commences action for a judgment which may result in collection from the travel agency recovery fund, the person aggrieved shall notify the trustees in writing to this effect at the time of the commencement of the action. The trustees shall have the right to intervene in and defend any action.

(c) When any person aggrieved 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] licensee for any act, omission of a material fact, 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 person aggrieved 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 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.

(d) When the office of consumer protection obtains a consent judgment pursuant to section 480-22, in any circuit court where the violation occurred, against any [travel agency or sales representative] licensee for any act, omission of a material fact, 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 office of consumer protection upon the finality of the consent judgment under section 480-22, may file a verified claim in the court in which the consent judgment was entered and, upon ten days' written notice to the trustees, may apply to the court for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the consent judgment, subject to the limitations stated in this section. The trustees shall have the right to intervene in and defend any application to the court for an order directing payment out of the travel agency recovery fund.

(e) The court shall proceed upon the application for an order directing payment out of the travel agency recovery fund in a summary manner, and, upon the hearing of the application, the person aggrieved shall be required to show:

- (1) He or she is not a spouse of the judgment debtor, or the personal representative of the judgment debtor's 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 subsections (c), (d), or (g), 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 the search required by this section, 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.

(f) The court shall make an order directed to the 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 person aggrieved by subsection (e), that the person aggrieved has fully pursued and exhausted all remedies available to the person aggrieved for recovering the amount awarded by the judgment of the court. Upon a showing that the licensee is a debtor under the United States Bankruptcy Code, (11 U.S.C. §101, et seq.) as amended the person aggrieved shall have complied with the requirements stated in subsection (e), paragraphs (4) and (5), and shall be deemed to have fully pursued and exhausted all remedies available to the person aggrieved for recovering the amount which may be awarded by the court.

(g) 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] licensee shall be the judgment obtained by the person aggrieved against the [registered travel agency or registered sales representative.] licensee. For purposes of this chapter, any written notification to the trustees as required by subsection (b) by the office of consumer protection or any acts to recover restitution on behalf of the person aggrieved by the office of consumer protection shall be the acts of the person aggrieved.

(h) 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.

(i) Upon the filing of an order for payment from the travel agency recovery fund to the office of consumer protection, or to any person aggrieved, which is based upon a consent judgment obtained by the office of consumer protection pursuant to section 480-22, the trustees may defer payment from the fund for six months, at the end of which period the trustees may discharge the trustees' obligations under the order and any other order for payment from the fund obtained by any person aggrieved prior to and at any time during the six-month period, by disbursing the money from the fund, up to the maximum allowed under this chapter, to all of the persons aggrieved, including those persons aggrieved in whose behalf the office of consumer protection obtained its order, on a pro rata basis; provided that prior to the disbursement of the money, the trustees file an affidavit with the court stating how the money is to be disbursed. The trustees may apply to the court for an extension of the six-month period upon good cause, but in no case shall payment to the office of consumer protection or any person aggrieved be deferred for more than one year except as provided in subsection (k).

(j) Should the 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] licensee, the license shall be automatically terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. The [travel agency or sales representative]

former licensee shall not be eligible to [reregister to do business] obtain a new license 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.] former licensee. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(k) 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 trustees shall, when sufficient money has been deposited in the travel agency recovery fund, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed or in accordance with subsection (i)."

SECTION 8. Section 468K-12, Hawaii Revised Statutes, is amended to read as follows:

"§468K-12 Disciplinary action against [registrant.] licensee. 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 adopted 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 adopted rules."

SECTION 9. Section 468K-14, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 10. Section 468K-15, Hawaii Revised Statutes, is amended to read as follows:

"§468K-15 Penalties. Any person who engages in an [unlawful] act or practice which violates any provision of this chapter or rules [promulgated] adopted 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 11. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§468K- Advertisements. Each travel agency and sales representative shall state in each of its advertisements its name and license number. For the purpose of this section, "advertisement" includes, but is not limited to, any written or graphic representation in any card, brochure, newspaper, magazine, directory listing, or display if the listing or display is obtained in exchange for valuable consideration, or any oral, written, or graphic representation made by radio, television, or cable broadcast."

SECTION 12. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§468K- Disclosures. (a) Each travel agency and sales representative shall disclose to a person purchasing travel services all restrictions, limitations,

conditions, and fee assessments which pertain to the person's right to cancel, obtain a refund, change itinerary or make a claim for lost tickets.

(b) In the event an airline award is purchased, the following disclosure shall be made in a sales contract, in bold face print, no less than brevier or eight point type, and in a manner reasonably calculated to draw the attention of the reader:

THIS CONTRACT IS FOR THE SALE OF AN AIRLINE AWARD. CERTAIN AIRLINES HAVE TAKEN THE POSITION THAT THEY MAY VOID AIRLINE AWARDS AT THEIR DISCRETION, AT ANY TIME. IF ANY SUCH VOIDING OCCURS, (name of travel agency) WILL REFUND TO PURCHASER THE PROPORTIONATE AMOUNT OF PRICE PAID WITHIN THIRTY (30) DAYS."

SECTION 13. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§468K- Revocation or suspension of license. The director may revoke any license issued under this chapter or suspend the right of a travel agency or sales representative to use the license for violations of this chapter or its adopted rules, including:

- (1) Making any statement, either orally or in writing, in connection with a sale or offer to sell travel services which has the tendency or capacity to mislead or deceive;
- (2) Omitting any material fact in connection with a sale or offer to sell travel services;
- (3) Failing to perform any term or condition of a contract for travel services, whether the term or condition was made in writing or orally by the travel agency or sales representative;
- (4) Failing to make a refund in a timely manner to a person with whom the travel agency or sales representative has contracted for travel services; provided that all refunds shall be made within thirty days from the day (A) the refund is requested in writing, or (B) the travel agency or sales representative has recovered the amount to be refunded or has obtained appropriate credits from the ultimate provider of travel service transportation carrier, or other source not including travel service wholesaler, whichever is later; provided further that the travel agency or sales representative shall exercise reasonable diligence in recovering or obtaining the amounts or credits;
- (5) Acting in participation or concert with any person who violates this chapter or its adopted rules;
- (6) Making any statement that a travel agency or sales representative is recommended, endorsed, or approved by the department; provided that a licensee may state that it is licensed by the department;
- (7) Committing any other conduct in connection with a sale or offer to sell travel services which constitutes fraudulent or dishonest dealings; and
- (8) Violating section 480-2 in connection with a sale or offer to sell travel services."

SECTION 14. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§468K- Hearings. In every case where it is proposed to revoke or suspend a license or where a license application has been denied, the director shall give the person concerned an opportunity for a hearing in conformity with chapter 91 and the rules adopted thereto.

In all such proceedings, the director shall have the same powers respecting administering oaths, compelling the attendance of witnesses and production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In cases of disobedience by any person of any order of the director, or of any subpoena issued by the director, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the director, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 15. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§468K- Other remedies. Nothing in this chapter shall be construed to limit any right of any person to filing an action in any court which may exist by virtue of any other statute, rule, practice, or common law.”

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 17. This Act shall take effect upon its approval.

(Approved June 13, 1988.)

Note

1. Edited pursuant to HRS §23G-16.5.