

ACT 285

S.B. NO. 390

A Bill for an Act Relating to Travel Agencies.

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

SECTION 1. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
TRAVEL AGENCIES**

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

“Advertisement” includes, but is not limited to, any oral, written, graphic, or pictorial statement or representation, including those made through any electronic or print medium.

“Consumer” means any purchaser of travel services other than a retailer or wholesaler of travel services.

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

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

“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 services” includes transportation by air, sea, or rail; ground transportation; hotel accommodations; package tours; or specialized air, land, or sea tour excursions and activities, whether offered on a wholesale or retail basis.

§ -2 Registration and renewal. (a) A travel agency shall register with the director prior to engaging in the business of selling or advertising to sell travel services.

(b) Each travel agency shall renew its registration on or before December 31 of each odd-numbered year. A special report prepared and signed by a licensed public accountant or certified public accountant verifying that the practices of the travel agency are in accordance with section -5, shall be filed with the renewal. The director, by rule, may permit alternatives to the special report that provides for at least the same level of verification.

§ -3 Powers and duties of the director. The director shall have the following powers and duties:

- (1) To adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) To issue and renew registrations pursuant to this chapter and to deny or refuse to renew for failure to comply with this chapter;
- (3) To establish fees;
- (4) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter;
- (5) Suspend or revoke any registration for any violation of this chapter; and
- (6) Inspect and audit the books and records of any travel agency as they pertain to the deposits to and withdrawals from the trust account. The travel agency shall immediately make available to the director such books and records as may be requested at the travel agency’s place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the travel agency. The director may contract with a consultant to inspect and audit the books and records of any travel agency, the cost of which shall be borne by the travel agency if a violation of this chapter is established.

§ -4 Statement required to be furnished to consumer. A travel agency shall not receive money or other valuable consideration in payment for travel services, unless at the time of receipt of money or other valuable consideration, the travel agency furnishes to the consumer making the payment a written statement conspicuously setting forth the following information:

- (1) The name, business address, and telephone number of the travel agency;
- (2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any;

- (3) The name and address of the financial institution that maintains the travel agency trust account, and the number of the trust account;
- (4) The name of the entity with which the travel agency has arranged travel services and pertinent information such as, but not limited to, the types of accommodation, dates and times of services, and all restrictions, limitations, conditions, and fee assessments that pertain to the person's right to cancel, obtain a refund, change itinerary, or make a claim for lost tickets; and
- (5) The cancellation provisions of the contract between the travel agency and the consumer, and the rights and obligations of the parties in the event of such cancellation.

§ -5 Client trust accounts; maintenance of and withdrawal from such accounts. (a) Within three business days of receipt, a travel agency shall deposit all sums received from a consumer, for travel services offered by the travel agency in a trust account maintained in a federally insured financial institution located in Hawaii.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the travel agency. The travel agency shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

- (1) In partial or full payment for travel services to the entity directly providing the travel services; or
- (2) To make refunds as required by this chapter.

A travel agency may make payment through another travel agency; provided that any such payment is treated as if it were a payment by a consumer.

(c) This section shall not prevent the withdrawal from the trust account of:

- (1) The amount of the sales commission, up to a maximum of fifteen per cent;
- (2) Any interest earned and credited to the trust account; or,
- (3) Any remaining funds of a consumer once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided.

(d) At the time of registration, the agency shall file with the department the account number and the name of the financial institution at which the trust account is held. The agency shall notify the department of any change in the account number or location within one business day of the change.

(e) The director, by rule, may allow for the use of other types of funds or accounts; provided that the protection for consumers is no less than that provided by this section.

§ -6 Disclosure on airline awards. (a) 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 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 THE PRICE PAID WITHIN THIRTY (30) DAYS.”

(b) For the purposes of this section, "airline award" means any coupon, certificate, voucher, benefit, or tangible thing promised, given, sold, or otherwise transferred by any 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.

§ -7 **Consumer's rights.** (a) Any travel agency registered under this chapter shall have the following obligations to any consumer who purchases travel services from the travel agency:

- (1) The consumer shall have the right to be informed by the travel agency, prior to the purchase of any travel services from the travel agency, of any limitations, conditions, events, circumstances, or any other business or commercial factors that may affect the availability of the travel services and the ability of the consumer to obtain a refund of moneys paid for the travel services;
- (2) The consumer shall have the right to rely on any promises, guarantees, representations, or information provided by the travel agency, regarding travel services, including but not limited to, the availability of travel services offered or sold by the travel agency, the conditions for obtaining a refund of moneys paid for the travel services, and the nature or quality of the travel services provided;
- (3) The consumer shall have the right to have the travel agency fulfill any term or condition of the contract for travel services between the consumer and the travel agency, whether the term or condition was made in writing or otherwise by the travel agency;
- (4) The consumer shall have the right to have the travel agency fulfill any promises, guarantees, or representations made regarding travel services, whether the promises, guarantees, or representations are made by the travel agency in written or verbal form;
- (5) The consumer shall have the right to be informed of all conditions, if any, upon which the contract between the travel promoter and the entity providing the transportation or related services may be cancelled, and the respective rights and obligations of all parties in the event of cancellation;
- (6) The consumer shall have the right to obtain the ticket or other similar documentation binding upon the ultimate provider of the travel services from the travel agency, upon making full payment to the travel agency for the travel services purchased; and
- (7) The consumer shall have the right to a refund, within fourteen calendar days from the date the refund is requested, of all moneys paid to a travel agency for travel services not performed in accordance with the contract for travel services, less any of the following amounts:
 - (A) Any amounts for cancellation fees that were previously disclosed to the consumer; and
 - (B) Any amounts held by the ultimate provider of the travel services, or by a representative of the ultimate provider of travel services that the travel agent was required to contract with by the ultimate provider.

(b) The travel agency shall provide a written disclosure of the consumer's rights under this section to the consumer at the time the travel agency issues the ticket for travel services to the consumer.

(c) The department may develop a form for the written disclosure of consumer rights under this chapter, and if such form is developed, all travel agencies

shall utilize the department's form in order to comply with the provisions of this section.

§ **-8 Restitution.** Any person who engages in an act or practice that violates any provision of this chapter or rules adopted pursuant hereto may be ordered by a court of proper jurisdiction to make restitution to all persons injured by the act or practice.

§ **-9 Injunctions.** In any civil proceedings brought pursuant to this chapter, the court may also enjoin any activity that violates this chapter.

§ **-10 Consumer right of action.** Any person who suffers damage as a result of a violation of this chapter shall be entitled to injunctive relief restraining further violations, and may sue to recover damages in any circuit court of the State, and, if successful, shall recover three times the actual damages or \$1,000, whichever is greater. In any action brought under this chapter, the prevailing party shall be entitled to the recovery of costs of suit, including reasonable attorney's fees.

§ **-11 Remedies cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to remedies or penalties available under other laws of this State.

§ **-12 Criminal penalties.** A person commits the criminal offense of theft if the person, being a travel agency or an agent, employee, or independent contractor of a travel agency, knowingly or intentionally violates section -5(a), (b), or (c)."

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The following chapters are hereby repealed effective December 31, 1994:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 457 (Board of Nursing)
- (3) Chapter 457A (Nurse Aides)
- (4) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter (Travel Agencies)"

SECTION 3. All travel agencies licensed as of September 30, 1991 shall be deemed registered; provided that proof of compliance with section -5, Hawaii Revised Statutes, filed by October 1, 1991.

SECTION 4. Effective October 1, 1991, all funds remaining in the travel agency recovery fund shall be held for disbursement to claimants pursuant to section 468K-5, Hawaii Revised Statutes, until the fund is exhausted; provided, however, that all such claims are limited to claims arising from travel services purchased prior to October 1, 1991; provided further that no lawsuit commenced on or after October 1, 1993 shall be effective to result in a recovery from the travel agency recovery fund.

Upon being notified of a civil proceeding that may result in a claim

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against the travel agency recovery fund, pursuant to section 468K-5, Hawaii Revised Statutes, the director shall reserve \$8,000 for each licensee involved in each civil proceeding. The funds reserved shall be released only upon the entry of judgment and an order of payment, and shall be released and paid in accordance with the court's orders. Any reserved funds that remain after payment pursuant to court order shall revert to being unreserved funds within the travel agency recovery fund, subject to reservation in any future case.

All funds remaining in the travel agency recovery fund after the resolution of all civil proceedings commenced prior to October 1, 1993, if any, shall become part of the compliance resolution fund for use in travel agency-related cases.

SECTION 5. The department shall use the amounts available in the education fund to alert all current licensees under chapter 468K, Hawaii Revised Statutes, to the requirements of this Act and to inform the public about the rights and remedies provided in this Act.

SECTION 6. Chapter 468K, Hawaii Revised Statutes, is repealed; provided that sections 468K-3, 468K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, and 468K-11 shall remain in effect solely to receive claims pursuant to section 4 of this Act; and provided further that all references to "trustees" in those sections shall be amended to read "director" and shall mean the director of commerce and consumer affairs.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on October 1, 1991.

(Approved June 18, 1991.)