

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 143

Session of
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AS REPORTED FROM COMMITTEE ON TOURISM AND RECREATIONAL DEVELOPMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 16, 2000

AN ACT

1 Providing for the regulation of sellers of travel; requiring
2 that certain bonds be secured for the benefit of customers;
3 requiring bank deposits; and providing penalties.

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8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Sellers of
12 Travel Act.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 "Accommodations." Any hotel or motel room, condominium or
18 cooperative unit, cabin, lodge or apartment; any other
19 commercial structure designed for occupancy by one or more
20 individuals; or any lodging establishment as provided by law.

21 "Adequate bond." A corporate bond of an amount at least
22 equal to the amount required under the contract between the
23 seller of travel and the travel or tour services carrier or
24 company or person providing other services in conjunction with
25 travel or tour services.

26 "Advertise." To make a representation in the solicitation of
27 travel or tour services. The term includes communication with
28 other members of the same partnership, corporation, joint
29 venture, association, organization, group or other entity.

30 "Air carrier." A transporter of persons by air which is

1 subject to regulation as such by a governmental agency.

2 "Broker." Any person or corporation not included in the term
3 "motor carrier" and not a bona fide employee or agent of any
4 such carrier, or group of such carriers, who or which, as
5 principal or agent, sells or offers for sale any transportation
6 by a motor carrier, or the furnishing, providing, or procuring
7 of facilities therefor, or negotiates for, or holds out by
8 solicitation, advertisement, or otherwise, as one who sells,
9 provides, furnishes, contracts, or arranges for such
10 transportation, or the furnishing, providing, or procuring of
11 facilities therefor, other than as a motor carrier directly or
12 jointly, or by arrangement with another motor carrier, and who
13 does not assume custody as a carrier.

14 "Bureau." The Bureau of Consumer Protection.

15 "Charitable organization." Any nonprofit organization.

16 "Commission." The Pennsylvania Public Utility Commission.

17 "Contract." Any agreement, certificate, reservation request
18 or confirmation form, membership application or use agreement,
19 license or reservation confirmation whereby the purchaser
20 obtains the right to benefits and privileges of the prearranged
21 travel or tourist service, or to a vacation form committing the
22 seller of travel to provide transportation pertaining to
23 reservations, tour or travel arrangements and accommodations.

24 "Land carrier." A transporter of persons by land which is
25 subject to regulation as such by a governmental agency.

26 "Motor carrier." A common carrier by motor vehicle, and a
27 contract carrier by motor vehicle.

28 "Offer for sale." Any direct or indirect representation,
29 claim or statement or undertaking by any means or method to
30 arrange for, provide or acquire travel reservations or

1 accommodations, tickets for domestic or foreign travel by air,
2 rail, ship or any other medium of transportation or hotel and
3 motel accommodations or sightseeing tours.

4 "Seller of travel." Any resident or nonresident person,
5 firm, corporation, business entity or charitable organization
6 who offers for sale, directly or indirectly, at wholesale or
7 retail travel or tour services in exchange for a fee, commission
8 or other consideration.

9 "Subrogation." The substitution of one person in the place
10 of another with reference to a lawful claim, demand or right, so
11 that he who is substituted succeeds to the rights of the other
12 in relation to the debt or claim.

13 "Travel or tour services." Any arrangement for individuals
14 or groups, including:

15 (1) vacation or travel packages, sightseeing tours,
16 prearranged travel services, travel reservations or
17 accommodations, tickets for domestic or foreign travel by
18 air, rail, ship, bus or other medium of transportation or
19 hotel or other accommodations;

20 (2) travel-related prizes or awards for which the
21 traveler must pay a fee or, in connection with the prize or
22 award, expend moneys for the direct or indirect monetary
23 benefits of the person or business entity making the award in
24 order for the traveler to collect or enjoy the benefits of
25 the prize or award;

26 (3) travel-related services provided in conjunction with
27 solicitations for the sale of any investments, goods,
28 products or services or in conjunction with promotional
29 opportunities, including, but not limited to, land and
30 interest in land, timeshare plans, housing, commodities or

1 securities; and

2 (4) vacation certificates and travel clubs.

3 "Traveler." The purchaser of travel or tour services, person
4 otherwise entitled to receive travel or tour services for a fee
5 or commission, person who has received a travel-related prize or
6 award or person who has been provided travel-related services in
7 conjunction with solicitations of the sale of any investments,
8 goods, products or services, or in conjunction with promotional
9 opportunities, including, but not limited to, land and interest
10 in land, time-share plans, housing commodities or securities.

11 "Vacation certificate." Any arrangement, plan, program or
12 vacation package that promotes, discusses or discloses a
13 destination or itinerary or type of travel whereby a purchaser
14 for consideration paid in advance is entitled to the use of
15 travel, accommodations or facilities for any number of days,
16 whether certain or uncertain, during the period in which the
17 certificate can be exercised and no specific date or dates for
18 its use are designated. A vacation certificate does not include
19 prearranged travel, tourist-related services or tour-guide
20 services when a seller of travel remits full payment for the
21 cost of such services to the provider or supplier within ten
22 business days of the purchaser's initial payment to the seller
23 of travel.

24 Section 3. Legislative findings.

25 The General Assembly finds and declares as follows:

26 (1) Certain advertising, sales and business practices of
27 sellers of travel have worked financial hardship upon the
28 people of this Commonwealth.

29 (2) The travel business has a significant impact upon
30 the economy and well-being of this Commonwealth and its

1 people.

2 (3) Problems have arisen which are peculiar to the
3 seller of travel business.

4 (4) The public welfare requires regulation of sellers of
5 travel in order to eliminate unfair advertising, sales and
6 business practices.

7 (5) Standards are needed which will safeguard the people
8 against financial hardship and to encourage competition, fair
9 dealing and prosperity in the travel business.

10 Section 4. Construction and nonapplicability.

11 (a) Construction.--The provisions of this act insofar as
12 they are in conflict with any statutory law or common law
13 relating to agency shall, FOR THE PURPOSES OF THIS ACT, <—
14 supercede the conflicting provisions and principles.

15 (b) Nonapplicability.--This act does not apply to:

16 (1) Any direct common carrier of travelers or property
17 regulated by an agency of the Federal Government or employees
18 of such carrier when engaged solely in the transportation
19 business of the carrier.

20 (2) An interstate or intrastate common carrier of
21 travelers selling only transportation or employees of such
22 carrier when engaged solely in the transportation business of
23 the carrier.

24 (3) Hotels, motels or other places of public
25 accommodation selling public accommodations or employees of
26 such hotels, motels or other places of public accommodations
27 when engaged solely in making arrangements for
28 accommodations.

29 (4) Any resident or nonresident person, firm,
30 corporation or business entity maintaining or purporting to

1 maintain a business location or branch office in this
2 Commonwealth involved solely in the rental, leasing or sale
3 of transportation vehicles.

4 (5) Any resident or nonresident person, firm,
5 corporation or business entity maintaining or purporting to
6 maintain a business location or branch office in this
7 Commonwealth who makes travel arrangements only for
8 themselves, for their employees or agents, for the
9 distributors, franchisees or dealers of the person's products
10 or services or for the employees or agents of the
11 distributor, franchise, dealer or financially related entity.

12 Section 5. Advertisements.

13 All price-related advertisements placed by a seller of travel
14 shall display or contain the registration number of the seller
15 of travel assigned by the bureau under section 10.

16 Section 6. Information required.

17 A seller of travel shall not deposit money or other valuable
18 consideration in payment for travel or tour services unless,
19 within five days of the time after the traveler's payment is
20 deposited, the seller of travel furnishes to the traveler a
21 written statement or electronic communication clearly and
22 conspicuously setting forth the following information:

23 (1) The name, business address and telephone number of
24 the seller of travel.

25 (2) The amount paid, the date of payment, the purpose of
26 the payment made and an itemized statement of the balance
27 due, if any.

28 (3) The location of the bond required by this act.

29 (4) The method of transportation, the date and place of
30 each departure.

(5) The conditions, if any, upon which the contract between the seller of travel and the traveler may be canceled, and the rights and obligations of all parties in the event of a cancellation.

(6) A statement in ten-point boldface type which clearly and conspicuously states, "If travel and tour services or other services are canceled by the seller of travel all sums paid to the seller of travel for services not performed in accordance with the contract between the seller of travel and the traveler will be refunded within ten days of receipt of money from the travel service provider unless the traveler requests the seller of travel to apply the money to another travel or tour service, destination or date."

Section 7. Cancellation and refunds.

(a) Refunds.--In the event that travel services or tour services contracted for are canceled through no fault of the traveler or if the travel services or tour services are not provided through no fault of the traveler and unless the traveler otherwise advises the seller of travel in writing, the seller of travel shall return to the traveler all moneys paid for services not performed and goods not delivered in accordance with the contract.

(b) Misrepresentation.--Any material misrepresentation with respect to the date or place of all departures or arrivals or type of aircraft or land or ocean carrier or similar occurrence shall be reasons for cancellation by the consumer, which will require the refund specified in this section. The seller of travel has the right to substitute another ship, airline or hotel of equal or greater value due to strike, bankruptcy or condition making the accommodations uninhabitable.

1 (c) Subrogation.--Any seller of travel who makes any refund
2 under the provisions of this act shall be entitled to
3 subrogation as defined in this act.

4 Section 8. Evidence of financial security.

5 (a) Filing and amount.--Before offering, advertising,
6 selling or executing or causing to be executed any contract in
7 this Commonwealth for travel or tour services, every seller of
8 travel shall file and maintain with the bureau evidence of
9 financial security as follows:

10 (1) An adequate bond issued by a surety authorized to do
11 business in this Commonwealth and specifically authorized to
12 issue such surety bonds in this Commonwealth. The requisite
13 bond amount shall be in an amount equal to 100% of the seller
14 of travel's amount of retail business not to exceed \$25,000.
15 However, if the seller of travel has revenues in excess of
16 \$250,000, then the seller of travel must be bonded for 10% of
17 the previous year's annual gross sales. If the seller of
18 travel provides or offers vacation certificates as part of
19 the travel or tour services, then the bond must be equal to
20 100% of the seller of travel's amount of retail business. A
21 seller of travel filing the bond shall maintain the bond in
22 force in the proper amount as a condition of continuing to
23 engage in business. Evidence of the bond must be filed with
24 the bureau.

25 (2) An adequate bond shall be in favor of the bureau for
26 the benefit of:

27 (i) any traveler injured by having paid money for
28 travel or tour services to a person or entity that fails
29 to provide the travel or tour service; or

30 (ii) any traveler injured as a result of a violation

1 of this act.

2 (3) The bond requirement may be waived on an annual
3 basis if any of the following apply:

4 (i) sellers of travel who have:

5 (A) contracted with the Airlines Reporting
6 Corporation for the most recent consecutive three
7 years or more and who do not offer vacation
8 certificates; and

9 (B) had three or more consecutive years of
10 experience as a seller of travel under the same
11 ownership and name in this Commonwealth in compliance
12 with this act, unless acquired or formed by a
13 registered seller of travel that has been in business
14 under the same ownership for a period of three years
15 and has not had any civil, criminal or administrative
16 actions instituted against the seller of travel in
17 the vacation and travel business by any governmental
18 agency or any action involving fraud, theft,
19 misappropriation of property or moral turpitude; ~~or~~ <—

20 (ii) the seller of travel is a broker who has
21 complied with 52 Pa. Code § 39.15 (relating to security
22 for the protection of the public) and has furnished a
23 bond or other security approved by the commission.
24 Such waiver may be revoked if the seller of travel
25 violates any provision of this act; OR <—

26 (III) THE SELLER OF TRAVEL HAS BEEN IN BUSINESS OF
27 SELLING OR ARRANGING TRAVEL OR TOUR SERVICES FOR A
28 MINIMUM OF THREE YEARS, HAS NOT HAD A BANKRUPTCY IN THE
29 PREVIOUS FIVE YEARS AND ALREADY MAINTAINS A BOND OF EQUAL
30 OR GREATER AMOUNT REQUIRED BY THIS SECTION. PROOF OF

1 THESE REQUIREMENTS MUST BE SUBMITTED TO THE BUREAU AT THE
2 TIME OF REGISTRATION, REQUIRED BY SECTION 10, IN ORDER TO
3 HAVE THE BOND REQUIREMENT WAIVED.

4 (b) Consent for cancellation.--An adequate bond shall not be
5 canceled without the consent of the bureau.

6 Section 9. School purchases of travel or tour services.

7 (a) Purchase from registered seller of travel.--If a school
8 purchases or arranges for the purchase of travel or tour
9 services for or on behalf of the students of the school, the
10 school shall purchase the travel or tour services from a seller
11 of travel that is registered under section 10 and that holds
12 adequate security as required by section 8.

13 (b) Nonapplication.--This section does not apply to trips in
14 which the entire cost of the trip for the students as a whole is
15 less than \$2,500.

16 (c) Definition.--As used in this section, "school" means a
17 public school offering kindergarten through grade 12 or any part
18 thereof.

19 Section 10. Registration.

20 (a) Registration.--A seller of travel shall file a statement
21 with the bureau, indicating name, home address and business
22 address and, where applicable, the name and address of the
23 financial institution where the bond is located and any other
24 information required by the bureau under this act. The bureau
25 shall assign a registration number to each seller of travel.

26 (b) Registration fee.--Registration fees shall be \$150 for
27 the first year and \$50 for each subsequent year. Registration
28 costs have been calculated to be equal to the costs of
29 implementing and enforcing this act. For sellers of travel which
30 have more than one office, registration fees shall be assessed

1 at the main location which maintains the principal banking
2 relationship for the branch offices.

3 (c) Additional material to be filed.--Sellers of travel who
4 offer vacation certificates must also submit and disclose to the
5 bureau with the application for registration, and any time such
6 document is changed but prior to the sale of any vacation
7 certificate, the following:

8 (1) A copy of the contract by which the rights,
9 obligations, benefits and privileges resulting from purchase
10 of a vacation certificate are established.

11 (2) A copy of each promotional brochure, pamphlet, form
12 letter, registration form or any other written material
13 disseminated in connection with the advertising, promotion or
14 sale of any vacation certificate.

15 (3) A verbatim script of each radio, television or movie
16 or other similar advertisement broadcast to the public in
17 connection with the advertising, promotion or sale of any
18 vacation certificate.

19 (4) A transcript of any standard verbal sales
20 presentation utilized in connection with the advertising,
21 promotion or sale of vacation certificates.

22 (5) A copy of all rules, regulations, conditions or
23 limitations upon the use of, or obtaining reservations for
24 the use of, accommodations or facilities available pursuant
25 to the vacation certificate.

26 (6) A copy of a written authorization for the use of any
27 registered trademark, trade name or trade logo utilized in
28 promotional brochures, pamphlets, form letters, registration
29 forms or other written materials disseminated in connection
30 with the advertising, promotion or sale of vacation

1 certificates from the holder of each trademark, trade name or
2 trade logo so used.

3 (7) A complete copy of the original of each testimonial
4 letter from previous vacation certificate purchasers utilized
5 in advertisements disseminated in connection with
6 advertising, promotion or sale of vacation certificates.

7 (8) Where discount or complimentary coupons or tickets
8 are to be provided to purchasers, a copy of such ticket or
9 coupon which shall include a statement of the names and
10 addresses of businesses where the coupons or tickets are
11 honored, the goods, services or amenities provided and any
12 additional charges, limitations or conditions.

13 (9) Where other goods, services or amenities are
14 provided to the purchasers, a copy of such ticket or coupon
15 which shall include a statement of the names and addresses of
16 businesses where the coupons or tickets are honored, the
17 goods, services or amenities provided and any additional
18 charges, limitations or conditions.

19 (10) A statement of the number of certificates to be
20 issued and the date of their expiration.

21 (11) A copy of the vacation certificate and its
22 component parts, including, but not limited to, any
23 registration card, form letter, reservation form,
24 confirmation form and lodging directory.

25 (12) A copy of all agreements between the seller and
26 business entities providing accommodations or facilities to
27 purchasers.

28 (13) A copy of all agreements between the seller and
29 each business entity providing or honoring discount or
30 complimentary coupons or tickets or providing other goods,

1 services or amenities to the purchaser.

2 (14) A listing of the full name, address and telephone
3 number of each person through which the distribution and sale
4 of vacation certificates is to be carried out, including the
5 number of vacation certificates allocated or sold to each
6 person and the name and address of a registered agent for
7 service of process in this Commonwealth.

8 (15) A financial statement prepared by an independent
9 certified public accountant in accordance with generally
10 accepted accounting principles. Such statement shall be
11 submitted annually at the close of each fiscal year. A seller
12 which has not yet begun operations shall submit a balance
13 sheet prepared by an independent certified public accountant
14 in accordance with generally accepted auditing principles in
15 lieu of an initial financial statement, thereafter annually
16 submitting a financial statement or Federal income tax return
17 at the close of the fiscal year.

18 Section 11. Prohibited practices by sellers of travel.

19 It shall be illegal for any seller of travel and, if such
20 seller of travel is a corporation, any officer or director
21 thereof to engage in any or all of the following enumerated
22 practices:

23 (1) Make a material misrepresentation regarding the
24 quality of aircraft, vehicle, ship or train, day of departure
25 or arrival, points served, quality of lodging, time share or
26 other accommodation or other services available, reserved or
27 contracted for in connection with any trip, tour or other
28 travel services, unless such misrepresentation was based upon
29 a reasonable belief as to the services available based upon
30 representations made by the person, company, corporation,

1 common carrier or other entity offering such services.

2 (2) Misrepresent the fares and charges for
3 transportation or services, unless such misrepresentation was
4 based upon a reasonable belief as to the fares and charges
5 applicable based upon representations made by the person,
6 company, corporation, common carrier or other entity offering
7 such services.

8 (3) Misrepresent that special priorities for
9 reservations are available when such special considerations
10 are in fact granted to members of the public generally.

11 (4) Sell transportation to a person or persons on a
12 reservation or charter basis for specified space, flight or
13 time or represent that such definite reservations or charter
14 is or will be available or has been arranged without a
15 binding commitment with a carrier for the furnishing of such
16 definite reservation or charter as represented or sold.

17 (5) Sell or issue tickets or other documents to
18 passengers to be exchanged or used for transportation if such
19 tickets or other documents will not be or cannot be legally
20 honored by carriers for transportation.

21 (6) Misrepresent the requirements that must be met by a
22 person or persons in order to qualify for charter or group
23 fare rates, unless such misrepresentation was based upon a
24 reasonable belief as to the requirements applicable based
25 upon representations made by the person, company corporation,
26 common carrier or other entity offering such charter or group
27 fare.

28 (7) Fail or refuse to honor a purchaser's vacation
29 certificate request to cancel if such request is made:

30 (i) within 30 days from the date of purchase or

receipt of the vacation certificate, whichever occurs later; or

(ii) at any time accommodations or facilities are not available pursuant to a request for use as provided in the contract, provided that the contract shall not require notice greater than 60 days in advance of the date requested, if acceptable to the purchaser, comparable alternate accommodations or facilities in a city, or reservations for a date different than that requested, may be provided.

Section 12. Offenses.

A violation of the provisions of this act constitutes a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law. In addition to the penalties provided in this act, any seller of travel who violates the provisions of this act shall be subject to a civil penalty of up to \$5,000 for each violation. The Attorney General, a district attorney or the traveler may seek such penalties in addition to any other penalty or remedy permitted under the Unfair Trade Practices and Consumer Protection Law or any other laws of this Commonwealth.

Section 13. Burden of proof.

(a) Proceeding under this act.--In any civil proceeding alleging a violation of this act, the burden of proving an exemption is upon the person claiming it. In any criminal proceeding alleging a violation of this act, the burden of producing evidence to support a defense based upon an exemption or an exception is upon the person claiming it.

(b) Other proceedings.--Compliance with this act does not satisfy nor substitute for any requirements for license,

1 registration or regulation mandated by other laws.

2 Section 14. Investigation.

3 (a) Authority.--If the Attorney General OR DISTRICT ATTORNEY <—
4 has reason to believe that a violation of this act has occurred,
5 the Attorney General OR DISTRICT ATTORNEY shall have the <—
6 authority to investigate, on behalf of the Commonwealth, its
7 citizens or a political subdivision.

8 (b) Procedure.--Prior to the institution of a civil action,
9 the Attorney General is authorized to require the attendance and
10 testimony of witnesses and the production of documents. For this
11 purpose, the Attorney General may issue subpoenas, examine
12 witnesses and receive evidence. If a person objects to or
13 otherwise fails to comply with a subpoena or request for
14 testimony, the Attorney General may file in Commonwealth Court
15 an action to enforce the subpoena or request. Notice of hearing
16 the action and a copy of all pleadings shall be served upon the
17 person who may appear in opposition.

18 Section 15. Authority.

19 (a) Authority of bureau.--The bureau shall have all powers,
20 rights and duties as are provided in this act to seek penalties,
21 remedies and procedures against any seller of travel that is
22 engaged in practices that are unlawful according to the
23 provisions of this act.

24 (b) Other remedies preserved.--The provisions of this act
25 are not exclusive and do not relieve sellers of travel or
26 contracts subject thereto from compliance with all other
27 applicable provisions of law nor shall these provisions provide
28 immunity for any civil claim against any seller of travel which
29 has acquired any moneys or property, real or personal, by means
30 of any practice declared unlawful by this act.

1 Section 16. Venue.

2 An offense under this act is deemed to have been committed in
3 any county where the seller of travel has a place of business,
4 the county from which payment by the traveler was made or the
5 county where money was collected by the seller of travel.

6 Section 17. Regulations.

7 The bureau may adopt rules and regulations necessary to
8 enforce and administer this act. These rules and regulations,
9 when promulgated pursuant to the act of July 31, 1968 (P.L.769,
10 No.240), referred to as the Commonwealth Documents Law, shall
11 have the force and effect of law.

12 Section 18. Effective date.

13 This act shall take effect in 90 days.