

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 817

Session of
2001

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YOUNGBLOOD AND LEWIS, FEBRUARY 26, 2001

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 18, 2001

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

11 Section 1. Short title.

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

14 Section 2. Definitions.

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

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

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

28 "Advertise." To make a representation in the solicitation of
29 travel or tour services. The term includes communication with
30 other members of the same partnership, corporation, joint

1 venture, association, organization, group or other entity.

2 "Air carrier." A transporter of persons by air which is
3 subject to regulation as such by a governmental agency.

4 "Bed and breakfast, homestead or inn." A public
5 accommodation consisting of a private residence which contains
6 ten or fewer bedrooms used for providing overnight accommodation
7 to the public and in which breakfast is the only meal served and
8 is included in the charge for the room.

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

21 "Bureau." The Bureau of Consumer Protection.

22 "Charitable organization." Any nonprofit organization.

23 "Commission." The Pennsylvania Public Utility Commission.

24 "Contract." Any agreement, certificate, reservation request
25 or confirmation form, membership application or use agreement,
26 license or reservation confirmation whereby the purchaser
27 obtains the right to benefits and privileges of the prearranged
28 travel or tourist service, or to a vacation form committing the
29 seller of travel to provide transportation pertaining to
30 reservations, tour or travel arrangements and accommodations.

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

3 "Motor carrier." A common carrier by motor vehicle, and a
4 contract carrier by motor vehicle.

5 "Offer for sale." Any direct or indirect representation,
6 claim or statement or undertaking by any means or method to
7 arrange for, provide or acquire travel reservations or
8 accommodations, tickets for domestic or foreign travel by air,
9 rail, ship or any other medium of transportation or hotel and
10 motel accommodations or sightseeing tours.

11 "Place of public accommodation." Any accommodation that is
12 open to the general public, in contrast to being owner occupied.

13 "Seller of travel." Any resident or nonresident person,
14 firm, corporation, business entity or charitable organization
15 who offers for sale, directly or indirectly, at wholesale or
16 retail travel or tour services in exchange for a fee, commission
17 or other consideration.

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

22 "Travel or tour services." Any arrangement for individuals
23 or groups, including:

24 (1) vacation or travel packages, sightseeing tours,
25 prearranged travel services, travel reservations or
26 accommodations, tickets for domestic or foreign travel by
27 air, rail, ship, bus or other medium of transportation or
28 hotel or other accommodations;

29 (2) travel-related prizes or awards for which the
30 traveler must pay a fee or, in connection with the prize or

1 award, expend moneys for the direct or indirect monetary
2 benefits of the person or business entity making the award in
3 order for the traveler to collect or enjoy the benefits of
4 the prize or award;

5 (3) travel-related services provided in conjunction with
6 solicitations for the sale of any investments, goods,
7 products or services or in conjunction with promotional
8 opportunities, including, but not limited to, land and
9 interest in land, time-share plans, housing, commodities or
10 securities; and

11 (4) vacation packages and travel clubs.

12 "Traveler." The purchaser of travel or tour services, person
13 otherwise entitled to receive travel or tour services for a fee
14 or commission, person who has received a travel-related prize or
15 award or person who has been provided travel-related services in
16 conjunction with solicitations of the sale of any investments,
17 goods, products or services, or in conjunction with promotional
18 opportunities, including, but not limited to, land and interest
19 in land, time-share plans, housing commodities or securities.

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

1 the purchaser's initial payment to the seller of travel.

2 Section 3. Legislative findings.

3 The General Assembly finds and declares as follows:

4 (1) Certain advertising, sales and business practices of
5 sellers of travel have worked financial hardship upon the
6 people of this Commonwealth.

7 (2) The travel business has a significant impact upon
8 the economy and well-being of this Commonwealth and its
9 people.

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

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

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

18 Section 4. Construction and nonapplicability.

19 (a) Construction.--The provisions of this act insofar as
20 they are in conflict with any statutory law or common law
21 relating to agency shall, for the purposes of this act,
22 supersede the conflicting provisions and principles.

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

24 (1) Any direct common carrier of travelers or property
25 regulated by an agency of the Federal Government or employees
26 of such carrier when engaged solely in the transportation
27 business of the carrier.

28 (2) An interstate or intrastate common carrier of
29 travelers selling only transportation or employees of such
30 carrier when engaged solely in the transportation business of

1 the carrier.

2 (3) Hotels, motels or other places of public
3 accommodation selling public accommodations or employees of
4 such hotels, motels or other places of public accommodations
5 when engaged solely in making arrangements for accommodations
6 or when engaged in the offering for sale or the sale of any
7 travel or tour services in conjunction with making
8 arrangements for accommodations upon their property.

9 (4) Any resident or nonresident person, firm,
10 corporation or business entity maintaining or purporting to
11 maintain a business location or branch office in this
12 Commonwealth involved solely in the rental, leasing or sale
13 of transportation vehicles.

14 (5) Any resident or nonresident person, firm,
15 corporation or business entity maintaining or purporting to
16 maintain a business location or branch office in this
17 Commonwealth who makes travel arrangements only for
18 themselves, for their employees or agents, for the
19 distributors, franchisees or dealers of the person's products
20 or services or for the employees or agents of the
21 distributor, franchise, dealer or financially related entity.

22 Section 5. Advertisements.

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

26 Section 6. Information required.

27 A seller of travel shall not deposit money or other valuable
28 consideration in payment for travel or tour services unless,
29 within five days of the time after the traveler's payment is
30 deposited RECEIVED, the seller of travel furnishes to the

<—

1 traveler a written statement or electronic communication clearly
2 and conspicuously setting forth the following information:

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

5 (2) The amount paid, the date of payment, the purpose of
6 the payment made and an itemized statement of the balance
7 due, if any.

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

9 (4) The method of transportation, the date and place of
10 each departure.

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

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

24 (7) A disclosure statement specifying the type of
25 accommodations that are being sold as well as an additional
26 disclosure of all material terms and conditions included in
27 the contract. This disclosure shall include any and all
28 additional costs or charges that may be incurred.

29 Section 7. Cancellation and refunds.

30 (a) Refunds.--In the event that travel services or tour

1 services contracted for are canceled through no fault of the
2 traveler or if the travel services or tour services are not
3 provided through no fault of the traveler and unless the
4 traveler otherwise advises the seller of travel in writing, the
5 seller of travel shall return to the traveler all moneys paid
6 for services not performed and goods not delivered in accordance
7 with the contract.

8 (b) Misrepresentation.--Any material misrepresentation with
9 respect to the date or place of all departures or arrivals or
10 type of aircraft or land or ocean carrier shall be reasons for
11 cancellation by the consumer, which will require the refund
12 specified in this section. The seller of travel has the right to
13 substitute another ship, airline, accommodations or mode of
14 transportation of equal or greater value due to strike,
15 bankruptcy or condition making the ship, airline, accommodations
16 or mode of transportation uninhabitable, nonoperational or
17 unusable. A change in type of aircraft or land or ocean carrier
18 is not considered a misrepresentation under this section if the
19 reason for the change is beyond the control of the seller of
20 travel including, but not limited to, weather, mechanical
21 problems or traveler safety concerns.

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

25 Section 8. Evidence of financial security.

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

1 (1) An adequate bond issued by a surety authorized to do
2 business in this Commonwealth and specifically authorized to
3 issue such surety bonds in this Commonwealth. The requisite
4 bond amount shall be in an amount equal to 100% of the seller
5 of travel's amount of retail business not to exceed \$25,000.
6 However, if the seller of travel has revenues in excess of
7 \$250,000, then the seller of travel must be bonded for 10% of
8 the previous year's annual gross sales. If the seller of
9 travel provides or offers vacation packages as part of the
10 travel or tour services, then the bond must be equal to 100%
11 of the seller of travel's amount of retail business. A seller
12 of travel filing the bond shall maintain the bond in force in
13 the proper amount as a condition of continuing to engage in
14 business. Evidence of the bond must be filed with the bureau.

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

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

20 (ii) any traveler injured as a result of a violation
21 of this act.

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

24 (i) sellers of travel who have:

25 (A) contracted with the Airlines Reporting
26 Corporation for the most recent consecutive three
27 years or more and who do not offer vacation packages;
28 and

29 (B) had three or more consecutive years of
30 experience as a seller of travel under the same

ownership and name in this Commonwealth in compliance with this act, unless acquired or formed by a registered seller of travel that has been in business under the same ownership for a period of three years and has not had any civil, criminal or administrative actions instituted against the seller of travel in the vacation and travel business by any governmental agency or any action involving fraud, theft, misappropriation of property or moral turpitude;

(ii) the seller of travel is a broker who has complied with 52 Pa. Code § 39.15 (relating to security for the protection of the public) and has furnished a bond or other security approved by the commission.

Such waiver may be revoked if the seller of travel violates any provision of this act; or

(iii) the seller of travel has been in business of selling or arranging travel or tour services for a minimum of three years, has not had a bankruptcy in the previous five years and already maintains a bond or surety of equal or greater amount required by this section. Proof of these requirements must be submitted to the bureau at the time of registration, required by section 10, in order to have the bond requirement waived.

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

Section 9. Educational institution purchases of travel or tour services.

(a) Purchase from registered seller of travel.--If an educational institution purchases or arranges for the purchase of travel or tour services for or on behalf of the students of

1 the educational institution, the educational institution shall
2 purchase the travel or tour services from a seller of travel
3 that is registered under section 10 and that holds adequate
4 security as required by section 8.

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

8 (c) Definition.--As used in this section, "educational
9 institution" shall mean a public school operated by a joint
10 board, board of directors or school board where pupils are
11 enrolled in compliance with Article XIII of the act of March 10,
12 1949 (P.L.30, No.14), known as the Public School Code of 1949.
13 The term includes elementary schools, secondary schools, area
14 vocational-technical schools and intermediate units or any part
15 thereof. The term also includes any member institution of the
16 State System of Higher Education, any community college
17 established and operated under the authority of Article XIX-A of
18 the Public School Code of 1949 or any State-related higher
19 educational institution.

20 Section 10. Registration.

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

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

1 have more than one office, registration fees shall be assessed
2 at the main location which maintains the principal banking
3 relationship for the branch offices.

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

9 (1) A copy of the contract by which the rights,
10 obligations, benefits and privileges resulting from purchase
11 of a vacation ~~packages~~ PACKAGE are established. <—

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

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

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

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

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

1 with the advertising, promotion or sale of vacation packages
2 from the holder of each trademark, trade name or trade logo
3 so used.

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

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

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

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

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

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

29 (13) A copy of all agreements between the seller and
30 each business entity providing or honoring discount or

complimentary coupons or tickets or providing other goods, services or amenities to the purchaser.

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

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

Section 11. Prohibited practices by sellers of travel.

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

(1) Make a material misrepresentation regarding the quality of aircraft, vehicle, ship or train, day of departure or arrival, points served, quality of lodging, time share or other accommodation or other services available, reserved or contracted for in connection with any trip, tour or other travel services, unless such misrepresentation was based upon a reasonable belief as to the services available based upon

1 representations made by the person, company, corporation,
2 common carrier or other entity offering such services.

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

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

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

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

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

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

1 (i) within 30 days from the date of purchase or
2 receipt of the vacation package, whichever occurs later;
3 or

4 (ii) at any time accommodations or facilities are
5 not available pursuant to a request for use as provided
6 in the contract, provided that the contract shall not
7 require notice greater than 60 days in advance of the
8 date requested, ~~if~~. IF acceptable to the purchaser, <—
9 comparable alternate accommodations or facilities in a
10 city, or reservations for a date different than that
11 requested, may be provided.

12 Section 12. Offenses.

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

23 Section 13. Burden of proof.

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

30 (b) Other proceedings.--Compliance with this act does not

1 satisfy ~~not~~ OR substitute for any requirements for ~~license~~ <—
2 LICENSING, registration or regulation mandated by other laws. <—

3 Section 14. Investigation.

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

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

19 Section 15. Authority.

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

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

1 of any practice declared unlawful by this act.

2 Section 16. Venue.

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

7 Section 17. Regulations.

8 The bureau shall adopt rules and regulations necessary to
9 enforce and administer this act including, but not limited to, a
10 provision outlining a complaint procedure for individuals or
11 other sellers of travel, for the reporting of violations of this
12 act, either to the Attorney General or district attorney. These
13 rules and regulations, when promulgated pursuant to the act of
14 July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth
15 Documents Law, shall have the force and effect of law.

16 Section 18. Effective date.

17 This act shall take effect in 90 days.