
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 149 Session of
1989

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DEMPSEY AND SAURMAN, JANUARY 30, 1989

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE,
JANUARY 30, 1989

AN ACT

1 Relating to travel charter and tour operators; requiring
2 bonding; prescribing fees; and providing penalties.

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3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Pennsylvania
7 Consumer Travel Protection Act.

8 Section 2. Legislative findings and declarations.

9 (a) Legislative findings.--The General Assembly finds and
10 declares that advertising, sales and business practices of
11 certain travel charter and tour operators have hurt many
12 consumers in Pennsylvania who have fallen victim to such
13 practices, and that the travel industry has a significant impact
14 upon the economy of this Commonwealth and its people.

15 (b) Declarations.--The General Assembly declares that it
16 would be in the best interests of the consumers of Pennsylvania
17 to regulate travel charter and tour operators in order to
18 eliminate unfair advertising, sales and business practices; to
19 establish standards which will safeguard the people of this
20 Commonwealth against financial hardship; and to encourage
21 competition, fair dealing and prosperity in the travel business.

22 Section 3. Definitions.

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

26 "Advertise." To make any representation in conjunction with,
27 or to effect the sale of, travel services. The term includes
28 communication with other members of the same partnership,
29 corporation, joint venture, association, organization, group or
30 other entity.

1 "Director." The Director of the Bureau of Consumer
2 Protection.

3 "Passenger." A person who purchases travel arrangements in
4 this Commonwealth and on whose behalf money or other
5 consideration has been given or is to be given to another,
6 including another member of the same partnership, corporation,
7 joint venture, association, organization, group or other entity,
8 for procuring transportation and/or other travel services.

9 "Prize." The term includes, but is not limited to, money,
10 personal property, vacations, travel arrangements, motor
11 vehicles and appliances.

12 "Travel charter or tour operator." Any person, partnership,
13 corporation, joint venture, association, organization, group or
14 other entity who or which sells, provides, furnishes, contracts
15 for, arranges or advertises in this Commonwealth that it can or
16 may arrange, or has arranged, air, sea or land transportation,
17 either separately or in conjunction with any or all of the
18 following:

- 19 (1) Transfers to and from an airport.
20 (2) Lodging, with or without meals.
21 (3) Sightseeing, at one or more destinations.
22 (4) Air, sea or land transportation, at one or more
23 destinations.

24 The term includes a person who sells membership in an
25 organization, club or association that provides reduced rates
26 for transportation or other service, and it includes such
27 organization, club or association. The term does not include a
28 common carrier of passengers regulated by an agency of the
29 Federal Government or a hotel, motel, inn or other such
30 establishment offering accommodations to travelers, when making

1 arrangements for accommodations in such establishments or when
2 making arrangements for sightseeing tours.

3 Section 4. Registration of travel charter or tour operators.

4 (a) General rule.--Prior to commencement of business in this
5 Commonwealth, a travel charter or tour operator business must
6 register with the director, in form and substance satisfactory
7 to him. A travel charter or tour operator business in operation
8 must register as required by this section.

9 (b) Fee.--Such registration shall be accompanied by a \$25
10 registration fee to and for the use of the director, and any
11 registration not accompanied by the fee need not be accepted by
12 the director.

13 (c) Information.--Registration shall include, but not be
14 limited to, the travel charter or tour operator's principal
15 place of business and other offices; the name and address of any
16 owner or the chief executive and operation officers of the
17 business; the name and position of all employees; the name and
18 phone number of a contact person; and, if applicable, a
19 notarized copy of the official appointments or authorizations
20 held by the business.

21 (d) Changes.--Every registered travel charter or tour
22 operator business shall notify the director when any information
23 on its registration has changed, within ten days after the
24 change. Each notification shall be in writing and be accompanied
25 with a \$5 fee.

26 (e) Renewal.--A travel charter or tour operator business
27 must annually register with the director and, with each renewal,
28 pay a fee of \$25.

29 Section 5. Bond or letter of credit required.

30 (a) Filing of bond.--With the registration required in

1 section 4, a travel charter or tour operator business shall file
2 and maintain with the director, in form and substance
3 satisfactory to him, a bond with corporate surety from a company
4 authorized to transact business in this Commonwealth or an
5 irrevocable letter of credit from a bank insured by the Federal
6 Deposit Insurance Corporation (FDIC), in an amount of \$100,000.

7 (b) Duration.--The bond or letter of credit shall be filed
8 and maintained and shall not be canceled or terminated except
9 with the consent of the director.

10 (c) Purpose.--The bond or letter of credit shall be for the
11 exclusive purpose of providing consumer refunds and shall not be
12 deemed as an asset of the travel agency for bankruptcy or any
13 other purpose.

14 (d) Certification of compliance.--All travel charter and
15 tour operators shall certify to the director, upon registration
16 each year, that the appropriate bond or letter of credit remains
17 in effect.

18 (e) Amount of recovery.--No person injured by a travel
19 charter's or tour operator's breach of contract or wrongful act
20 may recover upon the bond a sum greater than that which the
21 injured person paid to the travel charter or tour operator,
22 provided that this limitation shall not restrict the injured
23 person from recovering sums greater than those paid to the
24 travel charter or tour operator from sources other than the bond
25 or letter of credit. In no event shall the aggregate liability
26 of the bond or letter of credit for any and all claims which
27 arise under the bond exceed the amount of the bond.

28 (f) Statute of limitation.--Any claim under this section
29 shall be filed no later than six months from the date on which
30 the injury occurred.

(g) Exemptions.--A person who meets one of the following requirements shall be exempt from filing a bond or letter of credit upon providing such evidence to, and upon approval by, the director:

(1) The person has operated a travel agency business and meets standards no less than those required on January 1, 1988, for authorized agents of the Airline Reporting Corporation.

(2) The person has operated a travel charter or tour operator business for at least three years under the same ownership or management, and has in effect a surety bond for at least \$100,000 to the benefit of any consumer who has made payment to the person operating the travel charter or tour operator business.

Section 6. Advertising; restrictions.

A travel charter or tour operator shall not advertise that air, sea or land transportation, either separately or in conjunction with other services, is or may be available unless such operator has, prior to such advertisement, received written confirmation with a carrier for the transportation advertised.

Section 7. Written statement by travel charter or tour operator; information required.

A travel charter or tour operator shall not receive money or other consideration in payment for travel or for any other service offered in conjunction with the travel unless the travel charter or tour operator furnishes to the person making the payment a written statement conspicuously setting forth the following information:

(1) The name, address and telephone number of the travel charter or tour operator business, and the address at which

1 the contract was signed between the travel charter or tour
2 operator and the passenger.

3 (2) The amount paid, the date of the payment, the
4 purpose of the payment made, with a clear and concise
5 description of the services being paid for, and an itemized
6 statement of the balance due, if any.

7 (3) The amount of deposit paid, if applicable, and
8 whether or not that deposit is refundable.

9 (4) The name and address of the surety or bank from
10 which the travel or tour operator business has obtained a
11 bond or letter of credit, or other applicable information,
12 and a description of the procedure to obtain a refund under
13 such bond or letter of credit.

14 (5) The location and number of the trust account or bond
15 required by section 9.

16 (6) The name of the carrier with which the travel
17 charter or tour operator has contracted or arranged to
18 provide the transportation, the mode of transportation to be
19 used and the date, time and place of each departure.

20 (7) The conditions, if any, upon which the contract
21 between the travel charter or tour operator and the passenger
22 may be canceled and the rights and obligations of all parties
23 in the event of cancellation.

24 (8) The conditions, if any, upon which the contract
25 between the travel charter or tour operator and the carrier
26 may be canceled and the rights and obligations of all parties
27 in the event of cancellation.

28 (9) A statement in ten-point boldface type that, upon
29 cancellation of the transportation through no fault of the
30 passenger, all sums paid by the passenger or by his agent or

1 assignee to the travel charter or tour operator for services
2 not performed in accordance with the contract between the
3 travel charter or tour operator and the passenger will be,
4 unless the passenger otherwise advises the travel charter or
5 tour operator in writing, promptly refunded by the travel
6 charter or tour operator to the passenger or the party who
7 contracted for the consumer within 14 days after cancellation
8 of the services.

9 Section 8. Cancellation, material misrepresentation and
10 refunds.

11 (a) Cancellation.--If the transportation or other services
12 contracted for are canceled, the travel charter or tour operator
13 shall return to the passenger, within 14 days after the
14 cancellation, all moneys paid for services not performed in
15 accordance with the contract unless mutually acceptable
16 alternative travel arrangements are provided.

17 (b) Misrepresentations.--Any misrepresentation with regard
18 to the date, time, places of all departures or arrivals or type
19 of transportation or similar occurrence or with regard to any
20 other service offered in conjunction with the travel shall be
21 deemed a cancellation necessitating a full refund by the travel
22 charter or tour operator to the passenger within 14 days after
23 cancellation by the passenger due to any misrepresentation.

24 Section 9. Trust account required.

25 (a) General rule.--A travel charter or tour operator shall
26 deposit 90% of all sums received for transportation or any other
27 services offered by the travel charter or tour operator in
28 conjunction with such transportation in a trust account in a
29 Federally insured financial institution.

30 (b) Withdrawals.--The trust account required by this section

1 shall be created and maintained for the benefit of the
2 passengers paying money to the travel charter or tour operator.
3 The travel charter or tour operator shall not withdraw money
4 therefrom except:

5 (1) in an amount equal to partial or full payment for
6 the services contracted for the passengers to the carrier or
7 person providing the other services offered by the travel
8 charter or tour operator; or

9 (2) to make the refunds as required by section 8 or as
10 provided for by written contract between the travel charter
11 and tour operator and passengers.

12 A travel charter or tour operator may withdraw from the account
13 any interest earned and credited to the trust account for the
14 sole benefit of the travel charter or tour operator after all
15 services have been provided as contracted.

16 (c) Alternative.--A travel charter and tour operator,
17 instead of maintaining a trust account as provided in
18 subsections (a) and (b), may maintain a bond or letter of credit
19 in an amount not less than \$100,000 or an amount equal to 10% of
20 the total revenue of the two highest consecutive months for the
21 travel charter or tour operator's business during the prior
22 calendar year, whichever is greater, but in no case more than
23 \$500,000.

24 Section 10. Promotional giveaway or promotional contest.

25 Any travel charter or tour operator advertising, promoting or
26 sponsoring a promotional giveaway, promotional contest or
27 promotion in connection with travel, including, but not limited
28 to, travel or vacation club memberships, shall provide written
29 notice complying with the following provisions:

30 (1) Notice requirements shall be as follows:

1 (i) Notice must be given to all persons who are
2 offered an opportunity to participate in any promotion
3 prior to the person's traveling to the place of business
4 or, if no travel is necessary, prior to any seminar,
5 sales presentation or other presentation; and the
6 required notice must be provided prior to the signing of
7 any contract or payment of any moneys.

8 (ii) Notices may be delivered by hand or by mail,
9 and any offer to the participant made through any other
10 medium must be preceded or followed by the required
11 written notice at the required time.

12 (iii) It is the intent of this section that full,
13 clear and meaningful disclosure shall be made to the
14 participant in such a manner that the participant can
15 fully study and understand the disclosure prior to
16 deciding whether to travel to the place of participation
17 or whether to allow a presentation to be made in the
18 participant's home or any other location. This section
19 shall be liberally construed to effect this purpose.

20 (iv) The notice requirements of this section shall
21 be applicable to any promotion offer made by any travel
22 charter or tour operator in this Commonwealth or any
23 promotion offer made to any person in this Commonwealth.

24 (2) The promotional giveaway or contest must be an
25 advertising and promotional undertaking, in good faith,
26 solely for the purpose of advertising the goods, services or
27 property, real or personal, of the sponsor. The notice shall
28 contain the name, address and phone number of the promoter
29 and of the sponsor, as applicable. The promoter and the
30 sponsor may be held liable for any failure to comply with the

1 provisions of this section.

2 (3) Notwithstanding that a promotion in which there is a
3 nominal charge for a prize is subject to regulation under
4 this section, that promotion shall be a violation of this
5 section if a person is required to pay or furnish any
6 consideration, other than the consideration of traveling to
7 the place of business or to the presentation or of allowing
8 the presentation to be made in the participant's home or any
9 other location, in order to receive any prize.

10 (4) Each notice must state the fair market value, not
11 suggested retail price, of each prize which the participant
12 has a chance of receiving. Each notice must state the odds of
13 the participant's receiving each prize if there is an element
14 of chance involved. The odds must be clearly identified as
15 "odds." Odds must be stated as the total number of that
16 particular prize which will be given and of the total number
17 of notices. The total number of notices shall include all
18 notices in which that prize may be given, regardless of
19 whether it includes notices for other sponsors. If the odds
20 of winning a particular prize would not be accurately stated
21 on the basis of the number of notices, then the odds may be
22 stated in another manner, but must be clearly stated in a
23 manner which will not deceive or mislead the participant
24 regarding the participant's chance of receiving the prize.
25 The fair market value and odds for each prize must be stated
26 in conjunction and in immediate proximity with each listing
27 of the prize in each place where it appears on the notice and
28 must be listed in the same size type and same boldness as the
29 prize. Odds and fair market values may not be listed in any
30 matter which requires the participant to refer from one place

1 in the notice to another place in the notice to determine the
2 odds and fair market value of the particular prize. Fair
3 market value shall be stated in Arabic numerals.

4 (5) Upon arriving at the place of business or upon
5 allowing the sponsor to enter the participant's home, or any
6 other location the promotion is being held, the participant
7 must be immediately informed which, if any, prize the
8 participant will receive prior to any seminar, sales
9 presentation or other presentation; and the prize, or any
10 voucher, certificate or other evidence of obligation in lieu
11 of the prize, must be given to the participant at the time
12 the participant is so informed.

13 (6) No participant shall be required or invited to view,
14 hear or attend any sales presentation, by whatever name
15 denominated, unless such requirement or invitation has been
16 conspicuously disclosed to the participant in the notice in
17 at least ten-point boldface type.

18 (7) In the event any prize is offered or given which
19 will require the participant to purchase additional goods or
20 services, including shipping fees, handling fees or any other
21 charge, by whatever name denominated, from any person in
22 order to make the prize conform to what it reasonably appears
23 to be in the mailing or delivery, such requirement and the
24 additional cost to the participant must be clearly disclosed
25 in each place where the prize is listed in the notice. This
26 disclosure shall be made by using the following appropriately
27 completed statement:

28 "You must pay \$_____ in order to receive this item."

29 This statement shall be in the same size type and same boldness
30 as the prize listed.

1 (8) Any limitation on eligibility of participants, such
2 as age, income or marital status, must be clearly disclosed
3 in the notice.

4 (9) Substitutes of prizes shall not be made. In the
5 event the represented prize is unavailable, the participant
6 shall be presented with a certificate which the sponsor shall
7 honor within 30 days by shipping the prize, as represented in
8 the notice, to the participant at no cost to the participant.
9 In the event a certificate cannot be honored within 30 days,
10 the sponsor shall mail to the participant a valid check or
11 money order for the fair market value which was represented
12 in the notice.

13 (10) In the event the participant is presented with a
14 voucher, certificate or other evidence of obligation as the
15 participant's prize, or in lieu of the participant's prize,
16 it shall be the responsibility of the sponsor to honor the
17 voucher, certificate or other evidence of obligation, as
18 represented in the notice, if the person who is named as
19 being responsible for honoring the voucher, certificate or
20 other evidence of obligation fails to honor it as represented
21 in the notice.

22 (11) The geographic area covered by the notice must be
23 clearly stated. If any of the prizes may be awarded to
24 persons outside of the listed geographical area or to
25 participants in promotions for other sponsors, these facts
26 must be clearly stated, with a corresponding explanation that
27 every prize may not be given away by that particular sponsor.
28 If prizes will not be awarded or given if the winning ticket,
29 token, number, lot or other device used to determine winners
30 in that particular promotion is not presented to the promoter

1 or sponsor, this fact must be clearly disclosed.

2 (12) Upon request of the director, the sponsor or
3 promoter must within ten days furnish to the director the
4 names, addresses and telephone numbers of persons who have
5 received any prize.

6 (13) A list of all winning tickets, tokens, numbers,
7 lots or other devices used to determine winners in
8 promotional contests involving an element of chance must be
9 prominently posted at the place of business or distributed to
10 all participants if the seminar, sales presentation or other
11 presentation is made at a place other than the place of
12 business. A copy of this list shall be furnished to each
13 participant who so requests.

14 (14) Any promotion involving an element of chance which
15 does not conform with the provisions of this paragraph shall
16 be considered an unlawful lottery as defined in 18 Pa.C.S. §
17 5512 (relating to lotteries, etc.). The director may seek and
18 shall receive the assistance of the prosecuting attorneys of
19 this Commonwealth in the commencement and prosecution of
20 persons who promote and sponsor promotions which constitute
21 an unlawful lottery.

22 (15) Any person who participates in a promotional
23 giveaway or contest and does not receive an item which
24 conforms with what that person, exercising ordinary
25 diligence, reasonably believed that person should have
26 received based upon the representations made to that person
27 may bring private action against the sponsor and the promoter
28 and, if that person prevails, shall be awarded, in addition
29 to any other recovery provided under this part, a sum which
30 will allow that person to purchase an item which reasonably

1 conforms to the prize which that person, exercising ordinary
2 diligence, reasonably believed that person would receive.

3 (16) In addition to any other remedy provided under this
4 section, where a contract is entered into by a person while
5 participating in a promotional giveaway or contest which does
6 not conform with this section, the contract shall be voidable
7 by the participant for seven business days following the date
8 of the contract. In order to void the contract, the
9 participant must notify the sponsor in writing within seven
10 business days following the signing of the contract; any
11 money paid by the participant must be returned by the sponsor
12 within 30 days upon receipt of notice of cancellation.

13 Section 11. Application of consumer protection act.

14 A violation of this act shall also be a violation of the act
15 of December 17, 1968 (P.L.1224, No.387), known as the Unfair
16 Trade Practices and Consumer Protection Law, and shall be
17 subject to the enforcement provisions, civil penalties and
18 private rights of action contained in that act.

19 Section 12. Rules and regulations.

20 The director may adopt rules and regulations necessary to
21 enforce and administer this act. These rules and regulations,
22 when promulgated pursuant to the act of July 31, 1968 (P.L.769,
23 No.240), referred to as the Commonwealth Documents Law, shall
24 have the force and effect of law.

25 Section 13. Severability.

26 The provisions of this act are severable. If any provision of
27 this act or its application to any person or circumstance is
28 held invalid, the invalidity shall not affect other provisions
29 or applications of this act which can be given effect without
30 the invalid provision or application.

1 Section 14. Effective date.

2 This act shall take effect January 1, 1990.