
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2585

Session of
1988

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JUNE 27, 1988

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, JUNE 27, 1988

AN ACT

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

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

6 Section 1. Short title.

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

9 Section 2. Legislative findings and declarations.

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

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

23 Section 3. Definitions.

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

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

1 other entity.

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

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

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

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

20 (1) Transfers to and from an airport.

21 (2) Lodging, with or without meals.

22 (3) Sightseeing, at one or more destinations.

23 (4) Air, sea or land transportation, at one or more
24 destinations.

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

1 establishment offering accommodations to travelers, when making
2 arrangements for accommodations in such establishments or when
3 making arrangements for sightseeing tours.

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

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

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

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

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

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

30 Section 5. Bond or letter of credit required.

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

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

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

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

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

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

1 the injury occurred.

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

6 (1) The person has operated a travel agency business and
7 meets standards no less than those required on January 1,
8 1988, for authorized agents of the Airline Reporting
9 Corporation.

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

16 Section 6. Advertising; restrictions.

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

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

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

30 (1) The name, address and telephone number of the travel

1 charter or tour operator business, and the address at which
2 the contract was signed between the travel charter or tour
3 operator and the passenger.

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

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

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

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

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

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

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

29 (9) A statement in ten-point boldface type that, upon
30 cancellation of the transportation through no fault of the

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

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

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

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

25 Section 9. Trust account required.

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

(b) Withdrawals.--The trust account required by this section shall be created and maintained for the benefit of the passengers paying money to the travel charter or tour operator. The travel charter or tour operator shall not withdraw money therefrom except:

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

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

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

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

Section 10. Promotional giveaway or promotional contest.

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

1 (1) Notice requirements shall be as follows:

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

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

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

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

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

1 sponsor may be held liable for any failure to comply with the
2 provisions of this section.

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

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

1 matter which requires the participant to refer from one place
2 in the notice to another place in the notice to determine the
3 odds and fair market value of the particular prize. Fair
4 market value shall be stated in Arabic numerals.

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

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

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

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

30 This statement shall be in the same size type and same boldness

1 as the prize listed.

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

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

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

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

1 in that particular promotion is not presented to the promoter
2 or sponsor, this fact must be clearly disclosed.

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

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

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

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

1 will allow that person to purchase an item which reasonably
2 conforms to the prize which that person, exercising ordinary
3 diligence, reasonably believed that person would receive.

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

14 Section 11. Application of consumer protection act.

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

20 Section 12. Rules and regulations.

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

26 Section 13. Severability.

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

- 1 the invalid provision or application.
- 2 Section 14. Effective date.
- 3 This act shall take effect January 1, 1989.