

I spoke with Allan Goodman, Esq., Assistant Attorney General for the Consumer Protection unit in Los Angeles. He said he had extensive experience with California Travel Promoters Act. The act was last written in 1974.

He was saying that since passage of the act, in regard to travel promoters, there have been relatively few complaints, for example, 50 state-wide which is very small in this area. The act seems to be working fairly well, he has two major criticisms:

First, there should be an act to regulate travel agencies. He said the absence of such an act is a result of extensive lobbying by the travel agencies in California; second criticism is a minor criticism, he was saying that perhaps when we prohibit the promoter or agent from advertising his transportation before a contract is made, we should specify this in the written contract. California statutes do not specify this.

Gordon told me, however, as a factual matter, this is not a problem because normally these contracts are so complex that they couldn't be orally made any way.

C. Other States

~~1977 Act (old)~~ or now Copy
Travel Promoter
Business
et seq (Business Provision code)

California - This Act regulates travel promoters (1974)

Purpose and Provisions - Article 2.5 Sections 17540, etc.

Travel promoter sells, provides, furnishes, contracts for, arranges or advertises that he can or may arrange or has arranged air or sea transportation either separately or in conjunction with other services. Does not include: air carrier or ocean carrier or officially appointed agent of an air carrier or ocean carrier.

A promoter may not advertise that air or sea transportation is or may be available unless he has prior to such advertising contracted for transportation advertised.

"Adequate bond" means a corporate bond of an amount at least equal to the amount required under the contract between the travel promoter and the transportation carrier or company or person providing any other service in connection with such transportation.

A written statement must be furnished to the passenger, including among other things, his right to cancel: ~~cancel~~

Cancellation is provided for when: through no fault of the passenger the transportation contracted for is cancelled and any misrepresentation with regard to date, time, place ^{BCF} or all departures or arrivals, or type of aircraft or ocean carrier or similar occurrence.

A trust fund ^(90% of funds received) or adequate bond is required for money received from passengers. ^(The gov rec)

The promoter shall issue the ticket or voucher upon demand if the passenger is paid in full. ^(1/11)

Penalty, Violation, or Misdemeanor - ~~??~~

Max. \$500 or 6 months
6 months

Misdemeanor
1/11
5/11
1/11

Connecticut - According to the Office of Legislative Research of the Connecticut General Assembly there were no bills relating to travel agents in the 1976 session but she sent the copy of a 1975 bill which was ~~killed~~ in committee.

"Engage in the business of conducting a travel agency" means to hold oneself out to any person, directly or indirectly, as being able, or to offer or undertake by any means, as principal, agent, broker, group travel arranger or organizer, or otherwise, to acquire, for a fee, commission or other valuable consideration, whether at retail or wholesale, travel reservations or accommodations, tickets for ^{domestic} or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging reservations or accommodations.

"Travel agent" means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations and selling or otherwise obtaining such travel arrangements or accommodations in the conduct or administration of its business.

The Commissioner of Consumer Protection administers this bill.

This bill registers agencies and agents, travel agency registration certificates, the registration fee and renewal of \$150.

Travel agent certificate is \$25 for the application and renewal.

The penalty for conducting a travel agency or acting as a travel agent without a registration certificate is a maximum of \$500 or six months imprisonment or both and shall be ineligible to obtain a registration certificate for one year from the date of conviction of such an offense.

Florida - The Florida cabinet promulgated emergency regulations for sharing vacation plans. This means any arrangement, plan, scheme or similar device in which membership agreement, or sale or lease or rent, etc. or whereby a passenger in exchange for advanced consideration receives a right to use accommodations, facilities or both for a specific period of time for less than a full year during any given year but not necessarily for consecutive years and shall extend for

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Handwritten notes on the left side of the page, including "VACATION TIME SHARING PLAN", "CONSUMER PROTECTION", "REGISTRATION", "FEE", "RENEWAL", "25", "150", "500", "6 MONTHS", "1 YEAR", "ADVANCED CONSIDERATION", "MEMBERSHIP AGREEMENT", "SALE OR LEASE OR RENT, ETC.", "PASSenger", "FACILITIES", "PERIOD OF TIME", "FULL YEAR", "CONSECUTIVE YEARS".

more than a period of one year. The purpose is to require a seller to submit certain materials to the Department of Legal Affairs. The regulation makes it a deceptive practice for failing to submit to the Department of Legal Affairs prior to solicitation, copies of contracts, brochures, statement of the type of business entity through which the business is carried out, copies of all contracts between the business entity offering the vacation time sharing plan for sale and each business providing accommodations and facilities to purchasers.

Notice of cancellation must be put on the contract.

15 day period

Prorata refund is also provided for. The seller must place 50%

of all monies refunded in an escrow account or ~~the~~ post of bond in lieu of the escrow.

(the bond has to be equal to the contract price)

Effective Date - All sellers are given 10 days after August 3, 1976 to comply with these rules.

Now w/ 10 days

Hawaii Act No. _____ of 1975

Revised Statutes Sec. 468J.1 et seq.

468J
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468J

"Travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services. Travel agency does not include an air or ocean carrier, or an officially appointed agency of an air or ocean carrier.

"Sales representative" means any employee or agent of a travel agency who arranges for the purchase or sale of travel services but does not include a salaried employee of a licensed travel agency.

Travel agencies or sales representatives must be licensed with the director of regulatory agencies. Travel agency is \$100 nonrefundable fee plus \$20 for each branch office. Sales representative, nonrefundable fee of \$20.

Biennial renewal fee is \$100 for each agency and \$20 for each permanent branch office of a licensed agency and \$20 for a sales representative.

Each travel agency and sales representative must file a bond in sufficient amount as determined by the director but not less than \$10,000 for travel agencies and \$1,000 for sales representatives.

This bill also provides restitution to any person who is harmed by violation of this act.

Penalty for violation of this act range between a fine of ~~\$25~~ and \$2,500.

Illinois - Senate Bill 663 of the 1973 Session

This bill is entitled "The Travel Arrangers Registration Act" was vetoed by Governor Walker on September 12, 1973. This bill requires all travel agents and travel salesmen to obtain a registration certificate and establish a board of travel examiners.

Prohibits any person from engaging in the business of acting in the capacity of a travel agent or travel salesman without certificate of registration from the Illinois Department of Registration and Education.

Defines acts constituting acting in the capacity of a travel agent or salesman as (1) arranging or reserving services relating to the travel of another person and (2) aiding or acting in behalf of any travel agent, for compensation, of in the solicitation or negotiation of services relating to the travel of another person.

Exempted are federal or state gov. carriers regulated by the federal or state gov.

This bill requires the filing of a bond by a travel agent of \$5,000 and requires segregation of funds collected to be held in fiduciary capacity.

Creates Board of Examiners of Travel Agents and Salesmen, of 7 members appointed for 3 year staggered terms by the Director, 4 of whom are travel agents; to be paid \$25 per diem and expenses.

*Gov. DeSilva
CGILVIR
DCLW*

Governor Walker vetoed this bill (he vetoed a similar bill on September 23, 1971). Gov. Walker gave as his main reasons that regulation of such an area should be done only at a federal level to be equitable and uniform, otherwise, administrative hardship would be ~~caused~~ by members of the industry, moreover, licensed travel

*of previous
FED created by
CREAM FCB*

Does

more restrictive

agency salesmen ~~do~~ not protect consumers from fraudulent agencies; more appropriate incentive to honest management would be to increase penalties for fraud and other deceptive business practices. The travel industry is already ~~one~~ of the ~~most~~ *more restrictive* and this regulation would only add an impediment for new individuals entering into the business and benefit those already established.

ment

The Illinois Travel Agency and Passenger *AND* Study Commission in its 1973 report to the Governor 78th General Assembly, supported passage of this bill and refuted the arguments against the bill.

Research on the possible application of this legislation to out-of-state operators shows that states can enact laws under their police powers, ~~which~~, may impose incidental burdens on interstate commerce.

even if they

The problem of burden on business has centered upon the benefits of the bill to insure more competent and honest behavior in the travel industry.

(see in F-DO (NR-11))

This is very important because of the federal nature of travel agency business.

Another argument used against the Governor was the mere passage of such a law would hopefully have a preventive effect, most businesses would rather not lose their licenses or suffer such penalties.

OK
11-11-74
BILL

Massachusetts - 1974, Act No.

Licensing and bonding of travel agencies administered by the Commissioner of Public Safety.

"Travel agency" means any person or persons who hold out, directly or indirectly, that they are able or offering or undertaking by any means or method, to arrange or book trips.

A license is valid for one year and renewal yearly for \$50, original fee is \$100

Penalty for operating without being licensed in six months imprisonment or \$5,000 fine or both.

Bond of \$25,000 required. The burden is put upon the travel agent to sufficiently fulfill any promise, guarantee, or representation regarding any

Violation of this act is a violation of the "Unfair Trade Practices Act".

trip which it makes to any person with whom the travel agency contracts for such a trip.

New York - Statutes - Article 9-A General Business Law

Article 9-A Passage Tickets - It is unlawful to advertise as an agent without written authorization from the carrier.

Violation of this section is a misdemeanor (Look up penalty)

Article 10 - Ticket Agents - License must be obtained to sell tickets for transportation to and from foreign countries. A bond is required by the Department of State. In cities of the first class it is \$2,000 and \$1,000 for all other localities.

(except for steam & railroad agents)

Article 10-A - "Truth and Travel Act"

"Travel consultant" means any person, firm, corporation, partnership or association, other than a common carrier or employee of a common carrier, who as principal or agent, sells or offers for sale any travel tickets or orders for transportation, or negotiates for or holds himself out by solicitation, advertisement or otherwise as one who sells, provides, furnishes, contracts or arranges for such travel tickets or orders for transportation.

Among other things of prohibited practices, knowingly misrepresent the quality or kind of service, type or size of aircraft, vehicle, ship or train, time to departure or arrival, points served, route to be traveled, stops to be made, or total trip-time from point of departure to destination or other services available, reserved or contracted for in connection with any trip or tour.

(2) Knowingly misrepresent the fares and charges for transportation or services in connection therewith. (3) Knowingly advertise or otherwise offer for sale or sell transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the carrier, who is engaged to provide such transportation or services, or knowingly offer or give rebates or other concessions thereon, or knowingly assist or permit a person

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or persons to obtain such transportation or services at less than such lawful rates, fares and charges. (4) Knowingly misrepresent that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally. (5) Knowingly sell transportation to a person or persons on a reservation or charter basis for specified space, flight or time or knowingly represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold.

Violation of this act is a misdemeanor. The Attorney General or district attorney of any county may seek an injunction to restrain or prevent violations.

Important Cases

Bucholz vs. Sirotkin Travel, Ltd. - 343 NYS 2d 438 (1973)

Ten travelers brought a small claim proceeding against a travel agency with respect to a problem encountered with plane and travel reservations for a three day trip for her and her husband to Las Vegas.

The District Court of Nassau held that the defendant was liable for breach of its fiduciary responsibility in failing to use reasonable care to confirm the reservations, the court allowed the recovery on behalf of the plaintiff and her husband the sum of \$106 for inconvenience and discomfort resulting from change in accommodations. Changes had been made in the arrival and departure time of the flight, on arrival in Las Vegas, the plaintiff learned that no reservations had been made at the hotel originally booked. They were required to take alternative accommodations at a motel. The motel was 1/2 mile out of town. This created additional expenses and inconvenience for the plaintiff and her husband in traveling to the places of interest in the town. The court began by saying that New York law presently lacked clarity with respect to the travel agency and its clients.

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~~Obviously~~, the travel agency is an agent, but the question comes, whose agent? Is it the agent of a hotel or other innkeeper with whom, or for whom, the agency transacts business? Or the steamship line or airline with whom it does business? Generally, the travel agency is neither an agent or employee of the common carriers or innkeepers.

The travel agent deals directly with the traveler. He must be charged with the duty of exercising reasonable care in securing passage on an appropriate carrier and lodging with an innkeeper. The money was paid over by the traveler to the defendant for that specific purpose. Since nothing was done ^{ed} by the travel agent to verify or confirm either the plane reservations or the hotel reservations, the travel agent was liable in negligence for its failure to exercise reasonable care in making the reservations.

~~It is~~ The court noted that it might be urgent ^d that the fault was of the "remote wholesaler", however, the court noted that where, as here, the agent was selected because he is supposed to have special fitness for the performance of the duties to be undertaken, the traveler is entitled to rely on the judgment and discretion of that agent, as well as his honesty and financial responsibility. The agent may not evade responsibility by delegating to a subagent the carrying out of the task which has been committed to him.

Unless the principal, here the traveler, has expressly or impliedly authorized the travel agency to delegate responsibility to a second agency or "wholesaler", the responsibility must remain on the defendant travel agency. In an area so fraught with danger to the traveler, public policy demands that the travel agency be held responsible to: (a) verify or confirm the reservations and (b) use reasonable diligence in ascertaining the responsibility of any intervening "wholesaler" or tour organizer.

This decision of the district court was affirmed by the Supreme Court ^{5725 state}
~~filed as~~ 363 NYS 2d 415, 1974.)

In small claims action, 10 travelers recovered damages based on a travel agent's alleged misrepresentation and failure to provide proper travel arrangements, and defendants appealed. The Supreme Court held that the retail agent was properly held responsible despite any disclaimer in its brochures, and that, in any event, disclaimer was an ineffective agent represented itself as agent of an undisclosed principal. Plaintiff recovered \$218.68 each in regard to a trip to Israel. Plaintiff claimed deprived of three days of tour plus other inconveniences.

Rhode Island - January, Session 1976 - Act No.

"Travel agency" means any person, firm or corporation who holds out directly or indirectly that they are able or offering or undertaking by any means or method, to arrange or book travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus or other medium of transportation or hotel or other lodging accommodations for a fee, commission or other valuable consideration.

"Travel agent" means any person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business.

Every travel agency must file a bond of \$10,000. Travel agencies annual fee is \$75 and for a travel agent, \$10.

The travel agency is obligated to fulfill any promises made to passengers in regard to the trip, and provide refunds when there is not sufficient compliance.

Penalty for operating without a license - misdemeanor, maximum fine of \$1,000 or one year imprisonment or both and ineligible to obtain a license for two years from the date of conviction. The Attorney General may bring an action for an injunction.

Disclaimers are exempted.

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DEMPSEY J. BARRON
President

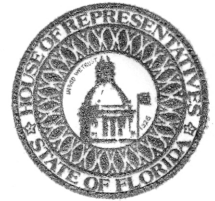
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August 23, 1976

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Marvin J. Mundel, Esquire
Research Counsel
House Committee on
Consumer Protection
House Box 209
Harrisburg, PA 17120

Dear Mr. Mundel:

We are responding to your recent telephone request concerning attempts by Florida to regulate travel agencies.

Accordingly, we transmit herewith copy of a partially edited transcript of the Tourism Subcommittee meeting of the Florida House Committee on Commerce held January 15, 1976. No proposed legislation resulted from this meeting.

We felt you might be interested in emergency time-sharing administrative rules adopted by the Florida Cabinet on Tuesday, August 3, which took effect 10 days later. We are sending you a copy of the rules and the appropriate statutory subsections which provide authority for the promulgation of the rules. (Subsections 120.54(8), 501.204(1) and 501.205(1), Florida Statutes 1975). These subsections were not amended by the 1976 Legislature. We are also transmitting copy of pertinent newspaper clippings.

Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "B. Gene Baker".

B. Gene Baker

BGB/lf
encl.

November 18, 1976

Telephone conversation as a result of Marvin Mundell's call to Mr. Peyser and Mr. Berlin of the Bureau of Consumer Protection, 2 World Trade Center, Room 46-45, New York 10047.

Subject: Travel Agents

New York has no law licensing and bonding travel agencies. Problem is agents go from state to state (thieves). Taking deposits and moving on. Stated they do not have any legislation. Attorney General seeking to bond and license agents and has been trying for a number of years. For this reason they take case-by-case. Most effective. Article 15 - Deceptive Practices. Two particular statutes effective law and 6312 for the best has to do with false advertising. We do not have specific law that applies to travel agents as such.

We do have consumer fraud statute.

You have a law about making a criminal fraud which was enacted fairly recently.

What type of deception have we gotten--Marvin's response. Sue Crafton. We had success by going after all kinds on grounds they are guilty of deceptive practices and we followed both ends so that end it was good--applies to all kinds of false advertising and deceptive practices.

In terms of kinds of complaints--individual purchases a trip and finds out that accommodations were not what he actually gets when he arrives at destination. Instead of arriving at the place he expected he arrives at another destination.

That is an area of many complaints. Another area--travel agent takes deposits goes out of business and then starts in again taking deposits.

Two classifications (1) deception; (2) actual trips

Consumer files complaint seeking reimbursement.

Most difficult to handle is the consumer seeking refund.

1. Order taker
2. Wholesaler
3. Hotel

Fragmented nature of the industry.

We are concerned about the consumer who didn't get what he bargained for. The consumer is out of money or didn't get the tour that was promised. We have to go into court or mediate these matters. Failure to supply services. We mediate. Encourage industry to mediate so that the consumer is made whole again. Reasonable success. If we find it is chronic, we bring a case to stop these practices.

Work strictly on a case by case basis. Courts will vary. Whole one way-- whole another way. Only practical way is to legislate --bond or licensing. Broaden the definition of unfair trade practices. Give every consumer a remedy so that he does fit in.



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September 3, 1976

Mr. Marvin Mundel
Research Counsel
Pennsylvania House Committee
on Consumer Protection
Harrisburg, PA 17120

Dear Mr. Mundel:

In response to your request for information on Ohio's regulation of travel agencies, I am enclosing a copy of H. B. 1320 which was enacted by the Ohio General Assembly this year but was vetoed by Governor Rhodes. Ohio maintains no legislative history of bills considered by the General Assembly. However, the Legislative Service Commission prepares an analysis of each bill as it proceeds through the legislative process. I have enclosed the most recent LSC analysis of H. B. 1320. Also enclosed is the veto message released by the Governor detailing his reasons for disapproving H. B. 1320. Of course, travel agencies are subject to the state's criminal penalties for fraud in the case of certain abuses. The Ohio Attorney General's Office has been active in the consumer protection area, and, for information on current enforcement practices, it may be worthwhile to contact Henry E. Helling, III, Chief, Consumer Frauds and crimes section, 30 E. Broad Street, Columbus, Ohio; telephone 466-8360. If you have any further questions, please contact us.

Sincerely,

William Driscoll
Research Associate

WD/ksd

Enclosures: LSC analysis of H. B. 1320
Veto message released by the Governor disapproving H. B. 1320