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**SUBSTITUTE HOUSE BILL 1316**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By** House Business & Financial Services (originally sponsored by Representative Kirby)

READ FIRST TIME 02/17/11.

1            AN ACT Relating to sellers of travel; and amending RCW 19.138.021  
2 and 19.138.140.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            **Sec. 1.** RCW 19.138.021 and 2001 c 44 s 1 are each amended to read  
5 as follows:

6            Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

8            (1) "Department" means the department of licensing.

9            (2) "Director" means the director of licensing or the director's  
10 designee.

11            (3) "Sale of travel-related benefits" means the sale of travel  
12 services if the travel services are not identified at the time of the  
13 sale with respect to dates, price, or location and includes:

14            (a) Sales of travel club memberships;

15            (b) Sales of vacation certificates or other documents that purport  
16 to grant the holder of the certificate or other document the ability to  
17 obtain future travel services, with or without additional  
18 consideration; or

1 (c) Sales of travel-industry member benefits including those  
2 through either or both the issuance and sale or the consulting with or  
3 advising for consideration of persons in connection with the obtaining  
4 of international airlines travel agent network identification cards or  
5 memberships.

6 (4) "Travel club" means a seller of travel that sells memberships  
7 to consumers, where the initial membership or maintenance dues are at  
8 least twice the amount of the annual membership or maintenance dues.

9 (5) "Seller of travel-related benefits" means a person, firm, or  
10 corporation that transacts business with Washington consumers for the  
11 sale of travel-related benefits.

12 (6) "Seller of travel" means a person, firm, or corporation both  
13 inside and outside the state of Washington, who transacts business with  
14 Washington consumers, including retail location travel agencies, home-  
15 based travel agencies, and online travel agencies.

16 (a) "Seller of travel" includes a travel agent and any person who  
17 is an independent contractor or outside agent for a travel agency or  
18 other seller of travel whose principal duties include consulting with  
19 and advising persons concerning travel arrangements or accommodations  
20 in the conduct or administration of its business. If a seller of  
21 travel is employed by a seller of travel who is registered under this  
22 chapter, the employee need not also be registered.

23 (b) "Seller of travel" does not include:

24 (i) An air carrier;

25 (ii) An owner or operator of a vessel, including an ocean common  
26 carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of  
27 a vessel that is required to establish its financial responsibility in  
28 accordance with the requirements of the federal maritime commission, 46  
29 U.S.C. App. 817 (e), and a steamboat company whether or not operating  
30 over and upon the waters of this state;

31 (iii) A motor carrier;

32 (iv) A rail carrier;

33 (v) A charter party carrier of passengers as defined in RCW  
34 81.70.020;

35 (vi) An auto transportation company as defined in RCW 81.68.010;

36 (vii) A hotel or other lodging accommodation;

37 (viii) An affiliate of any person or entity described in (i)  
38 through (vii) of this subsection (6)(b) that is primarily engaged in

1 the sale of travel services provided by the person or entity. For  
2 purposes of this subsection (6)(b)(viii), an "affiliate" means a person  
3 or entity owning, owned by, or under common ownership, with "owning,"  
4 "owned," and "ownership" referring to equity holdings of at least  
5 eighty percent;

6 (ix) Direct providers of transportation by air, sea, or ground, or  
7 hotel or other lodging accommodations who do not book or arrange any  
8 other travel services.

9 (7) "Travel services" includes transportation by air, sea, or  
10 ground, hotel or any lodging accommodations, package tours, or vouchers  
11 or coupons to be redeemed for future travel or accommodations for a  
12 fee, commission, or other valuable consideration.

13 (8) "Advertisement" includes, but is not limited to, a written or  
14 graphic representation in a card, brochure, newspaper, magazine,  
15 directory listing, or display, and oral, written, or graphic  
16 representations made by radio, television, internet, or cable  
17 transmission that relates to travel services.

18 (9) "Transacts business with Washington consumers" means to  
19 directly offer ~~((or))~~, sell, or allow purchase of travel services or  
20 travel-related benefits to Washington consumers, including the  
21 placement of advertising in media based in the state of Washington or  
22 that is primarily directed to Washington residents. Advertising placed  
23 in national print or electronic media alone does not constitute  
24 "transacting business with Washington consumers." Those entities who  
25 only wholesale travel services are not "transacting business with  
26 Washington consumers" for the purposes of this chapter.

27 **Sec. 2.** RCW 19.138.140 and 2003 c 38 s 1 are each amended to read  
28 as follows:

29 (1)(a) Except as provided in (b) and (c) of this subsection, a  
30 seller of travel shall deposit in a trust account maintained in a  
31 federally insured financial institution located in Washington state, or  
32 other account approved by the director, ~~((all))~~ sums held ~~((for more~~  
33 ~~than five business days))~~ by a seller of travel that are received from  
34 a person or entity, for retail travel services offered by the seller of  
35 travel.

36 (b) If the seller of travel receives a sum of less than two

1 thousand dollars from a person or entity for retail travel services,  
2 the sums must only be deposited into the trust account if they are held  
3 by the seller of travel for more than five business days.

4 (c) This subsection (1) does not apply to travel services sold by  
5 a seller of travel, when payments for the travel services are made  
6 through the airlines reporting corporation.

7 (2) The trust account or other approved account required by this  
8 section shall be established and maintained for the benefit of any  
9 person or entity paying money to the seller of travel. The seller of  
10 travel shall not in any manner encumber the amounts in trust and shall  
11 not withdraw money from the account except the following amounts may be  
12 withdrawn at any time:

13 (a) Partial or full payment for travel services to the entity  
14 directly providing the travel service;

15 (b) Refunds as required by this chapter;

16 (c) The amount of the sales commission;

17 (d) Interest earned and credited to the trust account or other  
18 approved account;

19 (e) Remaining funds of a purchaser once all travel services have  
20 been provided or once tickets or other similar documentation binding  
21 upon the ultimate provider of the travel services have been provided;  
22 or

23 (f) Reimbursement to the seller of travel for agency operating  
24 funds that are advanced for a customer's travel services.

25 (3) The seller of travel may deposit noncustomer funds into the  
26 trust account as needed in an amount equal to a deficiency resulting  
27 from dishonored customer payments made by check, draft, credit card,  
28 debit card, or other negotiable instrument.

29 (4) At the time of registration, the seller of travel shall file  
30 with the department the account number and the name of the financial  
31 institution at which the trust account or other approved account is  
32 held as set forth in RCW 19.138.110. The seller of travel shall notify  
33 the department of any change in the account number or location within  
34 one business day of the change.

35 (5) The director, by rule, may allow for the use of other types of  
36 funds or accounts only if the protection for consumers is no less than  
37 that provided by this section.

1 (6) The seller of travel need not comply with the requirements of  
2 this section if all of the following apply, except as exempted in  
3 subsection (1) of this section:

4 (a) The payment is made by credit card;

5 (b) The seller of travel does not deposit, negotiate, or factor the  
6 credit card charge or otherwise seek to obtain payment of the credit  
7 card charge to any account over which the seller of travel has any  
8 control; and

9 (c) If the charge includes transportation, the carrier that is to  
10 provide the transportation processes the credit card charge, or if the  
11 charge is only for services, the provider of services processes the  
12 credit card charges.

13 (7) The seller of travel need not maintain a trust account nor  
14 comply with the trust account provisions of this section if the seller  
15 of travel:

16 (a)(i) Files and maintains a surety bond approved by the director  
17 in an amount of not less than ten thousand nor more than fifty thousand  
18 dollars, as determined by rule by the director based on the gross  
19 income of business conducted for Washington state residents by the  
20 seller of travel during the prior year. The bond shall be executed by  
21 the applicant as obligor by a surety company authorized to transact  
22 business in this state naming the state of Washington as obligee for  
23 the benefit of any person or persons who have suffered monetary loss by  
24 reason of the seller of travel's violation of this chapter or a rule  
25 adopted under this chapter. The bond shall be conditioned that the  
26 seller of travel will conform to and abide by this chapter and all  
27 rules adopted under this chapter, and shall reimburse any person or  
28 persons who suffer monetary loss by reason of a violation of this  
29 chapter or a rule adopted under this chapter.

30 (ii) The bond must be continuous and may be canceled by the surety  
31 upon the surety giving written notice to the director of the surety's  
32 intent to cancel the bond. The cancellation is effective thirty days  
33 after the notice is received by the director.

34 (iii) The applicant may obtain the bond directly from the surety or  
35 through other bonding arrangement as approved by the director.

36 (iv) In lieu of a surety bond, the applicant may, upon approval by  
37 the director, file with the director a certificate of deposit, an

1 irrevocable letter of credit, or such other instrument as is approved  
2 by the director by rule, drawn in favor of the director for an amount  
3 equal to the required bond.

4 (v) Any person or persons who have suffered monetary loss by any  
5 act which constitutes a violation of this chapter or a rule adopted  
6 under this chapter may bring a civil action in court against the seller  
7 of travel and the surety upon such bond or approved alternate security  
8 of the seller of travel who committed the violation of this chapter or  
9 a rule adopted under this chapter or who employed the seller of travel  
10 who committed such violation. A civil action brought in court pursuant  
11 to the provisions of this section must be filed no later than one year  
12 following the later of the alleged violation of this chapter or a rule  
13 adopted under this chapter or completion of the travel by the customer;  
14 or

15 (b) Is a member in good standing in a professional association,  
16 such as the United States tour operators association or national tour  
17 association, that is approved by the director and that provides or  
18 requires a member to provide a minimum of one million dollars in errors  
19 and professional liability insurance and provides a surety bond or  
20 equivalent protection in an amount of at least two hundred fifty  
21 thousand dollars for its member companies.

22 (8) If the seller of travel maintains its principal place of  
23 business in another state and maintains a trust account or other  
24 approved account in that state consistent with the requirement of this  
25 section, and if that seller of travel has transacted business within  
26 the state of Washington in an amount exceeding five million dollars for  
27 the preceding year, the out-of-state trust account or other approved  
28 account may be substituted for the in-state account required under this  
29 section.

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