

ACT 106

S.B. NO. 1342

A Bill for an Act Relating to Travel Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 468K-5, Hawaii Revised Statutes, is amended to read as follows:

“§468K-5 Statute of limitations; recovery from fund. (a) No action for a judgment or proceeding for a consent judgment under section 480-22 which may subsequently result in an order for collection from the travel agency

recovery fund shall be commenced later than six years from the accrual of the cause of action. [When any aggrieved person commences action for a judgment which may result in collection from the travel agency recovery fund, the aggrieved person shall notify the trustees in writing to this effect at the time of the commencement of such action. The trustees shall have the right to intervene in and defend any such action.]

(b) When any person aggrieved commences action for a judgment which may result in collection from the travel agency recovery fund, the person aggrieved shall notify the trustees in writing to this effect at the time of the commencement of the action. The trustees shall have the right to intervene in and defend any action.

[(b)] (c) When any [aggrieved] person aggrieved recovers a valid judgment in any circuit court or district court of the county where the violation occurred against any travel agency or sales representative for [such] any act, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the [aggrieved] person aggrieved may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the trustees, may apply to the court for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section.

(d) When the office of consumer protection obtains a consent judgment pursuant to section 480-22, in any circuit court where the violation occurred against any travel agency or sales representative for any act, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the office of consumer protection upon the finality of the consent judgment under section 480-22, may file a verified claim in the court in which the consent judgment was entered and, upon ten days' written notice to the trustees, may apply to the court for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the consent judgment, subject to the limitations stated in this section. The trustees shall have the right to intervene in and defend any application to the court for an order directing payment out of the travel agency recovery fund.

[(c)] (e) The court shall proceed upon [such] the application for an order directing payment out of the travel agency recovery fund in a summary manner, and, upon the hearing of the application, the [aggrieved] person aggrieved shall be required to show:

- (1) He or she is not a spouse of the judgment debtor, or the personal representative of [such] the judgment debtor's spouse;
- (2) He or she has complied with all the requirements of this section;
- (3) He or she has obtained a judgment as set out in [subsection (b)] subsections (c), (d), or (g), stating the amount of the judgment and the amount owing on the judgment at the date of the application;
- (4) He or she has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment; and
- (5) That by [such] the search required by this section, he or she has discovered no personal or real property or other assets liable to

be sold or applied, or that he or she has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that he or she has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

[(d)] (f) The court shall make an order directed to the trustees requiring payment from the travel agency recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the [aggrieved] person aggrieved by subsection [(c) and] (e), that the [aggrieved] person aggrieved has fully pursued and exhausted all remedies available to the [aggrieved] person aggrieved for recovering the amount awarded by the judgment of the court.

[(e)] (g) For purposes of this chapter, an order for restitution obtained by the office of consumer protection on behalf of a person aggrieved against a registered travel agency or registered sales representative shall be the judgment obtained by the person aggrieved against the registered travel agency or registered sales representative. For purposes of this chapter, any written notification to the trustees as required by subsection [(a)] (b) by the office of consumer protection or any [action] acts to recover restitution on behalf of the person aggrieved by the office of consumer protection shall be the [actions] acts of the person aggrieved.

[(f)] (h) Subject to the limitations and requirements of this chapter, the office of consumer protection may apply to the court for an order directing payment out of the travel agency recovery fund on behalf of a person aggrieved; provided that the office of consumer protection obtains a court order directing the payment of restitution to the person aggrieved. The office of consumer protection shall not receive costs or attorneys' fees from the travel agency recovery fund.

(i) Upon the filing of an order for payment from the travel agency recovery fund to the office of consumer protection, or to any person aggrieved, which is based upon a consent judgment obtained by the office of consumer protection pursuant to section 480-22, the trustees may defer payment from the fund for six months, at the end of which period the trustees may discharge the trustees' obligations under the order and any other order for payment from the fund obtained by any person aggrieved prior to and at any time during the six-month period, by disbursing the money from the fund, up to the maximum allowed under this chapter, to all of the persons aggrieved, including those persons aggrieved in whose behalf the office of consumer protection obtained its order, on a pro rata basis; provided that, prior to the disbursement of the money, the trustees file an affidavit with the court stating how the money is to be disbursed. The trustees may apply to the court for an extension of the six-month period upon good cause, but in no case shall payment to the office of consumer protection or any person aggrieved be deferred for more than one year except as provided in subsection (k).

[(g)] (i) Should the trustees pay from the travel agency recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a registered travel agency or sales representative, registration shall be automatically terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. [No such] The travel agency or sales representative shall not be eligible to reregister to do business until

the fund is repaid in full, plus interest at the rate of ten per cent a year, the amount paid from the travel agency recovery fund on the account of the travel agency or sales representative. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

[(h)] (k) If, at any time, the money deposited in the travel agency recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the trustees shall, when sufficient money has been deposited in the travel agency recovery fund, satisfy [such] the unpaid claims or portions thereof, in the order that [such] the claims or portions thereof were originally filed[.] or in accordance with subsection (i).”

SECTION 2. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§468K- **Registration renewal.** Every travel agency and sales representative registered under this chapter shall register with the director and pay a renewal fee, as provided in rules adopted by the director in accordance with chapter 91, on or before December 31 of each odd-numbered year. Failure to pay the renewal fee as required by this section shall constitute a termination of registration as of the date the renewal fee is due. Any registration terminated under this section may be restored within one year after the date of termination upon the filing of an application and payment of a restoration fee as provided in rules adopted by the director in accordance with chapter 91.”

SECTION 3. Chapter 468K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§468K- **Powers and duties of the director.** The director shall have the following powers and duties:

- (1) Adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Issue, renew, terminate, and revoke registrations;
- (3) Establish fees; and
- (4) Do all things necessary to carry out the functions, powers, and duties set forth in this chapter.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 5. This Act shall take effect upon its approval.

(Approved May 31, 1987.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.