

ACT 193

S.B. NO. 1823

A Bill for an Act Relating to Travel Agencies.

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

SECTION 1. Section 468K-1.5, Hawaii Revised Statutes, is amended to read as follows:

**“§468K-1.5 Powers and duties of the director.** The director shall have the following powers and duties:

- (1) [Adopt,] To adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) [Issue,] To issue and renew[, terminate, and revoke licenses;] licenses pursuant to this chapter;
- (3) To fine any licensee, or suspend or revoke any license, for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be grounds for revocation or suspension of a license;
- [ (3) ] (4) [Establish] To establish fees; and
- [ (4) ] (5) [Do] To do all things necessary to carry out the functions, powers, and duties set forth in this chapter.”

SECTION 2. Section 468K-3, Hawaii Revised Statutes, is amended to read as follows:

**“§468K-3 Travel agency recovery fund; use of fund; fees.** There shall be established and maintained a travel agency recovery fund from which any person

aggrieved by an act, omission of material fact, representation, transaction, or conduct of a licensee, that 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, may recover, by order of [the circuit court or district court of the county where the violation occurred,] a court of competent jurisdiction within the State, an amount of not more than \$8,000 for damages sustained as a result of the act, representation, transaction, or conduct of each licensee. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable [attorney] attorneys' fees as determined by the court.

The director shall appoint three trustees, all of whom shall be licensed under this chapter, to maintain the travel agency recovery fund. The terms of the trustees shall be four years[,]; provided that the terms of the initial trustees shall be two, three, and four years, respectively. The director may remove any trustee for good cause.

Every travel agency shall pay at the time of original licensure a nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

Every sales representative shall pay at the time of original licensure a nonrefundable fee of \$25 for deposit in the travel agency recovery fund."

SECTION 3. Section 468K-5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), (e), and (f) to read as follows:

"(b) When any person aggrieved commences an 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] that effect at the [time of the] commencement of the action. The trustees shall have the right to intervene in and defend any action.

(c) When any person aggrieved recovers a valid judgment in [any circuit court or district court of the county where the violation occurred] a court of competent jurisdiction within the State against any licensee for any act, omission of a material fact, 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 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 in which the judgment was entered 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[.]; provided that the trustees must be given ten days' written notice of the hearing on the application.

(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 licensee for any act, omission of a material fact, 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 in which the consent judgment was entered 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[.]; provided that the trustees must be given ten days' written notice of the hearing on the application. 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.

(e) The court shall proceed upon 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 person aggrieved shall be required to show[:]  
that the person:

- (1) [He or she is] Is not a spouse of the judgment debtor, or the personal representative of the judgment debtor's spouse;
- (2) [He or she has] Has complied with all the requirements of this section;
- (3) [He or she has] Has obtained a judgment as set out in 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] 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] By the search required by this section, [he or she] has discovered no personal or real property or other assets at the time of the application 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.

(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 person aggrieved by subsection (e), that the person aggrieved has fully pursued and exhausted all remedies [available to the person aggrieved] for recovering the amount awarded by the judgment of the court. Upon a showing that the licensee is a debtor under the United States Bankruptcy Code[, ] (11 U.S.C. §101, et seq.), as amended, the person aggrieved shall have complied with the requirements stated in subsection (e)[, paragraphs] (4) and (5)[, ] and shall be deemed to have fully pursued and exhausted all remedies available to the person aggrieved for recovering the amount which may be awarded by the court."

SECTION 4. Section 468K-7.3, Hawaii Revised Statutes, is amended to read as follows:

**"[§468K-7.3] Revocation, [or] suspension, or denial of license. (a) The director may refuse to issue a license under this chapter, revoke any license issued under this chapter, or suspend the right of a travel agency or sales representative to use the license for violations of this chapter or its adopted rules, including:**

- (1) Making any statement, either orally or in writing, in connection with a sale or offer to sell travel services which has the tendency or capacity to mislead or deceive;
- (2) Omitting any material fact in connection with a sale or offer to sell travel services;
- (3) Failing to perform any term or condition of a contract for travel services, whether the term or condition was made in writing or orally by the travel agency or sales representative;

- (4) Failing to make a refund in a timely manner to a person with whom the travel agency or sales representative has contracted for travel services; provided that all refunds shall be made within thirty days from the day (A) The refund is requested in writing, or (B) the travel agency or sales representative has recovered the amount to be refunded or has obtained appropriate credits from the ultimate provider of travel service transportation carrier, or other source not including travel service wholesaler, whichever is later; provided further that the travel agency or sales representative shall exercise reasonable diligence in recovering or obtaining the amounts or credits;
- (5) Acting in participation or concert with any person who violates this chapter or its adopted rules;
- (6) Making any statement that a travel agency or sales representative is recommended, endorsed, or approved by the department; provided that a licensee may state that it is licensed by the department;
- (7) Committing any other conduct in connection with a sale or offer to sell travel services which constitutes fraudulent or dishonest dealings; [and]
- (8) Violating section 480-2 in connection with a sale or offer to sell travel services[.];
- (9) Misrepresenting a material fact in any application for issuance or renewal of a license; and
- (10) Failing to satisfy any judgment arising from services or materials rendered in the conduct of business as a travel agency or sales representative.

(b) The director may refuse to issue a license under this chapter to, revoke a license issued under this chapter of, or suspend the right to use a license issued under this chapter of any person who has been an officer, director, or partner of a corporation or partnership whose license hereunder is revoked or suspended; provided that a license may be denied, revoked, or suspended under this subsection only if the person participated in the acts or omissions which caused the revocation or suspension of the corporation's or partnership's license."

SECTION 5. Section 468K-9, Hawaii Revised Statutes, is amended to read as follows:

**"§468K-9 Subrogation to rights of creditor.** When, upon the order of the court, the trustees have paid from the travel agency recovery fund any sum to the judgment creditor, the trustees shall be subrogated to [all of] the rights of the judgment creditor to the extent of the amount of the payment, and the judgment creditor shall assign [all his or her] the judgment creditor's right, title, and interest in the judgment to the trustees [and any] in the amount of that payment from the trustees. Any amount and interest so recovered by the trustees on the judgment shall be deposited to the credit of the travel agency recovery fund."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 7, 1989.)