

ACT 62

S.B. NO. 1073

A Bill for an Act Relating to Travel Services.

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

SECTION 1. The purpose of this Act is to increase protections for consumers against the risk of loss from prepaid travel agency and charter tour services. Travel agencies and charter tour operators that are forced to suspend business operations due to mismanagement pose a significant threat to Hawaii's consumers. The growing incidence of these situations in recent years suggests that existing statutory requirements for travel agencies and charter tour operators do not offer adequate protections to consumers against the risk of loss from prepaid travel agency or charter tour services. Additional registration and client trust account record keeping requirements would ensure that travel agencies and charter tour operators maintain sound business practices. Added remedies, penalties, and specific prohibited acts would further safeguard consumers against the risk of financial loss.

SECTION 2. Chapter 468L, Hawaii Revised Statutes, is amended by adding to part I six new sections to be appropriately designated and to read as follows:

“§468L-A Denial of registration. The director may deny the registration of any travel agency or charter tour operator when a travel agency or charter tour operator, its directors, officers, owners, members, managers, or general partners:

- (1) Fails to meet the requirements for registration as provided in this chapter;
- (2) Fails to satisfy a civil fine, penalty, or restitution order arising out of any administrative or enforcement action brought by any governmental agency for conduct involving fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (3) Has a pending criminal, administrative, or enforcement proceeding brought against it in any jurisdiction for conduct involving fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (4) Has had an order or judgment entered against it in the past ten years in any criminal, administrative, or enforcement action for conduct involv-

- ing fraud or dishonest dealing, or for any violation of any state's travel agency or charter tour operator licensing laws or rules;
- (5) Fails to establish and maintain a client trust account in accordance with this chapter;
 - (6) Makes any false statement, representation, or certification in any document or record required to be maintained under this chapter;
 - (7) Fails to keep, maintain, and disclose upon request the books and records required to be maintained under this chapter; or
 - (8) Violates this chapter or any rule or order of the director.

§468L-B Record keeping requirements for client trust accounts. (a) A travel agency or charter tour operator shall maintain all books and records necessary to comply with this chapter and its rules.

(b) A travel agency or charter tour operator shall keep and maintain for a period of at least two years copies of all bank statements, deposit slips, canceled checks, drafts, and wire or electronic transaction documents relating to client trust accounts. The travel agency, charter tour operator, or any branch offices shall make such records available for inspection and audit within three business days of a written request by the director. Nothing herein shall prevent the director from inspecting and auditing the books and records of the travel agency, charter tour operator, or any branch offices, as otherwise provided under this chapter or its rules.

§468L-C Prohibited acts. (a)¹ No travel agency or charter tour operator shall engage in any of the following:

- (1) Selling or advertising to sell travel or charter tour services without first registering or renewing a registration with the director under this chapter;
- (2) Conducting business as a registered travel agency or charter tour operator without establishing and maintaining a client trust account in accordance with sections 468L-5, 468L-B, and 468L-24 and the rules relating to travel agencies and charter tour operators;
- (3) Failing to provide evidence of the establishment of a client trust account or to notify the department of the name of the financial institution at which the client trust account is held or of any change in the account number or location within three business days of any change in accordance with section 468L-5 and the rules relating to travel agencies and charter tour operators;
- (4) Making any false statement, representation, or certification in any application, document, or record required to be submitted, filed, or retained under this chapter;
- (5) Misrepresenting the consumer's right to cancel and to receive an appropriate refund or reimbursement as provided under this chapter;
- (6) Failing to provide a written statement to the consumer containing specific information as required by section 468L-4;
- (7) Failing to provide or otherwise comply with the disclosure requirements of sections 468L-6 and 468L-7;
- (8) Failing to make available to the director such books and records as may be requested by the director pursuant to sections 468L-3(6), 468L-B, and 468L-28 and the rules relating to travel agencies and charter tour operators; or
- (9) Otherwise violating any of the provisions of this chapter or its rules.

§468L-D Revocation, suspension, and renewal of registration. In addition to any other action authorized by law, the director may revoke, suspend, or refuse to

renew the registration of any travel agency or charter tour operator that violates this chapter.

§468L-E Violations; summary suspension; penalties. (a) Any violations by a travel agency or charter tour operator of any law or rule relating to client trust accounts shall constitute a prima facie showing of fraud on the part of the travel agency or charter tour operator.

(b) Upon a violation by a travel agency or charter tour operator of any law or rule relating to client trust accounts, the director may suspend or restrict the registration of the travel agency or charter tour operator as provided under section 436B-23. The director, as part of a proceeding brought under section 436B-23, may order a freeze of the bank or deposit accounts of the travel agency or charter tour operator.

(c) A travel agency or charter tour operator that violates any provision of this chapter may be fined not more than \$1,000 for each violation; provided that a charter tour operator also shall be assessed an administrative fine pursuant to section 468L-27 for any violation of that section.

§468L-F Court action for failure to maintain client trust accounts. (a) Whenever a travel agency or charter tour operator fails to establish or maintain a client trust account for the benefit of the consumers paying money to the travel agency pursuant to section 468L-5 or 486L-B² or the rules relating to travel agencies and charter tour operators, the director may file an action in circuit court to obtain an injunction or other appropriate order or judgment.

(b) The director shall not be required to post a bond in any action brought under this section.’’

SECTION 3. In codifying the new sections added to chapter 468L, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new Hawaii Revised Statutes sections in this Act.

SECTION 4. New statutory material is underscored.³

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

Notes

1. No subsection (b).
2. So in original.
3. Edited pursuant to HRS §23G-16.5.