

AMENDED IN ASSEMBLY APRIL 8, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1107

Introduced by Assembly Member Irwin

February 27, 2015

An act to amend Sections 17550.15 and 17550.44 of the Business and Professions Code, relating to sellers of travel.

LEGISLATIVE COUNSEL'S DIGEST

AB 1107, as amended, Irwin. Sellers of travel: regulation.

Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General. Existing law requires a seller of travel to deposit all sums received from any person or entity for air or sea transportation, or for any travel services offered by the seller of travel, and any refunds made by carries or providers of travel services, into a trust account, as specified. Existing law requires the seller of travel to file with the Attorney General an agreement allowing the Attorney General, a district attorney, or their representative to examine and obtain copies of all business records, including, but not limited to, those related to the trust account.

This bill would require the seller of travel to maintain all business records for a minimum period of 3 years. The bill would authorize the Attorney General to maintain an action for recovery of examination costs and expenses in any court of competent jurisdiction, as specified. The bill would require the seller of travel to pay for costs and expenses for any examination if the Attorney General bills the seller of travel, provided that the ~~Attorney General determines through the investigation~~

examination shows that the seller of travel has failed to comply with certain requirements.

Existing law creates the Travel Consumer Restitution Corporation, which assesses each registered seller of travel for both its operations and restitution funds. Existing law requires certain assessments to be due 45 days from the date the bill for that assessment is mailed.

This bill would instead require those assessments to be due 45 days from the date the bill for that assessment is sent to the seller of travel.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17550.15 of the Business and Professions
- 2 Code is amended to read:
- 3 17550.15. (a) This section applies to a seller of travel as
- 4 defined in Section 17550.1.
- 5 (b) The seller of travel shall deposit directly into a trust account
- 6 in a federally insured bank, savings and loan association, or credit
- 7 union 100 percent of all sums received from any person or entity,
- 8 including, but not limited to, those payments made in cash, by
- 9 credit card, or any other method of payment, for air or sea
- 10 transportation for any person, or for any travel services offered by
- 11 the seller of travel, and any refunds made by carriers or providers
- 12 of travel services. This subdivision does not require that a seller
- 13 of travel establish a separate trust account for each transaction.
- 14 (c) The seller of travel shall not in any manner encumber the
- 15 corpus of the trust account and shall not withdraw money therefrom
- 16 except as follows:
- 17 (1) In partial or full payment to the carrier for transportation,
- 18 or to the provider of travel services, for the services or
- 19 transportation purchased by the passenger.
- 20 (2) In partial or full payment to the carrier or provider of travel
- 21 services if payment is made by wire transfer directly to an account
- 22 of the Airlines Reporting Corporation, or by check or draft paid
- 23 to the Airlines Reporting Corporation for the transportation or
- 24 services contracted for by the passenger.
- 25 (3) Upon delivery of all tickets or vouchers necessary for the
- 26 passenger to obtain from the carrier or provider of travel services
- 27 the transportation or services purchased by the passenger, at which

1 time the seller of travel may withdraw the portion of the sum paid
2 by the passenger that is due the seller of travel as compensation
3 for sale of the transportation or travel services to that passenger.
4 Tickets or vouchers shall be deemed delivered if personally
5 delivered, turned over to an independent third-party delivery service
6 for regular delivery to the passenger at the address designated by
7 the passenger on the next business day, or deposited in the United
8 States mail with first-class postage prepaid.

9 (4) Upon full payment to the provider of transportation or travel
10 services, directly to the trust account identified in the registration
11 of another seller of travel to whom the funds are paid, or to another
12 registered seller of travel whose registration states that the other
13 registered seller of travel is exempt pursuant to subdivision (b) or
14 (c) of Section 17550.16 from the requirements of this section, of
15 the total amount that is required by the carrier or provider of
16 transportation or travel services or other registered seller of travel
17 in order to provide the transportation or services purchased by the
18 passenger, at which time the seller of travel may withdraw from
19 the trust account that portion of the sum paid by the passenger
20 which is commission due the seller of travel for sale of the
21 transportation or travel services to that passenger.

22 (5) To make refunds to the passenger.

23 (d) Subdivision (c) shall not prevent payment of the interest
24 earned on the trust account to the seller of travel.

25 (e) The seller of travel shall serve as trustee of the trust accounts
26 required by this article. If an individual person is the seller of
27 travel, the individual person shall be the trustee; if the seller of
28 travel is a corporation, partnership, limited liability company, or
29 other legal entity, a managing partner or partners, or the chief
30 executive officer of the corporation, or executive officer or manager
31 of a limited liability company shall be the trustee. The trustee may
32 designate in writing that an officer or employee may manage the
33 trust account if that officer or employee is under the trustee's
34 supervision and control, and the original of that writing is on file
35 with the Attorney General's office.

36 (f) (1) Except as otherwise provided in this section, all trust
37 accounts required by this article shall be maintained at a branch
38 of a federally insured bank, savings and loan association, or credit
39 union.

1 (2) The seller of travel shall file with the Attorney General an
2 irrevocable agreement in writing allowing the Attorney General,
3 a district attorney, or their representatives, upon written request,
4 to examine and obtain copies of all business records, including,
5 but not limited to, those related to the trust account wherever those
6 records may be, and including, but not limited to, those records
7 relating to any travel business account, or any account used for
8 any travel business transaction, or account to which trust funds
9 have been deposited. The statement shall indicate that the
10 authorization remains in effect as long as the seller of travel,
11 financial institution, or other custodian of records retains records.

12 (3) A seller of travel shall maintain all business records
13 described in paragraph (2) for a minimum period of three years.

14 (4) The Attorney General may maintain an action for recovery
15 of examination costs and expenses in any court of competent
16 jurisdiction, and may recover his or her reasonable costs and
17 attorney's fees as an item of costs, as provided for in paragraph
18 (10) of subdivision (a) and paragraph (5) of subdivision (c) of
19 Section 1033.5 of the Code of Civil Procedure. Costs and expenses
20 for an examination under this section shall be paid for by the seller
21 of travel if the Attorney General bills the seller of travel for those
22 costs and expenses, provided that the ~~Attorney General determines~~
23 ~~through the examination~~ *shows* that the seller of travel has failed
24 to comply with any requirements of this chapter.

25 (g) Every seller of travel has a fiduciary responsibility with
26 respect to all sums received for transportation or travel services.

27 (h) The following are deemed to be held in trust for passengers:

28 (1) All sums received by the seller of travel for transportation
29 or travel services whether or not required to be deposited in an
30 actual trust account and regardless of whether any of these sums
31 were required to be deposited or actually were deposited in a trust
32 account.

33 (2) All property with which any of the sums described in
34 paragraph (1) has been commingled if any of these sums cannot
35 be identified because of the commingling.

36 (i) Upon any judicially ordered distribution of any money or
37 property required to be held in trust and after all expenses of
38 distribution approved by the court have been paid, every passenger
39 has a claim on the trust for payments made for transportation and
40 other travel services not provided. Unless a passenger can identify

1 his or her funds in the trust within the time established by the court,
2 each passenger shall receive a proportional share based on the
3 amount paid.

4 (j) The seller of travel is not required to comply with the direct
5 deposit requirement set forth in subdivision (b) if all of the
6 following apply:

7 (1) The payment is made by credit card.

8 (2) The seller of travel does not deposit, negotiate, or factor the
9 credit card charge or otherwise seek or obtain payment of the credit
10 card charge or the crediting of the amount of the credit card charge
11 to any account over which the seller of travel has any control.

12 (3) (A) If the charge includes transportation, the carrier that is
13 to provide the transportation processes the credit card charge.

14 (B) If the charge is only for services, the provider of services
15 processes the credit card charge.

16 (k) In lieu of the trust account required by this article, an
17 adequate bond as set forth in Section 17550.11 may be maintained
18 by the seller of travel. Prior to the advertisement of transportation
19 or services, or both, by the seller of travel, the seller of travel shall
20 file a copy of that bond with the Attorney General.

21 SEC. 2. Section 17550.44 of the Business and Professions
22 Code is amended to read:

23 17550.44. (a) In addition to the assessments required by
24 Section 17550.43, the Travel Consumer Restitution Corporation
25 shall bill and collect from each participant an annual assessment
26 that in the aggregate shall consist of assessments for the operations
27 fund and the restitution fund. For each participant, the due date of
28 that annual assessment shall be 30 days prior to the annual renewal
29 date for registration pursuant to Section 17550.20 or 45 days after
30 billing, whichever is later. For a participant registering for the first
31 time, the assessments required by Section 17550.43 shall be due
32 10 days prior to the seller of travel doing business in this state. A
33 late fee of five dollars (\$5) per day, up to a maximum of five
34 hundred dollars (\$500), shall be paid for each day after the due
35 date specified in this section until the assessment is paid.

36 (b) The annual assessment for the operations fund shall be
37 determined no later than January 15 of each year for the next fiscal
38 year in an amount that does not exceed the amount necessary to
39 fund the operations and administration of the corporation, based
40 upon the annual operational budget required by subdivision (a) of

1 Section 17550.43, and shall become effective immediately. The
2 annual assessment for the operations fund shall not exceed
3 thirty-five dollars (\$35) per year for each location in the state from
4 which a participant does business.

5 (c) If, as of January 15 of any year, the balance in the restitution
6 fund is less than one million six hundred thousand dollars
7 (\$1,600,000), the Travel Consumer Restitution Corporation shall
8 make an assessment of participants, up to a maximum amount of
9 two hundred dollars (\$200) for each location in the state from
10 which a participant does business, to bring the restitution fund to
11 an expected balance of one million six hundred thousand dollars
12 (\$1,600,000). Every participant's assessment shall be determined
13 pro rata based upon the ratio of the number of locations in the state
14 from which the participant does business to the total number of
15 locations for all participants as of the preceding December 15.

16 (d) If, on May 1 or October 15 of any year, the balance in the
17 restitution fund is less than nine hundred thousand dollars
18 (\$900,000), the corporation shall make an emergency assessment
19 of participants, not more than twice per year, up to a maximum
20 amount of one hundred fifty dollars (\$150) per year for each
21 location in the state from which the participant does business, for
22 deposit in the trust account to return the level of the restitution
23 fund to an expected balance of one million six hundred thousand
24 dollars (\$1,600,000). The corporation shall estimate the total cost
25 of billing, collecting, and processing the emergency restitution
26 fund assessment and shall assess and collect, together with the
27 emergency restitution fund assessment, an emergency operations
28 fund assessment that is in the aggregate sufficient to offset the
29 estimated cost. Each participant's assessments shall be determined
30 pro rata based upon the ratio of the number of locations in the state
31 from which the participant does business to the total number of
32 locations for all participants as of the first day of the preceding
33 month. The board of directors shall adopt rules for the notification
34 of emergency assessments.

35 (e) In addition to the assessments required by Section 17550.43
36 and subdivision (d), if at any time during the fiscal year the board
37 of directors of the Travel Consumer Restitution Corporation
38 determines that the operations fund will be insufficient to pay the
39 costs of operations and administration for the current or next fiscal

1 year, the corporation, as determined by the board of directors, shall
2 do either or both of the following: ~~(A) make~~
3 (1) *Make* an emergency assessment of participants, not more
4 than once per fiscal year, up to a maximum amount of sixty-five
5 dollars (\$65) per year for each location in the state from which a
6 participant does business. The emergency assessment may be billed
7 and collected either on an emergency basis from all participants
8 upon the making of the assessment, or in conjunction with each
9 participant's annual assessment pursuant to subdivision ~~(a)~~ of
10 Section 17550.44, ~~(B) transfer any (a)~~.
11 (2) *Transfer any* or all interest earned on the Restitution Fund
12 to the Operations Fund, provided that no transfer results in a
13 restitution fund balance of less than one million two hundred
14 thousand dollars (\$1,200,000).
15 (f) The assessment required by subdivision (d) or (e) shall be
16 due 45 days from the date the bill for that assessment is sent to the
17 seller of travel by the Travel Consumer Restitution Corporation.
18 A late fee of five dollars (\$5) per day, up to a maximum of five
19 hundred dollars (\$500), shall be paid for each day after the due
20 date specified in this section until the assessment is paid.
21 (g) The Travel Consumer Restitution Fund shall report to the
22 office of the Attorney General each levy of assessment within 10
23 business days after the levy.