

Assembly Bill No. 1107

Passed the Assembly May 14, 2015

Chief Clerk of the Assembly

Passed the Senate August 20, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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.

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

SECTION 1. Section 17550.15 of the Business and Professions Code is amended to read:

17550.15. (a) This section applies to a seller of travel as defined in Section 17550.1.

(b) The seller of travel shall deposit directly into a trust account in a federally insured bank, savings and loan association, or credit union 100 percent of all sums received from any person or entity, including, but not limited to, those payments made in cash, by credit card, or any other method of payment, for air or sea transportation for any person, or for any travel services offered by the seller of travel, and any refunds made by carriers or providers of travel services. This subdivision does not require that a seller of travel establish a separate trust account for each transaction.

(c) The seller of travel shall not in any manner encumber the corpus of the trust account and shall not withdraw money therefrom except as follows:

(1) In partial or full payment to the carrier for transportation, or to the provider of travel services, for the services or transportation purchased by the passenger.

(2) In partial or full payment to the carrier or provider of travel services if payment is made by wire transfer directly to an account of the Airlines Reporting Corporation, or by check or draft paid to the Airlines Reporting Corporation for the transportation or services contracted for by the passenger.

(3) Upon delivery of all tickets or vouchers necessary for the passenger to obtain from the carrier or provider of travel services the transportation or services purchased by the passenger, at which time the seller of travel may withdraw the portion of the sum paid by the passenger that is due the seller of travel as compensation for sale of the transportation or travel services to that passenger. Tickets or vouchers shall be deemed delivered if personally delivered, turned over to an independent third-party delivery service for regular delivery to the passenger at the address designated by the passenger on the next business day, or deposited in the United States mail with first-class postage prepaid.

(4) Upon full payment to the provider of transportation or travel services, directly to the trust account identified in the registration of another seller of travel to whom the funds are paid, or to another

registered seller of travel whose registration states that the other registered seller of travel is exempt pursuant to subdivision (b) or (c) of Section 17550.16 from the requirements of this section, of the total amount that is required by the carrier or provider of transportation or travel services or other registered seller of travel in order to provide the transportation or services purchased by the passenger, at which time the seller of travel may withdraw from the trust account that portion of the sum paid by the passenger which is commission due the seller of travel for sale of the transportation or travel services to that passenger.

(5) To make refunds to the passenger.

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

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

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

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

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

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

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

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

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

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

(i) Upon any judicially ordered distribution of any money or property required to be held in trust and after all expenses of distribution approved by the court have been paid, every passenger has a claim on the trust for payments made for transportation and other travel services not provided. Unless a passenger can identify his or her funds in the trust within the time established by the court, each passenger shall receive a proportional share based on the amount paid.

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

(1) The payment is made by credit card.

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

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

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

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

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

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

(b) The annual assessment for the operations fund shall be determined no later than January 15 of each year for the next fiscal year in an amount that does not exceed the amount necessary to fund the operations and administration of the corporation, based upon the annual operational budget required by subdivision (a) of Section 17550.43, and shall become effective immediately. The annual assessment for the operations fund shall not exceed thirty-five dollars (\$35) per year for each location in the state from which a participant does business.

(c) If, as of January 15 of any year, the balance in the restitution fund is less than one million six hundred thousand dollars (\$1,600,000), the Travel Consumer Restitution Corporation shall make an assessment of participants, up to a maximum amount of two hundred dollars (\$200) for each location in the state from which a participant does business, to bring the restitution fund to an expected balance of one million six hundred thousand dollars

(\$1,600,000). Every participant's assessment shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all participants as of the preceding December 15.

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

(e) In addition to the assessments required by Section 17550.43 and subdivision (d), if at any time during the fiscal year the board of directors of the Travel Consumer Restitution Corporation determines that the operations fund will be insufficient to pay the costs of operations and administration for the current or next fiscal year, the corporation, as determined by the board of directors, shall do either or both of the following:

(1) Make an emergency assessment of participants, not more than once per fiscal year, up to a maximum amount of sixty-five dollars (\$65) per year for each location in the state from which a participant does business. The emergency assessment may be billed and collected either on an emergency basis from all participants upon the making of the assessment, or in conjunction with each participant's annual assessment pursuant to subdivision (a).

(2) Transfer any or all interest earned on the Restitution Fund to the Operations Fund, provided that no transfer results in a

restitution fund balance of less than one million two hundred thousand dollars (\$1,200,000).

(f) The assessment required by subdivision (d) or (e) shall be due 45 days from the date the bill for that assessment is sent to the seller of travel by the Travel Consumer Restitution Corporation. A late fee of five dollars (\$5) per day, up to a maximum of five hundred dollars (\$500), shall be paid for each day after the due date specified in this section until the assessment is paid.

(g) The Travel Consumer Restitution Fund shall report to the office of the Attorney General each levy of assessment within 10 business days after the levy.

Approved _____, 2015

Governor