

AMENDED IN SENATE MAY 31, 2016
AMENDED IN ASSEMBLY MARCH 10, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2106

Introduced by Assembly Member Irwin

February 17, 2016

An act to amend Sections 17550, 17550.20, 17550.21, and 17550.37 of the Business and Professions Code, relating to sellers of travel.

LEGISLATIVE COUNSEL'S DIGEST

AB 2106, as amended, Irwin. Sellers of travel: registration.

Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General. Under existing law, the Travel Consumer Restitution Corporation provides restitution to a person aggrieved by the failure of a seller of travel to refund payments for air or sea transportation or travel services, subject to specified restrictions. Existing law requires the Travel Consumer Restitution Corporation to assess, as specified, sellers of travel for the corporation's operations fund and the Travel Consumer Restitution Fund.

Existing law requires sellers of travel to register by filing with the Consumer Law Section specified fees for each location of business and specified information about the seller of travel including its business form, its place of organization, and certain personal identification numbers of each of its owners and principals.

This bill would also require sellers of travel to file with the Consumer Law Section, *the name, address, and telephone number of each person in a single-member limited liability corporation or "S" corporation*

with whom the seller of travel contracts and the file number issued to the seller of travel by the Secretary of State.

Existing law prohibits the issuance, approval, or renewal of registration of a seller of travel until specified filing and late fees have been paid.

The bill additionally would prohibit the issuance, approval, or renewal of registration until the seller of travel has paid any outstanding assessments due to the Travel Consumer Restitution Corporation.

Existing law requires the Attorney General to suspend the registration of a seller of travel who fails to make required payments to the Travel Consumer Restitution Corporation or who submits a check in payment of a registration fee or late fee that is not honored by the institution on which it is drawn.

The bill would require the Attorney General to suspend the registration of a seller of travel who fails to file with the Consumer Law Section, the file number issued to the seller of travel by the Secretary of State.

Existing law restricts refund payments from the Travel Consumer Restitution Fund to persons aggrieved by sellers of travel who, at the time of sale, were paid-up participants in the fund. Under existing law, any person aggrieved who files a claim for payment from the fund thereby waives his or her right to bring an action at law or equity against the seller of travel as to that claim, as specified, unless the seller of travel was not a paid-up participant.

The bill would instead allow refund payments to persons aggrieved by sellers of travel who had been paid-up participants at any time during ~~the 12 period commencing with the 18~~ months previous to the time of ~~sale. sale, and ending with the expiration of the applicable time period provided for filing an action.~~ Under the bill, any person aggrieved who files a claim for payment from the fund would thereby waive his or her right to bring an action at law or equity against the seller of travel as to that claim, as specified, unless the seller of travel had not been a paid-up participant at any time during the ~~12~~ months previous to the time of sale.

Existing law exempts from the provisions regulating sellers of travel an individual, natural person who conducts his or her activities in accordance with specified procedures.

This bill would also exempt single-member limited liability corporations and “S” Corporations *whose member is a natural person* that conduct their activities in accordance with those procedures.

The bill would correct an incorrect cross-reference and make other nonsubstantive changes.

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 of the Business and Professions
2 Code is amended to read:

3 17550. (a) The Legislature finds and declares all of the
4 following:

5 (1) Certain advertising, sales, and business practices of sellers
6 of travel have worked financial hardship upon the people of this
7 state.

8 (2) The travel business has a significant impact upon the
9 economy and well-being of this state and its people.

10 (3) Problems have arisen that are peculiar to sellers of travel
11 business.

12 (4) The public welfare requires regulation of sellers of travel in
13 order to eliminate unfair advertising, sales, and business practices,
14 to establish standards that will safeguard the people against
15 financial hardship, to encourage competition, fair dealing, and
16 prosperity in the travel business, and to provide certain and reliable
17 funding for the seller of travel registration program and
18 enforcement by the office of the Attorney General of this article.

19 (b) It is the intent of the Legislature in enacting this article that
20 the Department of Justice, to the extent that resources are available,
21 work together with representatives of the affected business
22 community to develop sample forms that will, to the maximum
23 extent possible, enable sellers of travel to comply with the
24 requirement to provide to persons making payment the information
25 required by paragraph (1) of subdivision (a) of Section 17550.13,
26 in a manner that is simplified, efficient, and nonduplicative, and
27 in a manner that recognizes the particular burdens and situations
28 that may exist for small sellers of travel in their efforts to comply
29 with the provisions of that section.

30 SEC. 2. Section 17550.20 of the Business and Professions
31 Code is amended to read:

32 17550.20. (a) (1) Not less than 10 days prior to doing business
33 in this state, a seller of travel shall apply for registration with the

1 office of the Attorney General by filing with the Consumer Law
2 Section the information required by Section 17550.21 and paying
3 the following fees, as applicable:

4 (A) A filing fee of one hundred dollars (\$100) for each location
5 from which the seller of travel conducts business.

6 (B) A late fee of five dollars (\$5) per day, up to a maximum of
7 five hundred dollars (\$500), for each day after the time specified
8 by this section until the filing fee and the information required by
9 Section 17550.21 are received.

10 (2) A seller of travel may annually renew its registration by
11 making the filing required by Section 17550.21 and paying the
12 filing fees and late fees required by paragraph (1).

13 (3) A registration shall not be issued, approved, or renewed until
14 the late fee, the filing and late fees for each year the seller of travel
15 operated without being registered, and any outstanding assessments
16 due to the Travel Consumer Restitution Corporation as required
17 by Sections 17550.43 and 17550.44 have been paid.

18 (4) A seller of travel shall be deemed to do business in this state
19 if the seller of travel solicits business from locations in this state
20 or solicits prospective purchasers who are located in this state.

21 (b) Registration shall be valid for one year from the effective
22 date thereof shown on the registration issued by the office of the
23 Attorney General.

24 (c) Whenever, prior to expiration of a seller of travel's annual
25 registration, there is a material change in the information required
26 by Section 17550.21, the seller of travel shall, within 10 days, file
27 an addendum updating the information with the Consumer Law
28 Section of the office of the Attorney General.

29 (d) (1) Not less than 10 days prior to the transfer or sale of any
30 interest in a seller of travel, the selling or transferring owner shall
31 file with the office of the Attorney General, Seller of Travel
32 Program, a notice of encumbrance, sale, or transfer of ownership,
33 using a form provided for that purpose by the office of the Attorney
34 General. The notice shall provide the information required pursuant
35 to subdivision (d) of Section 17550.21 as to each transferee.

36 (2) Until the time the notice of encumbrance, sale, or transfer
37 of ownership required in paragraph (1) is filed as required, the
38 selling, encumbering, or transferring owner is responsible for all
39 acts of and obligations imposed by law on the transferee sellers of

1 travel to the same extent as they would have been responsible had
2 there been no transfer, sale, or encumbrance.

3 (e) (1) The office of the Attorney General shall suspend the
4 registration of a seller of travel who does any of the following:

5 (A) Fails to make any payment required pursuant to Article 2.7
6 (commencing with Section 17550.35).

7 (B) Submits a check in payment of a registration fee or late fee
8 required by this section that is not honored by the institution on
9 which it is drawn.

10 (C) Fails to provide the file number issued by the Secretary of
11 State to the seller of travel, as required by subdivision (l) of Section
12 17550.21.

13 (2) The Attorney General shall provide written notice to the
14 seller of travel by first-class mail at the seller of travel's place of
15 business set forth in the registration statement that the seller of
16 travel's registration has been suspended until all fees that are due
17 have been paid. The registration of the seller of travel shall be
18 suspended until all such payments due have been collected.

19 (f) The Attorney General may, at his or her discretion and
20 subject to supervision by the Attorney General or his or her
21 delegate, contract out all or any part of the processing of
22 registrations required by this section.

23 (g) This section does not apply to an individual, natural person
24 who, or a single-member limited liability corporation or "S"
25 corporation *whose member is a natural person* that, meets all of
26 the following conditions:

27 (1) Has a written contract with a registered seller of travel to
28 act on that registered seller of travel's behalf in offering or selling
29 air or sea transportation and other travel goods or services in
30 connection with the transportation.

31 (2) Acts only on behalf of a registered seller of travel with whom
32 the person ~~or corporation~~ has a written contract in the offer or sale
33 to a passenger of air or sea transportation and other goods or
34 services in connection with the transportation and sells no other
35 air or sea transportation or travel services to that passenger.

36 (3) Provides air or sea transportation or travel services that are
37 offered or sold pursuant to the official agency appointment of the
38 registered seller of travel with whom the person ~~or corporation~~ has
39 a written contract.

1 (4) Does not receive any consideration for air or sea
2 transportation or other travel services from the passenger.

3 (5) Requires the passenger to pay all consideration for air or
4 sea transportation or other travel services directly to the air carrier
5 or ocean carrier or to the registered seller of travel.

6 (6) Discloses both of the following:

7 (A) The person ~~or corporation~~ is acting on behalf of a registered
8 seller of travel.

9 (B) The name, address, telephone number, and registration
10 number of the registered seller of travel on whose behalf the person
11 ~~or corporation~~ is acting.

12 The person ~~or corporation~~ shall make the disclosures required
13 by this paragraph in writing to the passenger at the same time the
14 passenger receives notice under Section 17550.13. If the person
15 ~~or corporation~~ transacts business in this state on the Internet, the
16 disclosures also shall appear on the home page of the person's ~~or~~
17 ~~corporation's~~ Internet Web site and shall be prominently set forth
18 in the first electronic mail message sent to the passenger that refers
19 to the passenger's purchase of air or sea transportation or travel
20 services.

21 (h) Whenever the Attorney General determines that a registration
22 application is accurate and complete, the application shall be
23 processed and a registration certificate shall be issued to the seller
24 of travel within 21 days.

25 SEC. 3. Section 17550.21 of the Business and Professions
26 Code is amended to read:

27 17550.21. Each filing pursuant to Section 17550.20 shall
28 contain the following information:

29 (a) The name or names of the seller of travel, including the name
30 under which the seller of travel is doing or intends to do business,
31 if different from the name of the seller of travel.

32 (b) The seller of travel's business form and place of organization
33 and, if operating under a fictitious business name, the location
34 where the fictitious name has been registered. If the seller of travel
35 does business in California from one or more locations in this state
36 but does not maintain its principal place of business in this state,
37 the seller of travel shall state whether it meets the requirements of
38 paragraph (16) of subdivision (e) of Section 17511.1.

39 (c) The complete street address or addresses of all locations
40 from which the seller of travel will be conducting business,

1 including, but not limited to, locations at which telephone calls
2 will be received from, or made to, passengers or other sellers of
3 travel. The statement shall designate which location is the principal
4 place of business.

5 (d) The complete business and residential addresses and
6 telephone numbers, the driver's license number and state of
7 issuance or equivalent personal identification, the social security
8 number, and the date of birth of each owner and principal of the
9 seller of travel. "Owner" means a person who owns or controls 10
10 percent or more of the equity of, or otherwise has claim to 10
11 percent or more of the net income of, a seller of travel. "Principal"
12 means an owner, an officer of a corporation, a general partner of
13 a partnership, or a sole proprietor of a sole proprietorship.

14 (e) A statement as to whether the seller of travel, any owner, or
15 principal, or any other seller of travel owned or managed by any
16 owner or principal of the seller of travel, or the seller of travel
17 itself has had entered against that person or entity any judgment,
18 including a stipulated judgment, order, made a plea of nolo
19 contendere, or been convicted of any criminal violation. The
20 statement shall identify the person, the court or administrative
21 agency rendering the judgment, order, or conviction, the docket
22 number of the matter, and the date of the judgment, order, or
23 conviction; where the judgment, order, or record of conviction is
24 filed; and the nature of the case or judgment. This subdivision does
25 not require disclosure of marital dissolution, child support, or child
26 custody proceedings.

27 (f) A copy of the travel certificates, if any, that are or will be
28 sold, marketed, or distributed to any person or entity by the seller
29 of travel.

30 (g) The seller of travel shall file with the Attorney General a
31 signed and dated statement providing the following:

32 (1) The account number of each trust account required by this
33 article.

34 (2) The name and address of each financial institution at which
35 the seller of travel maintains a trust account required by this article.

36 (3) Any registration number issued to the seller of travel by the
37 Airline Reporting Corporation or the International Association of
38 Travel Agents Network.

39 (4) A consent form consenting to the Attorney General, a district
40 attorney, or their representatives obtaining directly from the

1 Airlines Reporting Corporation, International Association of Travel
2 Agents Network, a seller of transportation, provider of
3 transportation, provider of travel services, and any financial
4 institution where passenger funds have been deposited, any
5 information related to an investigation of a seller of travel's
6 compliance with this section. The consent form shall be provided
7 by the Attorney General. If a bond is maintained in lieu of the trust
8 account, a copy of that bond shall be filed with the Attorney
9 General.

10 (h) A statement signed by each owner and principal granting
11 permission to the office of the Attorney General to obtain from
12 any financial institution or credit union at which any trust account
13 required by Section 17550.15 is maintained, information relating
14 to that trust account, as set forth in paragraph (2) of subdivision
15 (f) of Section 17550.15.

16 (i) The name, address, and telephone number of each person
17 described in subdivision (g) of Section 17550.20 with whom the
18 seller of travel contracts.

19 (j) *The name, address, and telephone number of each person*
20 *in a single-member limited liability corporation or "S" corporation*
21 *described in subdivision (g) of Section 17550.20 with whom the*
22 *seller of travel contracts.*

23 ~~(j)~~
24 (k) If at the time of registration renewal, no change has occurred
25 to the information provided in the last filed complete registration
26 statement and the permission described in subdivision (h) has not
27 expired, the seller of travel may, instead of filing a registration
28 statement containing the information required by subdivisions (a)
29 to ~~(i)~~, (j), inclusive, file a statement attesting to the continued
30 accuracy of the information in the last filed complete registration
31 statement. The attestation shall be in a form specified by the
32 Attorney General and verified as described in subdivision ~~(k)~~: (l).

33 ~~(k)~~
34 (l) The information required by this section shall be verified by
35 a declaration signed and dated by each owner and principal of the
36 seller of travel, or in the case of a registered seller of travel that
37 does business in California, from one or more locations in
38 California, and that meets the requirements of paragraph (16) of
39 subdivision (e) of Section 17511.1, by a duly authorized officer
40 of the corporation, under penalty of perjury pursuant to the laws

1 of the State of California. The declaration shall specify the date
2 and location of signing. Upon reregistration by a previously
3 registered seller of travel, the information required by this section
4 may be verified by the chief executive officer of a corporation,
5 managing partner of a partnership, or manager of a limited liability
6 company.

7 (†)

8 (m) The file number issued by the Secretary of State to the seller
9 of travel.

10 SEC. 4. Section 17550.37 of the Business and Professions
11 Code is amended to read:

12 17550.37. (a) “Person aggrieved,” as used in this article, means
13 a passenger, as defined in Section 17550.3, located in California
14 at the time of sale, or a person located in California at the time of
15 sale who made any payment on behalf of the passenger for air or
16 sea transportation or travel services, who has sustained a loss as a
17 result of the failure of a seller of travel to refund payments made
18 by or on behalf of a passenger as payment for air or sea
19 transportation or travel services, where a refund is due as a result
20 of the bankruptcy, insolvency, cessation of operations, or material
21 failure to provide the transportation or travel services purchased
22 by the passenger, regardless of whether the passenger or a person
23 making payment on behalf of the passenger initially contracted
24 with that seller of travel. “Loss,” as used herein, shall be limited
25 to losses that are incurred in a transaction with a seller of travel
26 who, at the time of sale, was registered pursuant to Section
27 17550.20, and ~~who, who had been a paid participant~~ at any time
28 during the ~~12~~ *period commencing with 18 months previous to the*
29 *time of sale, had been a paid-up participant. and ending with the*
30 *expiration of the applicable time period provided in law for the*
31 *filing of a civil, administrative, or other available action under*
32 *the law that is available to the person aggrieved.* “Person
33 aggrieved” shall not mean or include a passenger, or person making
34 payment on behalf of a passenger, in a transaction where the air
35 or sea transportation or travel services are furnished by a business
36 entity that is located and providing transportation or travel services
37 outside of the United States and is not in compliance with Article
38 2.6 (commencing with Section 17550).

39 (b) Any person aggrieved who files a claim for payment from
40 the Travel Consumer Restitution Fund thereby waives his or her

1 right to bring any action at law or equity that is against the seller
2 of travel as to whom the claim is made and arises from the
3 transaction that is the subject of the claim against the restitution
4 fund. The claim form required by Section 17550.46 shall include
5 a clear and conspicuous notice of the waiver.

6 (c) The waiver of rights provided for by subdivision (b) shall
7 not apply to any claimant whose claim is denied on any of the
8 following grounds, as set forth in the statement of decision required
9 by subdivision (d) of Section 17550.47:

10 (1) The seller of travel had not been a paid-up participant in the
11 Travel Consumer Restitution Fund at any time during the ~~12~~
12 ~~months previous to the period of time of sale, as required by~~
13 *provided in* subdivision (a).

14 (2) The seller of travel was not, at the time of sale, registered
15 pursuant to Section 17550.20.

16 (3) The claimant was not located in California at the time of
17 sale, as required by subdivision (a).