

Assembly Bill No. 2106

CHAPTER 517

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

[Approved by Governor September 23, 2016. Filed with Secretary of State September 23, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2106, 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 the sole member or the sole shareholder of a limited liability company or "S" corporation, as described, with which the seller of travel contracts and the file number assigned to the seller of travel by the Secretary of State or the Franchise Tax Board.

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 provide the Consumer Law Section the file number assigned to the seller of travel by the Secretary of State or the Franchise Tax Board.

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 period commencing with the 18 months previous to the time of 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 that time period.

Existing law exempts from the provisions regulating sellers of travel an individual, natural person who meets specified conditions.

This bill instead would exempt from those provisions a person who is an individual, a single-member limited liability company whose sole member is an individual, or a single-shareholder “S” corporation whose sole shareholder is an individual that meets specified conditions.

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

This bill would incorporate additional changes to Section 17550.20 of the Business and Professions Code proposed by AB 2138 that would become operative if this bill and AB 2138 are enacted and this bill is enacted last.

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

SECTION 1. Section 17550 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

17550.20. (a) (1) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and paying the following fees, as applicable:

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

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

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

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

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

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

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

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

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

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

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

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

(C) Fails to provide the file number assigned by the Secretary of State or the Franchise Tax Board to the seller of travel, as required by subdivision (m) of Section 17550.21.

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

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

(g) This section does not apply to a person who is an individual, a single-member limited liability company whose sole member is an individual, or a single-shareholder "S" corporation whose sole shareholder is an individual, that meets all of the following:

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

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

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

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

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

(6) Discloses both of the following:

(A) The person is acting on behalf of a registered seller of travel.

(B) The name, address, telephone number, and registration number of the registered seller of travel on whose behalf the person is acting.

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

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

SEC. 2.5. Section 17550.20 of the Business and Professions Code is amended to read:

17550.20. (a) (1) Not less than 10 days prior to doing business in this state, a seller of travel shall apply for registration with the office of the Attorney General by filing with the Consumer Law Section the information required by Section 17550.21 and paying the following fees, as applicable:

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

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

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

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

(4) A seller of travel shall be deemed to do business in this state if the seller of travel solicits business from locations in this state regardless of the geographic location of the prospective purchaser including persons located outside of this state or the country or solicits prospective purchasers who are located in this state.

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

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

(d) (1) Not less than 10 days prior to the transfer or sale of any interest in a seller of travel, the selling or transferring owner shall file with the office of the Attorney General, Seller of Travel Program, a notice of encumbrance,

sale, or transfer of ownership, using a form provided for that purpose by the office of the Attorney General. The notice shall provide the information required pursuant to subdivision (d) of Section 17550.21 as to each transferee.

(2) Until the time the notice of encumbrance, sale, or transfer of ownership required in paragraph (1) is filed as required, the selling, encumbering, or transferring owner is responsible for all acts of and obligations imposed by law on the transferee sellers of travel to the same extent as they would have been responsible had there been no transfer, sale, or encumbrance.

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

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

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

(C) Fails to provide the file number assigned by the Secretary of State or the Franchise Tax Board to the seller of travel, as required by subdivision (m) of Section 17550.21.

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

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

(g) This section does not apply to a person who is an individual, a single-member limited liability company whose sole member is an individual, or a single-shareholder "S" corporation whose sole shareholder is an individual, that meets all of the following:

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

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

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

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

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

(6) Discloses both of the following:

(A) The person is acting on behalf of a registered seller of travel.

(B) The name, address, telephone number, and registration number of the registered seller of travel on whose behalf the person is acting.

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

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

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

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

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

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

(c) The complete street address or addresses of all locations from which the seller of travel will be conducting business, including, but not limited to, locations at which telephone calls will be received from, or made to, passengers or other sellers of travel. The statement shall designate which location is the principal place of business.

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

(e) A statement as to whether the seller of travel, any owner, or principal, or any other seller of travel owned or managed by any owner or principal of the seller of travel, or the seller of travel itself has had entered against that person or entity any judgment, including a stipulated judgment, order,

made a plea of nolo contendere, or been convicted of any criminal violation. The statement shall identify the person, the court or administrative agency rendering the judgment, order, or conviction, the docket number of the matter, and the date of the judgment, order, or conviction; where the judgment, order, or record of conviction is filed; and the nature of the case or judgment. This subdivision does not require disclosure of marital dissolution, child support, or child custody proceedings.

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

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

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

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

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

(4) A consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, provider of travel services, and any financial institution where passenger funds have been deposited, any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

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

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

(j) The name, address, and telephone number of the sole member or the sole shareholder of a limited liability company or "S" corporation described in subdivision (g) of Section 17550.20 with which the seller of travel contracts.

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

(l) The information required by this section shall be verified by a declaration signed and dated by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date and location of signing. Upon reregistration by a previously registered seller of travel, the information required by this section may be verified by the chief executive officer of a corporation, managing partner of a partnership, or manager of a limited liability company.

(m) The file number assigned by the Secretary of State or the Franchise Tax Board to the seller of travel.

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

17550.37. (a) “Person aggrieved,” as used in this article, means a passenger, as defined in Section 17550.3, located in California at the time of sale, or a person located in California at the time of sale who made any payment on behalf of the passenger for air or sea transportation or travel services, who has sustained a loss as a result of the failure of a seller of travel to refund payments made by or on behalf of a passenger as payment for air or sea transportation or travel services, where a refund is due as a result of the bankruptcy, insolvency, cessation of operations, or material failure to provide the transportation or travel services purchased by the passenger, regardless of whether the passenger or a person making payment on behalf of the passenger initially contracted with that seller of travel. “Loss,” as used herein, shall be limited to losses that are incurred in a transaction with a seller of travel who, at the time of sale, was registered pursuant to Section 17550.20, and who had been a paid participant at any time during the period commencing with 18 months previous to the time of sale, and ending with the expiration of the applicable time period provided in law for the filing of a civil, administrative, or other available action under the law that is available to the person aggrieved. “Person aggrieved” shall not mean or include a passenger, or person making payment on behalf of a passenger, in a transaction where the air or sea transportation or travel services are furnished by a business entity that is located and providing transportation or travel services outside of the United States and is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to bring any action at law or equity that is against the seller of travel as to whom the claim is made and arises from the transaction that is the subject of the claim against the restitution fund. The claim form required by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as

set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel had not been a paid-up participant in the Travel Consumer Restitution Fund at any time during the period of time provided in subdivision (a).

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

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

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 17550.20 of the Business and Professions Code proposed by both this bill and Assembly Bill 2138. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 17550.20 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 2138, in which case Section 2 of this bill shall not become operative.