

AMENDED IN ASSEMBLY JULY 1, 1997

AMENDED IN SENATE MAY 14, 1997

SENATE BILL

No. 1348

**Introduced by Committee on Business and Professions
(Senators Polanco (Chair), Ayala, Craven, Greene,
Johannessen, Kelley, O'Connell, and Rosenthal)**

March 18, 1997

An act to amend Sections 5053, 5055, 5056, 5060, 5070.6, 5071, 5072, 5073, 5081.1, 5084, 5153, 11302, 11315, *11360*, 11410, ~~and 17550.47~~ *17550.43, 17550.44, and 17550.49* of, to add Sections 5058.1, 11316, 11317, 11318, and 11409 to, ~~and~~ to repeal Sections 5059, 5074, 5075, and 5076 of, *and to repeal and add Sections 5082.3 and 17550.47* of, the Business and Professions Code, *and to amend Section 719 of the Harbors and Navigation Code*, relating to professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1348, as amended, Committee on Business and Professions. Professions: accountancy: sellers of travel: real estate appraisers: *yacht brokers*.

(1) Existing law requires that any person who has received from the State Board of Accountancy a certificate of certified public accountant or a certificate of public accountant and holds a valid permit to practice be styled and known as a "certified public accountant" or "public accountant," respectively. Existing law prohibits any other person, except a partnership of registered certified public accountants or a partnership of public accountants to assume or use that title,

designation, or abbreviation or any other title, designation, sign, card, or device tending to indicate that the person using it is a certified public accountant or public accountant, respectively.

This bill would except a registered accountancy corporation from the above prohibition. The bill would also prohibit a person or firm from using any title or designation in connection with the designation “certified public accountant” or “public accountant” that is false or misleading or that is likely to lead to public confusion concerning either the source of the title or designation or the training, education, or experience required to earn, obtain, or use the title or designation. The bill would also make various revisions regarding the use of names in an accountancy firm or accountancy corporation and registration requirements for accountancy partnerships.

Violation of certain provisions relating to accountancy constitute a crime. Because the above provisions pertaining to the designation “certified public accountant” or “public accountant” would create a new crime, this bill would impose a state-mandated local program.

(2) Existing law provides that an expired permit to practice public accountancy may be renewed at any time within 5 years after its expiration on filing of an application for renewal on a form prescribed by the *State* Board of Accountancy, payment of all accrued and unpaid renewal fees, and giving evidence to the board of compliance with the continuing education provisions. Existing law further provides that if the permit is renewed more than 30 days after its expiration, its holder, as a condition precedent to renewal, shall also pay a prescribed delinquency fee.

This bill would delete the 30-day grace period for renewal of a permit.

(3) Under existing law, an applicant for admission to the examination for a certified public accountant certificate is required to comply with various requirements, including presenting satisfactory evidence that he or she has a baccalaureate degree from a university, college, or other 4-year institution of learning accredited as specified.



This bill would provide that such an applicant may also present satisfactory evidence of a degree *or degrees* from a college, university, or other institution of learning located outside the United States that is approved by the board as the equivalent of the aforementioned baccalaureate degree.

~~(4) Existing law provides that any person aggrieved, as defined, who suffers a loss may file a claim with the Travel Consumer Restitution Corporation. Existing law further provides that a claimant may request reconsideration of, and appeal, an adverse decision by the corporation and, if the claimant prevails on the appeal, the claimant shall be entitled to attorney's fees and costs.~~

~~This bill would authorize a seller of travel to request reconsideration of, and appeal, an adverse decision of the corporation and would entitle a seller of travel that prevailed on an appeal to attorney's fees and costs. Existing law provides that a Canadian Chartered Accountant in good standing shall be deemed to have met the examination requirements for a license as a certified public accountant in this state, as specified.~~

This bill would repeal this provision and instead provide that an applicant for a license may be deemed by the board to have met the examination requirements if the applicant is licensed or has comparable authority under the laws of any country to engage in the practice of public accountancy, as specified, and has passed the International Uniform Certified Public Accountant Examination.

(5) The Real Estate Appraisers' Licensing and Certification Law authorizes the Director of the Office of Real Estate Appraisers to issue to a licensee, applicant for licensure, or person who acts in a capacity that requires a license under the act a citation that may contain an order to pay an administrative fine assessed by the office if the appraiser is in violation of this law or any regulations adopted to carry out its purposes.

This bill would authorize the director to issue a citation that may contain an administrative fine assessment to a course provider, as defined, applicant for course provider accreditation, or a person who, *or entity that*, acts in a capacity that requires course provider accreditation for violation of this



law or any regulations adopted to carry out its purposes. The bill would provide that, if appropriate, the citation may contain an order to enroll in, and successfully complete, additional basic or continuing education courses ~~related to the standards of professional appraisal practice~~, as specified, and would revise provisions relating to the payment of fines assessed by the director.

This bill would also authorize ~~an administrative law judge~~ *the director* to assess a fine ~~at an administrative hearing~~ against a licensee, applicant for licensure, person who acts in a capacity that requires a license under the law, course provider, applicant for course provider accreditation, or a person who, *or entity that*, acts in a capacity that requires course provider accreditation for violation of the law or any regulations adopted to carry out its purposes ~~to the same extent as provided to the director~~. The bill, in addition, would require a licensee, applicant for licensure, course provider, or applicant for course provider accreditation to report to the office, in writing, the occurrence of certain events relating to any criminal convictions of a licensee, applicant for licensure, course provider, or applicant for course provider accreditation, or any disciplinary proceedings against a licensee or course provider, in accordance with prescribed procedures.

(6) Existing law requires the Office of Real Estate Appraisers to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest.

This bill would require the office to publish a summary of public disciplinary actions taken by the office, *including* resignations while under investigation, and the violations upon which these actions are based.

(7) Existing law does not provide for the recovery of costs for investigation ~~and~~, enforcement, *and prosecution* by the Office of Real Estate Appraisers.

This bill would authorize ~~the office to request an administrative law judge~~ *any order issued in resolution of a disciplinary proceeding* to direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under the Real Estate Appraisers' Licensing and Certification



Law, course provider, applicant for course provider accreditation, or a person who, *or entity that*, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to the standards of professional appraiser practice to pay these costs.

(8) The Real Estate Appraisers' Licensing and Certification Law establishes the Real Estate Appraisers Regulation Fund in the State Treasury consisting of moneys raised by fees and assessments imposed pursuant to the act, and requires that interest be paid on all money transferred to the General Fund from the Real Estate Appraisers Regulation Fund, notwithstanding certain provisions.

This bill would require that the interest on this money be paid at the pooled money investment rate.

(9) *Existing law provides that any person aggrieved, as defined, who suffers a loss may file a claim with the Travel Consumer Restitution Corporation, in accordance with specified procedures, and may recover from the Travel Consumer Restitution Fund an amount of up to \$15,000, per person for each claim. Existing law also requires the corporation to establish an operations fund for the payment of costs of operations and administration and requires all participants registering or applying for registration to pay to the corporation a one-time assessment of \$25 per location from which the participant does business in the state in order to provide additional funding for the operations of the corporation.*

This bill would increase the above assessment fee from \$25 to \$35, and would make changes to the claims procedure.

(10) *The Yacht and Ship Brokers Act provides for the licensing of yacht and ship brokers by the Department of Boating and Waterways and establishes the qualifications necessary for a person to apply for a broker's license.*

This bill would additionally provide that a person who has owned and operated a marine business selling new or used yachts for a minimum of 3 continuous years is qualified to submit an application for a broker's license.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs



mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 5053 of the Business and
2 Professions Code is amended to read:

3 5053. Nothing contained in this chapter precludes a
4 person who is not a certified public accountant or public
5 accountant from serving as an employee of, or an assistant
6 to, a certified public accountant or public accountant or
7 partnership or a corporation composed of certified public
8 accountants or public accountants holding a permit to
9 practice pursuant to this chapter if the employee or
10 assistant works under the control and supervision of a
11 certified public accountant, or a public accountant
12 authorized to practice public accountancy pursuant to
13 this chapter and if the employee or assistant does not issue
14 any statement over his or her name.

15 This section does not apply to an attorney at law in
16 connection with his or her practice of law.

17 SEC. 2. Section 5055 of the Business and Professions
18 Code is amended to read:

19 5055. Any person who has received from the board a
20 certificate of certified public accountant and holds a valid
21 permit to practice under this chapter shall be styled and
22 known as a “certified public accountant” and may also use
23 the abbreviation “C.P.A.” No other person, except a
24 partnership of certified public accountants registered
25 under Sections 5072 and 5073, or an accountancy
26 corporation registered under Section 5150, shall assume
27 or use that title, designation, or abbreviation or any other
28 title, designation, sign, card, or device tending to indicate
29 that the person using it is a certified public accountant.

30 SEC. 3. Section 5056 of the Business and Professions
31 Code is amended to read:



1 5056. Any person who has received from the board a
2 certificate of public accountant and holds a valid permit
3 to practice under this chapter shall be styled and known
4 as a “public accountant” and may also use the
5 abbreviation “P.A.” No other person, except a
6 partnership of public accountants registered under
7 Sections 5072 and 5073, or an accountancy corporation
8 registered under Section 5150, shall assume or use that
9 title, designation, or abbreviation or any other title,
10 designation, sign, card, or device tending to indicate that
11 the person using it is a public accountant.

12 SEC. 4. Section 5058.1 is added to the Business and
13 Professions Code, to read:

14 5058.1. (a) A person or firm may not use any title or
15 designation in connection with the designation “certified
16 public accountant” or “public accountant” that is either
17 of the following:

18 (1) False or misleading.

19 (2) Likely to lead to public confusion concerning
20 either of the following:

21 (A) The source of the title or designation, such as a
22 governmental agency, educational institution, or private
23 organization.

24 (B) The training, education, or experience required to
25 earn, obtain, or use the title or designation.

26 (b) The board may adopt regulations covering the use
27 of name styles, titles, or designations including, but not
28 limited to, those related to specialized training,
29 qualifications, or areas of specialized practice.

30 SEC. 5. Section 5059 of the Business and Professions
31 Code is repealed.

32 SEC. 6. Section 5060 of the Business and Professions
33 Code is amended to read:

34 5060. (a) The name or names under which a firm
35 may render professional services shall contain, and may
36 be restricted to, the name, last name, or initials of one or
37 more partners, shareholders, or owners of the firm who
38 are either licensed to practice under this chapter,
39 applicants for licensure under Sections 5087 and 5088, or
40 licensed to practice in another state or foreign country



1 where the firm is engaged in the practice of public
2 accountancy or its functional equivalent, if the firm name
3 does not include the name of any person whose license to
4 practice public accountancy is revoked by the board.

5 (b) Notwithstanding subdivision (a), the name of a
6 partnership or accountancy corporation may continue to
7 include, or may be limited to, the name, last name, or
8 initials of one or more former partners, shareholders, or
9 owners of the firm or a predecessor firm, if the firm name
10 does not include the name of any person whose license to
11 practice public accountancy is revoked by the board.

12 (c) Nothing in this chapter shall prohibit the right to
13 the continuous use of a firm name registered with the
14 board on or before December 31, 1997.

15 SEC. 7. Section 5070.6 of the Business and Professions
16 Code is amended to read:

17 5070.6. Except as otherwise provided in this chapter,
18 an expired permit may be renewed at any time within
19 five years after its expiration on filing of application for
20 renewal on a form prescribed by the board, payment of
21 all accrued and unpaid renewal fees and on and after
22 December 31, 1974, giving evidence to the board of
23 compliance with the continuing education provisions of
24 this chapter. If the permit is renewed after its expiration,
25 its holder, as a condition precedent to renewal, shall also
26 pay the delinquency fee prescribed by this chapter.
27 Renewal under this section shall be effective on the date
28 on which the application is filed, on the date on which the
29 accrued renewal fees are paid, or on the date on which
30 the delinquency fee, if any, is paid, whichever last occurs.
31 If so renewed, the permit shall continue in effect through
32 the date provided in Section 5070.5 that next occurs after
33 the effective date of the renewal, when it shall expire if
34 it is not again renewed.

35 SEC. 8. Section 5071 of the Business and Professions
36 Code is amended to read:

37 5071. No persons shall engage in the practice of
38 accountancy as a partnership unless the partnership is
39 registered by the board under Sections 5072 and 5073.



1 SEC. 9. Section 5072 of the Business and Professions
2 Code is amended to read:

3 5072. A partnership of certified public accountants or
4 public accountants, other than a limited partnership, may
5 be registered by the board provided it meets the
6 following requirements:

7 (a) At least one general partner ~~must~~ shall be a
8 certified public accountant or public accountant of this
9 state in good standing or ~~must~~ shall have applied for a
10 certificate as a certified public accountant under Sections
11 5087 and 5088.

12 (b) Each partner personally engaged within this state
13 in the practice of public accountancy ~~must~~ shall be a
14 licensee in good standing of this state or ~~must~~ shall have
15 applied for a certificate as a certified public accountant
16 under Sections 5087 and 5088.

17 (c) Each partner not personally engaged within this
18 state ~~must~~ shall be a certified public accountant in good
19 standing of some state.

20 (d) Each resident manager in charge of an office of the
21 firm in this state ~~must~~ shall be a licensee in good standing
22 of this state, or ~~must~~ shall have applied for a certificate as
23 a certified public accountant under Sections 5087 and
24 5088.

25 SEC. 10. Section 5073 of the Business and Professions
26 Code is amended to read:

27 5073. Application for registration of a partnership
28 ~~must~~ shall be made upon the affidavit of a general partner
29 of the partnership who holds a valid permit in this state
30 to practice as a certified public accountant or public
31 accountant, or ~~must~~ shall have applied for a certificate as
32 a certified public accountant under Sections 5087 and
33 5088. The affidavit shall set forth any information that
34 may be prescribed by the rules of the board. The board
35 shall in each case determine whether the applicant is
36 eligible for registration. A partnership that is so registered
37 and that holds a valid permit issued under this article and
38 that has at least one general partner who is licensed to
39 practice using the designation “certified public
40 accountant” or abbreviation “C.P.A.” may use the words



1 “certified public accountants” or the abbreviation
2 “C.P.A.s” in connection with its partnership name.
3 Notification shall be given to the board within one month
4 after the admission to, or withdrawal of, a partner from
5 any partnership so registered.

6 Any registration of a partnership under this section
7 granted in reliance upon Sections 5087 and 5088 shall
8 terminate forthwith if the board rejects the application
9 under Sections 5087 and 5088 of the general partner who
10 signed the application for registration as a partnership, or
11 any partner personally engaged in the practice of public
12 accountancy in this state, or any resident manager of a
13 partnership in charge of an office in this state.

14 SEC. 11. Section 5074 of the Business and Professions
15 Code is repealed.

16 SEC. 12. Section 5075 of the Business and Professions
17 Code is repealed.

18 SEC. 13. Section 5076 of the Business and Professions
19 Code is repealed.

20 SEC. 14. Section 5081.1 of the Business and
21 Professions Code is amended to read:

22 5081.1. An applicant for admission to the examination
23 for a certified public accountant certificate shall comply
24 with one of the following:

25 (a) He or she shall present satisfactory evidence that
26 he or she has either of the following:

27 (1) A baccalaureate degree from a university, college,
28 or other four-year institution of learning accredited by a
29 regional or national accrediting agency or association
30 included in a list of these agencies or associations
31 published by the United States Commissioner of
32 Education under the requirements of Section 253 of the
33 Veterans’ Readjustment Assistance Act of 1952, known as
34 Public Law 550 of the 82nd Congress, as amended, with
35 a major in accounting or related subjects requiring a
36 minimum of 45 semester units of instruction in these
37 subjects. If the applicant has received a baccalaureate
38 degree in a nonaccounting major, the applicant shall
39 present satisfactory evidence of study substantially the



1 equivalent of accounting major, including courses in
2 related business administration.

3 (2) A degree *or degrees* from a college, university, or
4 other institution of learning located outside the United
5 States that is approved by the board as the equivalent of
6 the baccalaureate degree described in paragraph (1).
7 The board may require an applicant to submit
8 documentation of his or her education to a credentials
9 evaluation service for review and to report the results of
10 this review to the board.

11 (b) He or she shall present satisfactory evidence that
12 he or she has successfully completed a two-year course of
13 study at college grade or received an associate in arts
14 degree from a junior college, either institution accredited
15 by a regional or national accrediting agency or association
16 that is included in a list published by the United States
17 Commissioner of Education under the provisions of
18 federal law specified in paragraph (1) of subdivision (a),
19 and that he or she has studied accounting, commercial
20 law, economics, finance, and related business
21 administration subjects for a period of at least four years.

22 (c) The applicant shall show to the satisfaction of the
23 board that he or she has had the equivalent of the
24 educational qualifications required by subdivision (b), or
25 shall pass a preliminary written examination approved
26 and administered by an agency approved by the State
27 Department of Education and shall have completed a
28 minimum of 10 semester hours or the equivalent in
29 accounting subjects. The 10 semester hours in accounting
30 subjects shall be completed at a college, university, or
31 other institution of higher learning accredited at the
32 college level by an agency or association that is included
33 in a list published by the United States Commissioner of
34 Education under the provisions of federal law specified in
35 paragraph (1) of subdivision (a).

36 (d) He or she shall be a public accountant registered
37 under this chapter.

38 *SEC. 14.3. Section 5082.3 of the Business and*
39 *Professions Code is repealed.*



1 ~~5082.3. A Canadian Chartered Accountant in good~~
2 ~~standing shall be deemed to have met the examination~~
3 ~~requirements of Section 5082 upon successfully passing~~
4 ~~the Canadian Chartered Accountant Uniform Certified~~
5 ~~Public Accountant Qualification Examination of the~~
6 ~~American Institute of Certified Public Accountants.~~

7 *SEC. 14.4. Section 5082.3 is added to the Business and*
8 *Professions Code, to read:*

9 *5082.3. An applicant for a license as a certified public*
10 *accountant may be deemed by the board to have met the*
11 *examination requirements of Section 5082 if the applicant*
12 *satisfies all of the following requirements:*

13 *(a) The applicant is licensed or has comparable*
14 *authority under the laws of any country to engage in the*
15 *practice of public accountancy.*

16 *(b) The United States International Qualifications*
17 *Appraisal Board has determined that the standards under*
18 *which the applicant was licensed or under which the*
19 *applicant secured comparable authority meets the*
20 *standards for admission to the International Uniform*
21 *Certified Public Accountant Qualification Examination.*

22 *(c) The applicant successfully passes the International*
23 *Uniform Certified Public accountant Qualification*
24 *Examination.*

25 *SEC. 15. Section 5084 of the Business and Professions*
26 *Code is amended to read:*

27 *5084. The board shall grant one year's credit toward*
28 *fulfillment of its public accounting experience*
29 *requirement to a graduate of a college who has*
30 *completed a four-year course with 45 or more semester*
31 ~~hours~~ *units or the equivalent thereof in the study of*
32 *accounting, commercial law, economics, and finance, of*
33 *which at least 20 semester units or the equivalent thereof*
34 *shall be in the study of accounting.*

35 *The members of the board shall prescribe rules*
36 *establishing the character and variety of experience*
37 *necessary to fulfill the experience requirements set forth*
38 *in this section.*

39 *SEC. 16. Section 5153 of the Business and Professions*
40 *Code is amended to read:*



1 5153. An accountancy corporation may not render
2 professional services under a name unless the name
3 complies with this chapter, including Article 3
4 (commencing with Section 5050) and Article 3.5
5 (commencing with Section 5060) and applicable
6 regulations adopted by the board, and has been approved
7 by the board as being neither false nor misleading.

8 SEC. 17. Section 11302 of the Business and Professions
9 Code is amended to read:

10 11302. For the purpose of applying this part, the
11 following terms, unless otherwise expressly indicated,
12 shall mean and have the following definitions:

13 (a) “Agency” means the Business, Transportation and
14 Housing Agency.

15 (b) “Appraisal” means a written statement
16 independently and impartially prepared by a qualified
17 appraiser setting forth an opinion in a federally related
18 transaction as to the market value of an adequately
19 described property as of a specific date, supported by the
20 presentation and analysis of relevant market information.

21 The term “appraisal” does not include an opinion given
22 by a real estate licensee or engineer or land surveyor in
23 the ordinary course of his or her business in connection
24 with a function for which a license is required under
25 Chapter 7 (commencing with Section 6700) or Chapter
26 15 (commencing with Section 8700) of Division 3, or
27 Chapter 3 (commencing with Section 10130) or Chapter
28 7 (commencing with Section 10500) and the opinion shall
29 not be referred to as an appraisal. This part does not apply
30 to a probate referee acting pursuant to Sections 400 to 408,
31 inclusive, of the Probate Code unless the appraised
32 transaction is federally related.

33 (c) “Appraisal Foundation” means the Appraisal
34 Foundation that was incorporated as an Illinois
35 not-for-profit corporation on November 30, 1987.

36 (d) “Appraisal Subcommittee” means the Appraisal
37 Subcommittee of the Federal Financial Institutions
38 Examination Council.

39 (e) “Director” means the Director of the Office of
40 Real Estate Appraisers.



1 (f) “Federal financial institutions regulatory agency”
2 means the Federal Reserve Board, Federal Deposit
3 Insurance Corporation, Office of the Comptroller of the
4 Currency, Office of Thrift Supervision, Federal Home
5 Loan Bank System, National Credit Union
6 Administration, the Resolution Trust Corporation, and
7 any other agency determined by the director to have
8 jurisdiction over transactions subject to this part.

9 (g) “Federally related real estate appraisal activity”
10 means the act or process of making or performing an
11 appraisal on real estate or real property in a federally
12 related transaction and preparing an appraisal as a result
13 of that activity.

14 (h) “Federally related transaction” means any real
15 estate-related financial transaction which a federal
16 financial institutions regulatory agency engages in,
17 contracts for or regulates and which requires the services
18 of a state licensed real estate appraiser regulated by this
19 part. This term also includes any transaction identified as
20 such by a federal financial institutions regulatory agency.

21 (i) “License” means any license, certificate, permit,
22 registration, or other means issued by the office
23 authorizing the person to whom it is issued to act
24 pursuant to this part within this state.

25 (j) “Licensure” means the procedures and
26 requirements a person shall comply with in order to
27 qualify for issuance of a license and includes the issuance
28 of the license.

29 (k) “Office” means the Office of Real Estate
30 Appraisers.

31 (l) “Secretary” means the Secretary of the Business,
32 Transportation and Housing Agency.

33 (m) “State licensed real estate appraiser” is a person
34 who is issued and holds a current valid license under this
35 part.

36 (n) “Uniform Standards of Professional Appraisal
37 Practice” are the standards of professional appraisal
38 practice established by the Appraisal Foundation.



1 (o) “Course provider” means a person or entity that
2 provides educational courses related to ~~the standards of~~
3 professional appraisal practice.

4 ~~(p) “Fine payment” means a payment amount~~
5 ~~determined by the director that is less than the full~~
6 ~~amount of the fine and that is paid in installments until~~
7 ~~the total amount of the fine is paid.~~

8 SEC. 18. Section 11315 of the Business and Professions
9 Code is amended to read:

10 11315. (a) The director may issue to a licensee,
11 applicant for licensure, person who acts in a capacity that
12 requires a license under this part, course provider,
13 applicant for course provider accreditation, or a person
14 who, *or entity that*, acts in a capacity that requires course
15 provider accreditation a citation that may contain an
16 order to pay an administrative fine assessed by the office
17 if the person or entity is in violation of this part or any
18 regulations adopted to carry out its purposes.

19 (b) A citation shall be written and describe with
20 particularity the nature of the violation, including a
21 specific reference to the provision of law determined to
22 have been violated.

23 (c) If appropriate, the citation shall contain an order
24 of abatement fixing a reasonable time for abatement of
25 the violation.

26 (d) (1) If appropriate, the citation may contain an
27 order to enroll in and successfully complete additional
28 basic or continuing education courses ~~related to the~~
29 ~~standards of professional appraisal practice.~~

30 (2) When a citation imposes an education course or
31 courses, the completion of the course or courses by the
32 licensee shall be subject to the following conditions:

33 (A) The citation imposing the education requirement
34 may specify the specific course content, the number of
35 hours to be completed, the date by which the course is to
36 be completed, and the method by which satisfaction of
37 the order is to be reported to the office.

38 (B) An education course imposed by citation may not
39 be credited towards the licensee’s continuing education
40 requirements pursuant to Section 11360.



1 (C) Only courses accredited by the office shall be
2 accepted for purposes of fulfilling education imposed by
3 citation.

4 (D) Any failure to satisfactorily complete or timely
5 report an education course to the office ~~on~~ by the date
6 specified in the citation shall result in the automatic
7 suspension of the licensee's appraisal license as of that
8 date.

9 (E) Reinstatement of a license suspended pursuant to
10 subparagraph (D) shall be made only if all of the
11 following events occur:

12 (i) Satisfactory verification of the completion of the
13 education course or courses imposed by the citation.

14 (ii) Completion and filing of a reinstatement
15 application.

16 (iii) Payment of all applicable fees, fines, or penalties.

17 (e) In no event shall ~~the~~ *an* administrative fine
18 assessed by the office by citation or order exceed ten
19 thousand dollars (\$10,000) per violation. In assessing a
20 fine, the office shall give due consideration to the
21 appropriateness of the amount of the fine with respect to
22 factors such as the gravity of the violation, the good faith
23 of the person who committed the violation, and the
24 history of previous violations.

25 (f) A citation or fine assessment issued pursuant to a
26 citation ~~or order of the director~~ shall inform the person
27 cited that, if he or she desires a hearing to contest the
28 finding of a violation, he or she must request a hearing by
29 written notice to the office within 30 days of the date of
30 issuance of the citation or assessment. Hearings shall be
31 held pursuant to Chapter 5 (commencing with Section
32 11500) of Part 1 of Division 3 of Title 2 of the Government
33 Code. The citation or fine assessment shall also inform the
34 person cited that failure to respond to the citation or fine
35 assessment shall result in any order or administrative fine
36 imposed becoming final, and that any order or
37 administrative fine shall constitute an enforceable civil
38 judgment in addition to any other penalty or remedy
39 available pursuant to law.



1 (g) (1) Failure of a licensee, applicant for licensure,
2 person who acts in a capacity that requires a license under
3 this part, course provider, applicant for course provider
4 accreditation, or a person who, *or entity that*, acts in a
5 capacity that requires course provider accreditation to
6 pay a fine or ~~make a fine payment~~ *required installment*
7 *payment on the fine* within 30 days of the date ordered
8 in the citation, unless the citation is being appealed, shall
9 result in disciplinary action by the office. If a licensee,
10 applicant for licensure, person who acts in a capacity that
11 requires a license under this part, course provider,
12 applicant for course provider accreditation, or a person
13 who, *or entity that*, acts in a capacity that requires course
14 provider accreditation fails to pay a fine or ~~make a fine~~
15 ~~payment~~ *required installment payment on the fine*
16 within 30 days, the director shall charge him or her
17 interest and a penalty of 10 percent of the fine or ~~fine~~
18 *installment* payment amount. Interest shall be charged at
19 the pooled money investment rate.

20 (2) If a citation is not contested and a fine or fine
21 payment is not paid within ~~30~~ 30 days of the date ordered
22 in the citation or *other* order of the director, the full
23 amount of the *unpaid balance of the* assessed fine shall be
24 added to any fee for renewal of a license. A license shall
25 not be renewed prior to payment of the renewal fee and
26 fine.

27 (3) The director may order the full amount of any fine
28 to be immediately due and payable *if any payment due*
29 *on a fine is not received by the office* within 30 days of its
30 due date.

31 (4) Any fine, or interest thereon, not paid within 30
32 days of a final *citation or order* shall constitute a valid and
33 enforceable civil judgment.

34 (5) A certified copy of the final order, or the citation
35 with certification by the office that no request for hearing
36 was received within 30 days of the date of issuance of the
37 citation, shall be conclusive proof of the civil judgment
38 ~~and its terms~~, *its terms, and its validity*.

39 (h) A citation may be issued without the assessment of
40 an administrative fine.



1 (i) Any administrative fine or penalty imposed
2 pursuant to this section shall be in addition to any other
3 criminal or civil penalty provided for by law.

4 (j) Administrative fines collected pursuant to this
5 section shall be deposited in the Real Estate Appraisers
6 Regulation Fund.

7 SEC. 19. Section 11316 is added to the Business and
8 Professions Code, to read:

9 11316. (a) ~~An administrative law judge~~ *The director*
10 may assess a ~~fine at an administrative hearing pursuant~~
11 ~~to Chapter 5 (commencing with Section 11500) of Part 4~~
12 ~~of Division 3 of Title 2 of the Government Code, fine~~
13 against a licensee, applicant for licensure, person who acts
14 in a capacity that requires a license under this part, course
15 provider, applicant for course provider accreditation, or
16 a person who, *or entity that*, acts in a capacity that
17 requires course provider accreditation for violation of this
18 part or any regulations adopted to carry out its purposes.

19 (b) (1) Failure of a licensee, applicant for licensure,
20 person who acts in a capacity that requires a license under
21 this part, course provider, applicant for course provider
22 accreditation, or a person who, *or entity that*, acts in a
23 capacity that requires course provider accreditation to
24 pay a fine or make a fine payment within 30 days of the
25 date of assessment shall result in disciplinary action by the
26 office. If a licensee, applicant for licensure, person who
27 acts in a capacity that requires a license under this part,
28 course provider, applicant for course provider
29 accreditation, or a person who, *or entity that*, acts in a
30 capacity that requires course provider accreditation fails
31 to pay a fine within 30 days, the director shall charge him
32 or her interest and a penalty of 10 percent of the fine or
33 payment amount. Interest shall be charged at the pooled
34 money investment rate.

35 (2) If a fine is not paid, the full amount of the assessed
36 fine shall be added to any fee for renewal of a license. A
37 license shall not be renewed prior to payment of the
38 renewal fee and fine.

39 (3) The director may order the full amount of any fine
40 to be immediately due and payable if any payment on the



1 fine, or portion thereof, is not received within 30 days of
2 its due date.

3 (4) Any fine, or interest thereon, not paid within 30
4 days of a final order shall constitute a valid and
5 enforceable civil judgment.

6 (5) A certified copy of the final order shall be
7 conclusive proof of the validity of the order of payment
8 and the terms of payment.

9 (c) Any administrative fine or penalty imposed
10 pursuant to this section shall be in addition to any other
11 criminal or civil penalty provided for by law.

12 (d) Administrative fines collected pursuant to this
13 section shall be deposited in the Real Estate Appraisers
14 Regulation Fund.

15 SEC. 20. Section 11317 is added to the Business and
16 Professions Code, to read:

17 11317. The office shall publish a summary of public
18 disciplinary actions taken by the office, *including*
19 resignations while under investigation; and the violations
20 upon which these actions are based, which shall meet, at
21 a minimum, the requirements of the appraisal
22 subcommittee. The office shall not publish identifying
23 information with respect to private reprovls or letters of
24 warning, which shall remain confidential.

25 SEC. 21. Section 11318 is added to the Business and
26 Professions Code, to read:

27 11318. (a) A licensee, applicant for licensure, course
28 provider, or applicant for course provider accreditation
29 shall report to the office, in writing, the occurrence of any
30 of the following events within 30 days of the date he or she
31 has knowledge of any of these events:

32 (1) The conviction of the licensee, applicant for
33 licensure, course provider, or applicant for course
34 provider accreditation of any of the following:

35 (A) A felony.

36 (B) Any crime related to the qualifications, functions,
37 or duties of a licensee, or to acts or activities committed
38 in the course of the licensee's or course provider's
39 practice.



1 As used in this section, a conviction includes an initial
2 plea, verdict, or finding of guilty, plea of no contest, or
3 pronouncement of sentence by a trial court even though
4 that conviction may not be final, the sentence may not be
5 imposed, or all appeals may not be exhausted.

6 (2) The cancellation, revocation, or suspension of a
7 license, other authority to practice, or refusal to renew a
8 license or other authority to practice as an occupational
9 or professional licensee or course provider, by any other
10 regulatory entity.

11 (3) The cancellation, revocation, or suspension of the
12 right to practice before any governmental body or
13 agency.

14 (b) The report required by subdivision (a) shall be
15 signed by the licensee, applicant for licensure, course
16 provider, or applicant for course provider accreditation
17 and clearly set forth the facts that constitute the
18 reportable event. The report shall include the title of the
19 matter, court or agency name, docket number, and dates
20 of occurrence of the reportable event.

21 (c) The licensee, applicant for licensure, course
22 provider, or applicant for course provider accreditation
23 shall also promptly obtain and submit a certified copy of
24 the police or administrative agency's investigative report
25 and certified copies of the court or administrative
26 agency's docket, complaint or accusation, and judgment
27 or other order.

28 (d) A licensee, applicant for licensure, course
29 provider, or applicant for course provider accreditation
30 shall promptly respond to oral or written inquiries from
31 the office concerning the reportable events.

32 SEC. 22. *Section 11360 of the Business and Professions*
33 *Code is amended to read:*

34 11360. (a) The director shall adopt regulations
35 governing the process and procedures for renewal of a
36 license which shall include, but not be limited to,
37 continuing education requirements.

38 (b) *An applicant for renewal of a license shall be*
39 *required to demonstrate his or her continuing fitness to*
40 *hold a license prior to its renewal.*



1 SEC. 23. Section 11409 is added to the Business and
2 Professions Code, to read:

3 11409. (a) Except as otherwise provided by law, in
4 any order issued in resolution of a disciplinary proceeding
5 ~~before the office, the office may request the~~
6 ~~administrative law judge to~~ *may* direct a licensee,
7 applicant for licensure, person who acts in a capacity that
8 requires a license under this part, course provider,
9 applicant for course provider accreditation, or a person
10 who, *or entity that*, acts in a capacity that requires course
11 provider accreditation found to have committed a
12 violation or violations of statutes or regulations relating to
13 real estate appraiser practice to pay a sum not to exceed
14 the reasonable costs of investigation ~~and~~, enforcement,
15 *and prosecution* of the case.

16 (b) Where an order for recovery of costs is made and
17 payment is not made within 30 days of the date directed
18 in the office's decision, the order for recovery shall
19 constitute a valid and enforceable civil judgment. This
20 judgment shall be in addition to, and not in place of, any
21 other criminal or civil penalties provided for by law.

22 (c) (1) Failure of a licensee, applicant for licensure,
23 person who acts in a capacity that requires a license under
24 this part, course provider, applicant for course provider
25 accreditation, or a person who, *or entity that*, acts in a
26 capacity that requires course provider accreditation to
27 pay recovery costs or make a recovery cost payment
28 within 30 days of the date ordered, shall result in
29 disciplinary action by the office. If the person fails to pay
30 recovery costs within 30 days, that person shall pay
31 interest and a penalty of 10 percent of the recovery costs
32 or payment amount. Interest shall be charged at the
33 pooled money investment rate.

34 (2) If recovery costs are not paid as ordered, the full
35 amount of the assessed fine shall be added to any fee for
36 renewal of a license. A license shall not be renewed prior
37 to payment of the renewal fee and recovery costs.

38 (3) The director may order the full amount of any
39 recovery costs to be immediately due and payable if any



1 payment on the recovery costs, or portion thereof, is not
2 received within 30 days of its due date.

3 (4) Any recovery costs, or interest thereon, not paid
4 within 30 days of a final order shall constitute a valid and
5 enforceable civil judgment.

6 (d) A certified copy of the office's decision shall be
7 conclusive proof of the validity of the order and its terms.

8 (e) The office shall not renew or reinstate the license
9 of any licensee who has failed to pay all of the costs
10 ordered under this section.

11 (f) Nothing in this section shall preclude the office
12 from including the recovery of the costs of investigation
13 and enforcement of a case in any default decision or
14 stipulated settlement.

15 ~~SEC. 23.~~

16 *SEC. 24.* Section 11410 of the Business and Professions
17 Code is amended to read:

18 11410. The Real Estate Appraisers Regulation Fund is
19 hereby created in the State Treasury to consist of moneys
20 raised by fees and assessments imposed pursuant to this
21 part. Interest shall be paid at the pooled money
22 investment rate on all money transferred to the General
23 Fund from the Real Estate Appraisers Regulation Fund,
24 notwithstanding the provisions of Section 16310 of the
25 Government Code.

26 ~~SEC. 24.~~ Section ~~17550.47~~ of the ~~Business and~~
27 ~~Professions Code~~ is amended to read:

28 ~~17550.47.~~ (a) (1) Any person aggrieved who suffers
29 a loss may file a claim with the Travel Consumer
30 Restitution Corporation. Except as provided in
31 paragraph (2), the claim must be filed within 60 days of
32 the date upon which the person aggrieved becomes
33 aware, or should have become aware, of the loss.

34 (2) Any person aggrieved who did not receive the
35 notice required by subdivision (h) of Section ~~17550.13~~
36 shall have until 60 days after receiving a notice setting
37 forth the information required by subdivision (h) of
38 Section ~~17550.13~~, or 60 days after the date upon which the
39 person aggrieved becomes aware, or should have become



1 aware, of the loss, whichever is later, within which to file
2 a claim.

3 (3) In no event shall a person aggrieved have more
4 than one year after the scheduled date of completion of
5 travel within which to file a claim with the Travel
6 Consumer Restitution Fund.

7 (b) A person aggrieved may recover from the Travel
8 Consumer Restitution Fund an amount of no more than
9 fifteen thousand dollars (\$15,000) per person aggrieved
10 not to exceed the amount paid to the participant for
11 transportation or travel services. The person aggrieved
12 shall not be entitled to receive attorney's fees in
13 connection with a filed claim, except as provided in this
14 section, on appeal.

15 (c) All claims are to be decided on the written record
16 before the corporation, with no hearing to be held. The
17 record shall consist of a fully executed and complete
18 claim, any other documentation submitted by the
19 claimant, and any documents or reports submitted by
20 staff or the designated representative of the office of the
21 Attorney General. Claims are to be decided within 45
22 days of receipt unless the designated representative of
23 the office of the Attorney General requests a continuance
24 to obtain and submit information. A claim not decided
25 timely shall be deemed granted.

26 (d) Whenever the Travel Consumer Restitution
27 Corporation denies a claim in whole or in part, it shall
28 provide to the claimant a written statement of decision
29 setting forth the factual and legal basis for the denial.

30 (e) A claimant or seller of travel may request
31 reconsideration of an adverse decision of the Travel
32 Consumer Restitution Corporation by mailing a written
33 request within 20 days of the date a notice of denial and
34 statement of decision was mailed to the claimant.

35 (f) The Travel Consumer Restitution Corporation
36 shall decide the request for reconsideration within 30
37 days of receipt of the request, and if the decision is a
38 denial in whole or in part, it shall provide to the claimant
39 and seller of travel a written statement of decision setting
40 forth the factual and legal basis for the decision. No appeal



1 ~~may be taken pursuant to subdivision (g) until~~
2 ~~reconsideration has been requested and decided. The~~
3 ~~claimant or seller of travel shall not be entitled to any~~
4 ~~attorney's fees incurred in connection with presentation~~
5 ~~of a claim or request for reconsideration.~~

6 ~~(g) A claimant or seller of travel may only seek review~~
7 ~~of the denial of a claim by filing a notice of appeal after~~
8 ~~having served the notice by mail on the Travel Consumer~~
9 ~~Restitution Corporation. The notice of appeal shall be~~
10 ~~filed and served on the Travel Consumer Restitution~~
11 ~~Corporation not later than 30 days after a written~~
12 ~~statement of decision on a request for reconsideration has~~
13 ~~been mailed to the claimant or seller of travel. The notice~~
14 ~~of appeal from a decision of the Travel Consumer~~
15 ~~Restitution Corporation shall be filed with the clerk of the~~
16 ~~superior court either in the county in which the principal~~
17 ~~place of business of the Travel Consumer Restitution~~
18 ~~Corporation is located, or in the county in which the~~
19 ~~claimant or seller of travel was a resident at the time the~~
20 ~~claimant purchased the transportation or travel services~~
21 ~~in dispute.~~

22 ~~(h) The claimant or seller of travel shall pay the same~~
23 ~~filing fee as is required for appeals from small claims~~
24 ~~court. The Travel Consumer Restitution Corporation~~
25 ~~shall file with the clerk of the superior court the record~~
26 ~~before the corporation within 30 days of the day the~~
27 ~~notice of appeal was served on the Travel Consumer~~
28 ~~Restitution Corporation.~~

29 ~~(i) Upon the filing of the record the clerk of the court~~
30 ~~shall schedule a hearing for the earliest available time and~~
31 ~~shall mail written notice of the hearing at least 14 days~~
32 ~~prior to the time set for the hearing.~~

33 ~~(j) The hearing on appeal shall be limited to the record~~
34 ~~before the Travel Consumer Restitution Corporation and~~
35 ~~any relevant evidence that could not have been with~~
36 ~~reasonable diligence submitted previously to the~~
37 ~~corporation. The reviewing court shall apply a~~
38 ~~preponderance of the evidence standard of review. The~~
39 ~~pretrial discovery procedures described in subdivision~~
40 ~~(a) of Section 2019 of the Code of Civil Procedure are not~~



1 ~~permitted, there is no right to trial by jury, no tentative~~
 2 ~~decision or statement of decision is required, and the~~
 3 ~~decision of the superior court after a hearing on appeal is~~
 4 ~~final and not appealable. No money may be claimed from~~
 5 ~~or paid by the Travel Consumer Restitution Fund except~~
 6 ~~in accordance with the provisions and procedures set~~
 7 ~~forth in this article. No provision herein shall limit or~~
 8 ~~otherwise affect those remedies as may be available~~
 9 ~~against persons or entities other than the Travel~~
 10 ~~Consumer Restitution Fund.~~

11 ~~(k) If the claimant or seller of travel prevails in whole~~
 12 ~~or in part in an appeal, the prevailing claimant or seller~~
 13 ~~of travel shall be entitled to attorney's fees and costs~~
 14 ~~actually and reasonably incurred in connection with the~~
 15 ~~appeal, those fees and costs not to exceed the amount~~
 16 ~~awarded by the reviewing court.~~

17 ~~(l) Any claim awarded by the corporation shall be paid~~
 18 ~~promptly by the trustee of the restitution fund when the~~
 19 ~~time for appeal has passed or the right to an appeal is~~
 20 ~~waived in writing by the claimant. Any judgment on~~
 21 ~~appeal shall be paid promptly by the trustee of the~~
 22 ~~restitution fund. If there should be insufficient funds to~~
 23 ~~pay a claim when otherwise due, claims shall be paid in~~
 24 ~~the order received. If the Travel Consumer Restitution~~
 25 ~~Corporation ceases to operate pursuant to the terms of~~
 26 ~~Section 17550.52, any remaining trust funds shall be~~
 27 ~~allocated on a pro rata basis to claims accruing prior to the~~
 28 ~~corporation ceasing to operate.~~

29 ~~(m) A claim shall require a majority of at least three~~
 30 ~~affirmative votes for denial, otherwise it shall be deemed~~
 31 ~~granted.~~

32 ~~SEC. 25.~~

33 ~~SEC. 25. Section 17550.43 of the Business and~~
 34 ~~Professions Code is amended to read:~~

35 17550.43. (a) The Travel Consumer Restitution
 36 Corporation shall establish an operations fund for the
 37 payment of costs of operations and administration. The
 38 corporation shall prepare, prior to its fiscal year end, an
 39 estimated annual operational budget projecting the costs



1 of operations and administration for the succeeding fiscal
2 year, excluding the amount paid for claims.

3 (b) All participants registering ~~in 1995~~ or applying for
4 registration ~~in 1995~~ shall pay to the Travel Consumer
5 Restitution Corporation an initial, one-time ~~twenty-five~~
6 ~~dollar (\$25)~~ *thirty-five dollar (\$35)* assessment per
7 location from which the participant does business in the
8 state in order to provide additional funding for the
9 operations of the corporation, as those operations are
10 authorized by the corporation's board of directors.

11 (c) (1) All participants who were sellers of travel in
12 1995, registering for the first time on or after January 1,
13 1996, shall pay the Travel Consumer Restitution
14 Corporation the same initial per location assessments for
15 the operations of the corporation and restitution fund as
16 were paid by participants registering in 1995.

17 (2) After January 1, 1996, all participants who were
18 sellers of travel in any year, and who were not registered
19 in that year, when registering for the first time in a
20 subsequent year must pay the Travel Consumer
21 Restitution Corporation all assessments for the years in
22 which they were in business as were paid by participants
23 registering in those years.

24 (d) The Travel Consumer Restitution Corporation
25 shall establish a restitution fund for the payment of
26 claims. All claims shall be paid from the restitution fund.

27 (1) The restitution fund shall be in the form of a trust
28 account maintained in the State of California with a
29 federally insured bank ~~which~~ *that* shall be selected by the
30 board of directors of the Travel Consumer Restitution
31 Corporation and shall be approved by the office of the
32 Attorney General. The board of directors of the Travel
33 Consumer Restitution Corporation or its delegate shall
34 serve as trustee.

35 (2) The restitution fund shall meet the following
36 criteria:

37 (A) The trustee shall deposit all restitution funds
38 received directly into the trust account.

39 (B) The trustee shall maintain a separate accounting
40 for disbursements and collections on account of claims



1 against each participant. Quarterly reports shall be
2 provided to the office of the Attorney General, Consumer
3 Law Section.

4 (C) The trustee shall disburse funds from the trust as
5 directed by the Travel Consumer Restitution
6 Corporation pursuant to Section 17550.47, directly to a
7 person aggrieved or as provided in Section 17550.47.

8 (D) The trustee may only invest the operations fund
9 and trust funds in any of the securities described in
10 subdivision (a) or (b) of Section 16430 of the Government
11 Code.

12 *SEC. 26. Section 17550.44 of the Business and*
13 *Professions Code is amended to read:*

14 17550.44. (a) In addition to the assessments required
15 by Section 17550.43, the Travel Consumer Restitution
16 Corporation shall bill and collect from each participant an
17 annual assessment that in the aggregate shall consist of
18 assessments for the operations fund and the restitution
19 fund. For each participant, the due date of that annual
20 assessment shall be 30 days prior to the initial and annual
21 renewal date for registration pursuant to Section
22 17550.20. A late fee of five dollars (\$5) per day, up to a
23 maximum of five hundred dollars (\$500), shall be paid for
24 each day after the due date specified in this section until
25 the assessment is received by the Travel Consumer
26 Restitution Corporation.

27 (b) The annual assessment for the operations fund
28 shall be determined no later than January 15 of each year
29 for the next fiscal year. The annual assessment for the
30 operations fund shall not exceed ~~twenty-five dollars (\$25)~~
31 *thirty-five dollars (\$35)* per year for each location in the
32 state from which a participant does business.

33 (c) If, as of January 15, 1997, or as of January 15 of any
34 subsequent year, the balance in the restitution fund is less
35 than one million two hundred thousand dollars
36 (\$1,200,000), the Travel Consumer Restitution
37 Corporation shall make an annual assessment of
38 participants, up to a maximum amount of two hundred
39 dollars (\$200) for each location in the state from which a
40 participant does business, to bring the restitution fund to



1 an expected balance of one million two hundred
2 thousand dollars (\$1,200,000). Every participant's
3 assessment shall be determined pro rata based upon the
4 ratio of the number of locations in the state from which
5 the participant does business to the total number of
6 locations for all registered participants as of the preceding
7 December 15.

8 (d) If, on May 1 or October 15 of any year,
9 commencing on January 1, 1997, the balance in the
10 restitution fund is less than nine hundred thousand dollars
11 (\$900,000), the corporation shall make an emergency
12 assessment of participants, not more than twice per year,
13 up to a maximum amount of two hundred dollars (\$200)
14 per year for each location in the state from which the
15 participant does business, for deposit in the trust account
16 to return the level of the restitution fund to an expected
17 balance of one million two hundred thousand dollars
18 (\$1,200,000). The board of directors shall adopt rules for
19 the notification of emergency assessments.

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

23 *SEC. 27. Section 17550.47 of the Business and*
24 *Professions Code is repealed.*

25 ~~17550.47. (a) (1) Any person aggrieved who suffers~~
26 ~~a loss may file a claim with the Travel Consumer~~
27 ~~Restitution Corporation. Except as provided in~~
28 ~~paragraph (2), the claim must be filed within 60 days of~~
29 ~~the date upon which the person aggrieved becomes~~
30 ~~aware, or should have become aware, of the loss.~~

31 ~~(2) Any person aggrieved who did not receive the~~
32 ~~notice required by subdivision (h) of Section 17550.13~~
33 ~~shall have until 60 days after receiving a notice setting~~
34 ~~forth the information required by subdivision (h) of~~
35 ~~Section 17550.13, or 60 days after the date upon which the~~
36 ~~person aggrieved becomes aware, or should have become~~
37 ~~aware, of the loss, whichever is later, within which to file~~
38 ~~a claim.~~

39 ~~(3) In no event shall a person aggrieved have more~~
40 ~~than one year after the scheduled date of completion of~~



1 ~~travel within which to file a claim with the Travel~~
2 ~~Consumer Restitution Fund.~~

3 ~~(b) A person aggrieved may recover from the Travel~~
4 ~~Consumer Restitution Fund an amount of no more than~~
5 ~~fifteen thousand dollars (\$15,000) per person aggrieved~~
6 ~~not to exceed the amount paid to the participant for~~
7 ~~transportation or travel services. The person aggrieved~~
8 ~~shall not be entitled to receive attorney's fees in~~
9 ~~connection with a filed claim, except as provided in this~~
10 ~~section, on appeal.~~

11 ~~(c) All claims are to be decided on the written record~~
12 ~~before the corporation, with no hearing to be held. The~~
13 ~~record shall consist of a fully executed and complete~~
14 ~~claim, any other documentation submitted by the~~
15 ~~claimant, and any documents or reports submitted by~~
16 ~~staff or the designated representative of the office of the~~
17 ~~Attorney General. Claims are to be decided within 45~~
18 ~~days of receipt unless the designated representative of~~
19 ~~the office of the Attorney General requests a continuance~~
20 ~~to obtain and submit information. A claim not decided~~
21 ~~timely shall be deemed granted.~~

22 ~~(d) Whenever the Travel Consumer Restitution~~
23 ~~Corporation denies a claim in whole or in part, it shall~~
24 ~~provide to the claimant a written statement of decision~~
25 ~~setting forth the factual and legal basis for the denial.~~

26 ~~(e) A claimant may request reconsideration of an~~
27 ~~adverse decision of the Travel Consumer Restitution~~
28 ~~Corporation by mailing a written request within 20 days~~
29 ~~of the date a notice of denial and statement of decision~~
30 ~~was mailed to the claimant.~~

31 ~~(f) The Travel Consumer Restitution Corporation~~
32 ~~shall decide the request for reconsideration within 30~~
33 ~~days of receipt of the request, and if the decision is a~~
34 ~~denial in whole or in part, it shall provide to the claimant~~
35 ~~a written statement of decision setting forth the factual~~
36 ~~and legal basis for the decision. No appeal may be taken~~
37 ~~pursuant to subdivision (g) until reconsideration has~~
38 ~~been requested and decided. The claimant shall not be~~
39 ~~entitled to any attorney's fees incurred in connection~~



1 with presentation of a claim or request for
2 reconsideration.

3 (g) A claimant may only seek review of the denial of
4 a claim by filing a notice of appeal after having served the
5 notice by mail on the Travel Consumer Restitution
6 Corporation. The notice of appeal shall be filed and
7 served on the Travel Consumer Restitution Corporation
8 not later than 30 days after a written statement of decision
9 on a request for reconsideration has been mailed to the
10 claimant. The notice of appeal from a decision of the
11 Travel Consumer Restitution Corporation shall be filed
12 with the clerk of the superior court either in the county
13 in which the principal place of business of the Travel
14 Consumer Restitution Corporation is located, or in the
15 county in which the claimant was a resident at the time
16 the claimant purchased the transportation or travel
17 services in dispute.

18 (h) The claimant shall pay the same filing fee as is
19 required for appeals from small claims court. The Travel
20 Consumer Restitution Corporation shall file with the
21 clerk of the superior court the record before the
22 corporation within 30 days of the day the notice of appeal
23 was served on the Travel Consumer Restitution
24 Corporation.

25 (i) Upon the filing of the record the clerk of the court
26 shall schedule a hearing for the earliest available time and
27 shall mail written notice of the hearing at least 14 days
28 prior to the time set for the hearing.

29 (j) The hearing on appeal shall be limited to the record
30 before the Travel Consumer Restitution Corporation and
31 any relevant evidence which could not have been with
32 reasonable diligence submitted previously to the
33 corporation. The reviewing court shall apply a
34 preponderance of the evidence standard of review. The
35 pretrial discovery procedures described in subdivision
36 (a) of Section 2019 of the Code of Civil Procedure are not
37 permitted, there is no right to trial by jury, no tentative
38 decision or statement of decision is required, and the
39 decision of the superior court after a hearing on appeal is
40 final and not appealable. No money may be claimed from



1 ~~or paid by the Travel Consumer Restitution Fund except~~
2 ~~in accordance with the provisions and procedures set~~
3 ~~forth in this article. No provision herein shall limit or~~
4 ~~otherwise affect those remedies as may be available~~
5 ~~against persons or entities other than the Travel~~
6 ~~Consumer Restitution Fund.~~

7 ~~(k) If the claimant prevails in whole or in part in an~~
8 ~~appeal, the claimant shall be entitled to attorney's fees~~
9 ~~and costs actually and reasonably incurred in connection~~
10 ~~with the appeal, those fees and costs not to exceed the~~
11 ~~amount awarded by the reviewing court.~~

12 ~~(l) Any claim awarded by the corporation shall be paid~~
13 ~~promptly by the trustee of the restitution fund when the~~
14 ~~time for appeal has passed or the right to an appeal is~~
15 ~~waived in writing by the claimant. Any judgment on~~
16 ~~appeal shall be paid promptly by the trustee of the~~
17 ~~restitution fund. If there should be insufficient funds to~~
18 ~~pay a claim when otherwise due, claims shall be paid in~~
19 ~~the order received. If the Travel Consumer Restitution~~
20 ~~Corporation ceases to operate pursuant to the terms of~~
21 ~~Section 17550.52, any remaining trust funds shall be~~
22 ~~allocated on a pro rata basis to claims accruing prior to the~~
23 ~~corporation ceasing to operate.~~

24 ~~(m) A claim shall require a majority of at least three~~
25 ~~affirmative votes for denial, otherwise it shall be deemed~~
26 ~~granted.~~

27 *SEC. 28. Section 17550.47 is added to the Business and*
28 *Professions Code, to read:*

29 *17550.47. (a) The Legislature hereby finds and*
30 *declares both of the following:*

31 *(1) Individual minor civil disputes are of special*
32 *importance to the parties and of significant social and*
33 *economic consequence collectively. Disputes over travel*
34 *services are a significant part of the disputes presented to*
35 *the civil court system, especially small claims divisions of*
36 *the municipal and justice courts. Often these cases*
37 *present complex issues involving industry practice and*
38 *standards to the trier of fact. When disputes have been*
39 *resolved to final judgment, it is often difficult or*



1 impossible for the judgment creditor to collect on a
2 money judgment.

3 (2) In order to resolve these disputes informally,
4 expeditiously, and fairly, at a minimum cost, it is essential
5 to provide a voluntary alternative dispute resolution
6 mechanism with incentives for its use that shall do all of
7 the following:

8 (A) Be available, in addition to the existing judicial
9 forums, to resolve disputes concerning travel services.

10 (B) Where the dispute is to be resolved in a civil court,
11 provide expertise to assist the court in resolution of the
12 dispute.

13 (C) Make payment on meritorious claims that meet
14 the requirements set forth in this section.

15 (D) Provide incentives for participation by both
16 parties.

17 (E) Protect the public against unscrupulous
18 registered sellers of travel who default on their
19 obligations to their customers.

20 (b) (1) Any person aggrieved who suffers a loss may
21 file a claim with the Travel Consumer Restitution
22 Corporation. Except as provided in paragraph (2), the
23 claim shall be filed within 60 days of the date upon which
24 the person aggrieved becomes aware, or should have
25 become aware, of the loss.

26 (2) Any person aggrieved who did not receive the
27 notice required by subdivision (h) of Section 17550.13
28 shall have until 60 days after receiving a notice setting
29 forth the information required by subdivision (h) of
30 Section 17550.13, or 60 days after the date upon which the
31 person aggrieved becomes aware, or should have become
32 aware, of the loss, whichever is later, within which to file
33 a claim.

34 (3) In no event shall a person aggrieved have more
35 than one year after the scheduled date of completion of
36 travel within which to file a claim with the Travel
37 Consumer Restitution Fund.

38 (c) (1) Filing a claim with the Travel Consumer
39 Restitution Corporation shall be optional. The claimant
40 may instead bring any action at law or equity that the



1 claimant was entitled to bring without regard to this
2 section. No requirement to exhaust the procedures
3 provided in this section may be inferred, nor may an
4 action filed without a claim being first submitted to the
5 Travel Consumer Restitution Corporation be subject to
6 the doctrine of primary jurisdiction.

7 (2) A claimant may recover from the Travel
8 Consumer Restitution Fund reimbursement for actual
9 amounts paid for air or sea transportation and related
10 travel services in an amount of no more than fifteen
11 thousand dollars (\$15,000) per person aggrieved, not to
12 exceed the amount paid to the participant against whom
13 the claim is made for transportation or travel services.
14 The claimant shall not be entitled to receive additional
15 compensation from the fund, including, but not limited
16 to, punitive damages or attorney's fees incurred in
17 connection with a filed claim. All claims shall be filed on
18 a claim form to be prepared by, and available upon
19 request from, the Travel Consumer Restitution
20 Corporation. The claim form shall include a notice to the
21 claimant advising the claimant that the claims process is
22 voluntary, and that the claimant has a right to bring any
23 action at law or equity without regard to this claims
24 process, a description of the claims procedures specified
25 by this section, and a disclosure of the circumstances, as
26 set forth in paragraph (4) of subdivision (e), under which
27 the claimant waives his or her right to bring any action at
28 law or equity arising from the transaction against the
29 seller of travel that is the subject of the claim. The claim
30 form provided by the Travel Consumer Restitution
31 Corporation shall be signed by the claimant, and shall be
32 accompanied by a form to be dated and signed by the
33 claimant, acknowledging receipt of the notice required
34 by this subdivision. No claim shall be deemed filed or
35 complete, and shall not be examined by the Travel
36 Consumer Restitution Corporation, unless the
37 acknowledgment of receipt has been received.

38 (d) All claims shall be examined by the Travel
39 Consumer Restitution Corporation. The examination
40 shall be based upon the claim, and any documents



1 provided therewith, a written response, if any, from the
2 participant, and any documents provided therewith,
3 information previously submitted by the participant
4 pursuant to Sections 17550.20, 17550.21, and 17550.23, and
5 any information previously submitted by the participant
6 to the Travel Consumer Restitution Corporation.

7 (e) (1) After a claim is filed, the Travel Consumer
8 Restitution Corporation shall mail a copy, by first class
9 mail and by certified mail, to the participant at its most
10 recent principal place of business as set forth in its Travel
11 Consumer Restitution Corporation application or any
12 written supplement received by the Travel Consumer
13 Restitution Corporation thereafter. Included with the
14 copy of the claim shall be a notice advising the participant
15 of all of the following:

16 (A) The claims procedures specified in this section.

17 (B) Notice of the potential for revocation of the
18 participant's seller of travel registration pursuant to
19 Section 17550.49 if a claim is paid from the fund, of the
20 consequential requirement to cease business as a seller of
21 travel, and of the disqualification of the seller of travel and
22 related persons from reregistration until specified
23 payments are made.

24 (2) The Travel Consumer Restitution Corporation
25 shall also provide the participant with a form wherein the
26 participant shall indicate the following:

27 (A) Whether the participant elects to participate in
28 the claims process.

29 (B) Whether the participant agrees to waive any and
30 all rights to any different claims resolution process,
31 appeal, or judicial review of any kind.

32 This form shall be filled out, signed by the participant,
33 and returned to the Travel Consumer Restitution
34 Corporation with the participant's response, if any. The
35 participant shall have 30 days from the date of mailing of
36 the claim, notice, and acknowledgement form specified
37 in paragraph (2) of subdivision (c) to submit the
38 election/waiver form specified in this paragraph and the
39 participant's written response or to seek a continuance of
40 not more than 20 days for good cause by requesting the



1 *continuance in writing from the Travel Consumer*
2 *Restitution Corporation. The Travel Consumer*
3 *Restitution Corporation shall then proceed with*
4 *examination of the claim as provided in subdivision (d).*

5 (3) *If a participant fails to submit a written response*
6 *and a fully executed election/waiver form, provided*
7 *pursuant to paragraph (2), and the Travel Consumer*
8 *Restitution Corporation subsequently recommends that*
9 *a claim be paid in whole or in part, the Travel Consumer*
10 *Restitution Corporation shall pay the claim from the fund*
11 *in the amount recommended and the participant's*
12 *registration shall be subject to revocation as provided in*
13 *Section 17550.49.*

14 (4) *If the participant has advised the Travel*
15 *Constitution Restitution Corporation of its election not to*
16 *participate in the claims process or if the participant has*
17 *failed to waive any and all rights to any different claims*
18 *resolution process, appeal, or judicial review of any kind,*
19 *the claimant shall be notified of the following:*

20 (A) *The participant's election not to participate or*
21 *failure to waive rights.*

22 (B) *The claimant's right to bring any action at law or*
23 *equity to which he or she would otherwise be entitled.*

24 (C) *The claimant's right to use the recommendation*
25 *and the report as is set forth in paragraph (3) of*
26 *subdivision (h).*

27 (D) *The claimant's right to seek payment from the*
28 *fund if final judgment in claimant's favor is obtained*
29 *against participant.*

30 (E) *The fact that the recommendation and report*
31 *shall be used as set forth in subdivision (f) to determine*
32 *the amount that may subsequently be paid from the fund.*
33 *The Travel Consumer Restitution Corporation shall*
34 *proceed with its examination of the claim and shall*
35 *comply with the procedures set forth in subdivision (f).*
36 *Subdivision (h) shall apply to any action brought by the*
37 *claimant arising from the transaction that gave rise to the*
38 *claim.*

39 (5) *If the participant submits the fully executed*
40 *election/waiver form provided pursuant to paragraph*



1 (2) of subdivision (e) and thereby elects to be a party to
2 the claims process set forth in this section and agrees to
3 waive any and all rights to any different claims resolution
4 process, appeal, or judicial review of any kind, the
5 participant shall be required to accept the
6 recommendation of the Travel Consumer Restitution
7 Corporation. If the participant tenders payment of the
8 amount recommended, the claimant may not
9 subsequently elect to bring an action at law or equity
10 arising from the transaction that was the subject of the
11 claim. If the participant does not tender payment of the
12 amount recommended, that amount shall be paid from
13 the fund, with the consequences, to participant, including
14 revocation of registration, set forth in Section 17550.49.

15 (f) Upon completion of its examination, the Travel
16 Consumer Restitution Corporation shall issue in writing
17 its recommendation and a report setting forth the bases
18 for the recommendation. The report shall in all instances
19 include a description of the Travel Consumer Restitution
20 Corporation and its purpose and the procedure followed
21 in examining a claim. The recommendation and report
22 shall be sent by first class mail and by certified mail to the
23 claimant at the address on his or her claim form, and to
24 the participant at its most recent principal place of
25 business as set forth in the participant's Travel Consumer
26 Restitution Corporation application or any written
27 supplement received by the Travel Consumer
28 Restitution Corporation thereafter. A separate notice
29 shall be sent to the claimant with the recommendation
30 and report conspicuously disclosing that acceptance of
31 any payment offered pursuant to the recommendation
32 shall constitute a waiver by the claimant of any cause of
33 action at law or equity that might lie against the
34 participant concerning the transaction complained of
35 and addressed in the Travel Consumer Restitution
36 Corporation recommendation.

37 (g) In the event the Travel Consumer Restitution
38 Corporation recommendation is for payment of some or
39 all of the amount claimed, and the participant elected
40 pursuant to paragraph (2) of subdivision (e) to be party



1 to the claims process, the participant shall have 20 days
2 from the date the Travel Consumer Restitution
3 Corporation recommendation and report is mailed to the
4 participant to furnish the Travel Consumer Restitution
5 Corporation with evidence of having paid the claimant as
6 required under subdivision (i). If the separate notice
7 required by subdivision (f) has been sent to the claimant
8 and the claimant thereafter accepts payment from the
9 participant, this acceptance shall constitute a waiver by
10 the claimant of any cause of action at law or equity that
11 might lie against the participant concerning the
12 transaction complained of and addressed in the Travel
13 Consumer Restitution Corporation recommendation.

14 (h) In an action brought by the claimant arising from
15 the same transaction that gave rise to the claim filed with
16 the Travel Consumer Restitution Corporation, the
17 following shall apply:

18 (1) The statute of limitations applicable to this action
19 shall be tolled from the date the claimant filed his or her
20 claim with the Travel Consumer Restitution Corporation
21 until the Travel Consumer Restitution Corporation
22 report and recommendation was mailed to the claimant.

23 (2) Venue shall be as set forth in subdivision (b) of
24 Section 395 of the Code of Civil Procedure for consumer
25 contracts for services.

26 (3) A copy of the Travel Consumer Restitution
27 Corporation report and recommendation may be
28 admitted in evidence by any party to the action, including
29 the participant, as qualified expert opinion testimony. If
30 offered, the court shall admit in evidence the report and
31 recommendation. However, the report and
32 recommendation shall not constitute evidence of the
33 underlying facts giving rise to the dispute, each of which
34 shall be established independently of the report and
35 recommendation, and the trier of fact shall have
36 discretion to determine what weight to give the report
37 and recommendation. Neither the Travel Consumer
38 Restitution Corporation nor its officers, directors, agents,
39 or staff may be subpoenaed by any party to testify about
40 or be cross-examined concerning the report and



1 recommendation, either for discovery purposes or for
2 trial.

3 (i) Where a claimant prevails in a civil court action
4 against a participant concerning a transaction that was
5 the subject of a claim submitted to the Travel Consumer
6 Restitution Corporation pursuant to the procedures in
7 this section, the claimant may present a final and
8 nonappealable judgment against the participant to the
9 Travel Consumer Restitution Corporation for payment.
10 The amount to be paid from the fund shall be the amount
11 of the final judgment or the amount recommended by the
12 Travel Consumer Restitution Corporation pursuant to
13 subdivision (f), whichever is less. When a judgment is
14 submitted by a claimant, a copy of the judgment and
15 notice of the Travel Restitution Corporation's
16 determination of the amount to be paid from the fund
17 shall be mailed first class and certified mail by the Travel
18 Consumer Restitution Corporation to the participant at
19 its most recent principal place of business as set forth in
20 its Travel Consumer Restitution Corporation application
21 or any written supplements received by the Travel
22 Consumer Restitution Corporation thereafter, along with
23 a demand that the portion for amounts recovered for air
24 and sea travel and related travel services be satisfied
25 within 10 days, with proof of payment submitted to the
26 Travel Consumer Restitution Corporation within 20 days
27 from the date on which the judgment and notice was
28 placed in the mail. If not paid by the participant within
29 the time limits set forth in this subdivision, the amount
30 authorized by this subdivision shall be paid by the Travel
31 Consumer Restitution Corporation to the claimant.
32 Acceptance of this payment from the fund by the
33 claimant shall not constitute, or be deemed a waiver of,
34 any and all rights the claimant may have to recover from
35 the participant any remaining amounts set forth in the
36 judgment.

37 (j) If there are insufficient funds to pay a claim when
38 otherwise due, claims shall be paid in the order received.
39 If the Travel Consumer Restitution Corporation ceases to
40 operate pursuant to the terms of Section 17550.52, any



1 remaining trust funds shall be allocated on a pro rata basis
2 to claims accruing prior to the corporation ceasing to
3 operate.

4 (k) A claim shall require a majority of at least three
5 affirmative votes for denial, otherwise it shall be deemed
6 granted.

7 SEC. 29. Section 17550.49 of the Business and
8 Professions Code is amended to read:

9 17550.49. If the Travel Consumer Restitution
10 Corporation directs that payment be made from the
11 restitution fund in any amount in response to a claim
12 against a participant, the corporation shall inform the
13 office of the Attorney General, which shall revoke the
14 registration of the participant, upon the date the notice
15 is received that payment has been directed to be made
16 from the fund. The seller of travel, including the sole
17 proprietor if the entity is a sole proprietorship, the
18 general partners if the entity is a partnership, or the
19 officers, directors, and stockholders holding more than 10
20 percent of the stock if the entity is a corporation, shall not
21 be eligible to reregister to do business as a seller of travel
22 until the fund is repaid in full, plus interest at the rate of
23 9 percent per year, the amount paid from the fund on the
24 account of the seller of travel, together with all expenses
25 and costs incurred by the ~~trustee~~ Travel Consumer
26 Restitution Corporation in connection with the claim.

27 SEC. 30. Section 17550.47 of the Business and
28 Professions Code, as added by Section 27 of this act, shall
29 apply to claims filed on and after January 1, 1998.

30 SEC. 31. Section 719 of the Harbors and Navigation
31 Code is amended to read:

32 719. (a) A person shall be deemed qualified to submit
33 an application for a broker's license if, as shown on the
34 department's records, the person has been employed,
35 within five years preceding his or her application, as a
36 licensed salesperson for at least one year, has been
37 licensed as a broker within five years preceding his or her
38 application, *has owned and operated a marine business*
39 *selling new or used yachts for a minimum of three*
40 *continuous years immediately preceding application for*



1 a broker's license, or has been employed as a broker or a
2 yacht salesperson in another state when that employment
3 was a primary occupation for a minimum of three
4 continuous years immediately preceding application for
5 a broker's license in California. Proof of employment as
6 a broker in another state shall be in the form of all of the
7 following:

8 (1) State, if applicable, and federal income tax returns,
9 or a proof of earning statement made by the applicant
10 under penalty of perjury, for the three-year period
11 preceding application in California.

12 (2) If bonded, a statement issued by the applicant's
13 bonding company that no action has been taken against
14 the bond for fraud or gross misrepresentation for the
15 period for which the bond has been issued.

16 (3) A copy of all business permits, issued by any state,
17 county, or city agency, which, if applicable, includes the
18 fictitious business name ("dba" or "doing business as")
19 under which the applicant conducted a yacht or ship
20 brokerage business for the three year period preceding
21 application for a California broker's license.

22 (4) If the applicant conducts a yacht or ship brokerage
23 business in another state that requires broker or
24 salesperson licensing, evidence of a current license in that
25 state.

26 (b) If the applicant is a partnership, then one of the
27 partners of the applicant shall have the foregoing
28 qualifications.

29 (c) If the applicant is a corporation, then the officer or
30 officers of the corporation to be designated for a license
31 as provided in this article shall have the foregoing
32 qualifications.

33 (d) If the applicant is an individual, the applicant shall
34 be at least 18 years of age.

35 *SEC. 32.* No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty



1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.

5 Notwithstanding Section 17580 of the Government
6 Code, unless otherwise specified, the provisions of this act
7 shall become operative on the same date that the act
8 takes effect pursuant to the California Constitution.

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