

**Senate Bill No. 1348**

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Passed the Senate      September 11, 1997

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*Secretary of the Senate*

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Passed the Assembly      September 9, 1997

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Sections 11302, 11315, 11360, 11410, 17550.43, 17550.44, 17550.47, 17550.49, 22443.1, 22447, and 22958 of, and to add Sections 11316, 11317, 11318, and 11409 to, 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, Committee on Business and Professions. Professions: sellers of travel: real estate appraisers: immigration consultants: yacht brokers.

(1) 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, as specified, and would revise provisions relating to the payment of fines assessed by the director.

This bill would also authorize the director to assess a fine 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. 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.

(2) 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.

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

This bill would authorize 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.

(4) 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.

(5) 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, provides that a claimant may request reconsideration of, and appeal, an adverse decision by the corporation, and entitles the claimant to receive attorney's fees and costs if he or she prevails on appeal. 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 authorize a seller of travel to request reconsideration of, and appeal, an adverse decision of the corporation. It would also increase the above assessment fee from \$25 to \$35, and would allow the corporation to seek recovery from a seller of travel of amounts paid from the fund, interest, and associated collection expenses. The bill would make other related changes.

(6) Existing law provides that prior to engaging in the business or acting in the capacity of an immigration consultant on or before December 31, 1997, each person shall file with the Secretary of State a bond, or a deposit in lieu of a bond, of \$10,000, as specified.

This bill would require each person engaging in the business or acting in the capacity of an immigration consultant on and after January 1, 1998, to file with the Secretary of State a bond or deposit of \$25,000.

(7) Existing law, until January 1, 1998, authorizes a person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, to recover damages from the bond or deposit, and also provides that when any



claim or claims against a bond or a deposit in lieu of a bond have been paid so as to reduce the principal amount of the bond or deposit remaining available to pay claims below the principal amount required, the immigration consultant shall cease to conduct any business unless and until that time as the bond has been reinstated or moneys have been deposited in the deposit account with the Secretary of State to bring the bond or deposit account balance available for the payment of claims up to the minimum amount required.

This bill would extend the operation of these provisions until January 1, 2002.

(8) Existing law, the Stop Tobacco Access to Kids Enforcement (STAKE) Act, authorizes the State Department of Health Services to assess civil penalties against any person, firm, or corporation that sells tobacco products or other controlled substances to persons who are under 18 years of age.

This bill would also provide for civil penalties to be assessed by the department against any person, firm, or corporation that advertises, or causes to be advertised, tobacco products on any outdoor billboard within 1,000 feet of any public or private school or public playground.

(9) 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.

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

SECTION 1. Section 11302 of the Business and Professions Code is amended to read:

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



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

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

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

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

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

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

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

(g) “Federally related real estate appraisal activity” means the act or process of making or performing an appraisal on real estate or real property in a federally



related transaction and preparing an appraisal as a result of that activity.

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

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

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

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

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

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

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

(o) “Course provider” means a person or entity that provides educational courses related to professional appraisal practice.

SEC. 2. Section 11315 of the Business and Professions Code is amended to read:

11315. (a) The director may issue to a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation a citation that may contain an order to pay an administrative fine assessed by the office



if the person or entity is in violation of this part or any regulations adopted to carry out its purposes.

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

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

(d) (1) If appropriate, the citation may contain an order to enroll in and successfully complete additional basic or continuing education courses.

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

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

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

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

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

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

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

(ii) Completion and filing of a reinstatement application.

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



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

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

(g) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to pay a fine or required installment payment on the fine within 30 days of the date ordered in the citation, unless the citation is being appealed, shall result in disciplinary action by the office. If a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation fails to pay a fine or required installment payment on the fine within 30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine or installment payment amount. Interest shall be charged at the pooled money investment rate.



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

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

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

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

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

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

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

SEC. 3. Section 11316 is added to the Business and Professions Code, to read:

11316. (a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, 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 this part or any regulations adopted to carry out its purposes.

(b) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to



pay a fine or make a fine payment within 30 days of the date of assessment shall result in disciplinary action by the office. If a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation fails to pay a fine within 30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine or payment amount. Interest shall be charged at the pooled money investment rate.

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

(3) The director may order the full amount of any fine to be immediately due and payable if any payment on the fine, or portion thereof, is not received within 30 days of its due date.

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

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

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

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

SEC. 4. Section 11317 is added to the Business and Professions Code, to read:

11317. The office shall 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, which shall meet, at a minimum, the requirements of the appraisal subcommittee. The office shall not publish identifying



information with respect to private reprovals or letters of warning, which shall remain confidential.

SEC. 5. Section 11318 is added to the Business and Professions Code, to read:

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

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

(A) A felony.

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

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

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

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

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

(c) The licensee, applicant for licensure, course provider, or applicant for course provider accreditation shall also promptly obtain and submit a certified copy of



the police or administrative agency's investigative report and certified copies of the court or administrative agency's docket, complaint or accusation, and judgment or other order.

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

SEC. 6. Section 11360 of the Business and Professions Code is amended to read:

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

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

SEC. 7. Section 11409 is added to the Business and Professions Code, to read:

11409. (a) Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, 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 real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

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

(c) (1) Failure of a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider



accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation to pay recovery costs or make a recovery cost payment within 30 days of the date ordered, shall result in disciplinary action by the office. If the person fails to pay recovery costs within 30 days, that person shall pay interest and a penalty of 10 percent of the recovery costs or payment amount. Interest shall be charged at the pooled money investment rate.

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

(3) The director may order the full amount of any recovery costs to be immediately due and payable if any payment on the recovery costs, or portion thereof, is not received within 30 days of its due date.

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

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

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

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

SEC. 8. Section 11410 of the Business and Professions Code is amended to read:

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



SEC. 9. Section 17550.43 of the Business and Professions Code is amended to read:

17550.43. (a) The Travel Consumer Restitution Corporation shall establish an operations fund for the payment of costs of operations and administration. The corporation shall prepare, prior to its fiscal yearend, an estimated annual operational budget projecting the costs of operations and administration for the succeeding fiscal year, excluding the amount paid for claims.

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

(c) (1) All participants registering for the first time on or after January 1, 1996, shall pay the Travel Consumer Restitution Corporation the same initial two hundred dollars (\$200) per location assessments for the operations of the corporation and restitution fund as were paid by participants registering in 1995.

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

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

(1) The restitution fund shall be in the form of a trust account maintained in the State of California with a federally insured bank that shall be selected by the Board of Directors of the Travel Consumer Restitution Corporation and shall be approved by the office of the Attorney General. The Board of Directors of the Travel



Consumer Restitution Corporation or its delegate shall serve as trustee.

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

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

(B) The trustee shall maintain a separate accounting for disbursements and collections on account of claims against each participant. Quarterly reports shall be provided to the office of the Attorney General, Consumer Law Section.

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

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

SEC. 10. Section 17550.44 of the Business and Professions Code is amended to read:

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

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



(c) If, as of January 15, 1997, or as of January 15 of any subsequent year, the balance in the restitution fund is less than one million two hundred thousand dollars (\$1,200,000), the Travel Consumer Restitution Corporation shall make an annual assessment of participants, up to a maximum amount of two hundred dollars (\$200) for each location in the state from which a participant does business, to bring the restitution fund to an expected balance of one million two hundred thousand dollars (\$1,200,000). Every participant's assessment shall be determined pro rata based upon the ratio of the number of locations in the state from which the participant does business to the total number of locations for all registered participants as of the preceding December 15.

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

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

SEC. 11. Section 17550.47 of the Business and Professions Code is amended to read:

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

(2) Any person aggrieved who did not receive the notice required by subdivision (h) of Section 17550.13



shall have until 60 days after receiving a notice setting forth the information required by subdivision (h) of Section 17550.13, or 60 days after the date upon which the person aggrieved becomes aware, or should have become aware, of the loss, whichever is later, within which to file a claim.

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

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

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

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

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

(f) The Travel Consumer Restitution Corporation shall decide the request for reconsideration within 30



days of receipt of the request, and if the decision is a denial in whole or in part, it shall provide to the claimant and seller of travel a written statement of decision setting forth the factual and legal basis for the decision. No appeal may be taken pursuant to subdivision (g) until reconsideration has been requested and decided. The claimant or seller of travel shall not be entitled to any attorney's fees incurred in connection with presentation of a claim or request for reconsideration.

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

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

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

(j) The hearing on appeal shall be limited to the record before the Travel Consumer Restitution Corporation and any relevant evidence that could not have been with reasonable diligence submitted previously to the corporation. The reviewing court shall apply a



preponderance of the evidence standard of review. The pretrial discovery procedures described in subdivision (a) of Section 2019 of the Code of Civil Procedure are not permitted, there is no right to trial by jury, no tentative decision or statement of decision is required, and the decision of the superior court after a hearing on appeal is final and not appealable. No money may be claimed from or paid by the Travel Consumer Restitution Fund except in accordance with the provisions and procedures set forth in this article. No provision herein shall limit or otherwise affect those remedies as may be available against persons or entities other than the Travel Consumer Restitution Fund.

(k) If the claimant prevails in whole or in part on an appeal, the claimant shall be entitled to an award against the seller of travel of attorney's fees and costs actually and reasonably incurred in connection with the appeal. The amount of any award of attorney's fees and costs to be paid by the seller of travel shall be determined by the reviewing court.

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

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

SEC. 12. Section 17550.49 of the Business and Professions Code is amended to read:

17550.49. If the Travel Consumer Restitution Corporation directs that payment be made from the restitution fund in any amount in response to a claim



against a participant, the corporation shall inform the office of the Attorney General and shall maintain a record of all claims paid from the fund. A list of those sellers of travel on whose account payment has been made from the fund shall be provided upon written request. The corporation shall have the authority and discretion to determine whether or not to seek recovery from a seller of travel of any amounts paid from the fund. The corporation may seek that recovery by any lawful means, including, but not limited to, debt collection or civil litigation. If the corporation seeks recovery, it shall be entitled to collect from any seller of travel against which action is taken all reasonable expenses incurred in taking the action, including attorney's fees. The corporation shall also be entitled to interest at the rate of 9 percent per year on the amount paid from the fund, together with all expenses and costs incurred by the corporation in connection with the claim.

SEC. 13. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, each person shall file with the Secretary of State a bond of twenty-five thousand dollars (\$25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars (\$25,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.



(c) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond or the deposit filed in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(e) A deposit may be made in lieu of a bond as set forth in Section 995.710 of the Code of Civil Procedure. When a deposit is made in lieu of the bond, the person asserting the claim against the deposit shall establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(f) When a claimant has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval thereon. The claim shall be designated an “approved claim.”

(g) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid a pro rata share of the deposit.

(h) When the Secretary of State approves the first claim against a particular deposit after the expiration of a 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (g) shall apply with respect to any amount remaining in the deposit.

(i) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had claims paid in full or in part pursuant to subdivision (g)



or (h) shall not be required to return funds received from the deposit for the benefit of other claimants.

(j) When a deposit has been made in lieu of bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the assignor of the deposit, other than as to an amount as no longer needed or required for the purpose of this title which would otherwise be returned to the assignor of the deposit by the Secretary of State.

(k) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business or act in the capacity of an immigration consultant or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. The written notice shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business or act in the capacity of an immigration consultant or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(l) This section shall apply to all deposits retained by the Secretary of State. The Secretary of State shall notify each assignor of a deposit retained by the Secretary of State on January 1, 1997, of the applicability of this section on or before January 11, 1997.

(m) A judge of a municipal or superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to



subdivision (l) to resolve outstanding claims against the deposit.

(n) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

(o) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 14. Section 22447 of the Business and Professions Code is amended to read:

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond or deposit required by Section 22443.1.

(b) When any claim or claims against a bond or a deposit in lieu of a bond have been paid so as to reduce the principal amount of the bond or deposit remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until that time as the bond has been reinstated or moneys have been deposited in the deposit account with the Secretary of State to bring the bond or deposit account balance available for the payment of claims up to the minimum amount required by Section 22443.1.

(c) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 15. Section 22958 of the Business and Professions Code, as amended by Chapter 220 of the Statutes of 1997, is amended to read:



22958. (a) The state department may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, or cigarette papers, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from two hundred dollars (\$200) to three hundred dollars (\$300) for the first violation, (2) a civil penalty of from six hundred dollars (\$600) to nine hundred dollars (\$900) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth or subsequent violation within a five-year period.

(b) The state department shall assess penalties in accordance with the schedule set forth in subdivision (a) against any person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or any person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(c) The state department shall assess penalties in accordance with the schedule set forth in subdivision (a) against any person, firm, or corporation that advertises or causes to be advertised any tobacco product on any outdoor billboard in violation of Section 22961.

(d) If a civil penalty has been assessed pursuant to this section against any person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If any person, firm, or corporation has been



prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(e) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(f) Proceedings under this section shall be conducted in accordance with Section 100171 of the Health and Safety Code.

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

719. (a) A person shall be deemed qualified to submit an application for a broker's license if, as shown on the department's records, the person has been employed, within five years preceding his or her application, as a licensed salesperson for at least one year, has been licensed as a broker within five years preceding his or her application, has owned and operated a marine business selling new or used yachts for a minimum of three continuous years immediately preceding application for a broker's license, or has been employed as a broker or a yacht salesperson in another state when that employment was a primary occupation for a minimum of three continuous years immediately preceding application for a broker's license in California. Proof of employment as a broker in another state or as a marine business selling



new or used yachts in California shall be in the form of all of the following:

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

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

(3) A copy of all business permits, issued by any state, county, or city agency, which, if applicable, includes the fictitious business name ("dba" or "doing business as") under which the applicant conducted a yacht or ship brokerage business or a marine business selling new or used yachts in California for the three-year period preceding application for a California broker's license.

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

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

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

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



Approved \_\_\_\_\_, 1997

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*Governor*

