

HOUSE BILL No. 5520

January 29, 1998, Introduced by Reps. Hale, Wallace, Wojno, Parks, Varga, Schermesser, Rison, Scott, Baird, Vaughn, Willard, Murphy, Bogardus, Brater and Stallworth and referred to the Committee on Consumer Protection.

A bill to regulate the activities of travel promoters; and to provide certain rights and remedies to certain persons.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "travel promotion consumer protection act".

3 Sec. 3. As used in this act:

4 (a) "Advertise" means to make any representation in the
5 solicitation of potential customers.

6 (b) "Contract" means an agreement between a customer and a
7 travel promoter for the purchase of transportation or transporta-
8 tion related services.

9 (c) "Customer" means a person who gives money or other con-
10 sideration, or on whose behalf money or other consideration is
11 given, to a travel promoter for transportation or transportation
12 related services.

1 (d) "Person" means an individual, partnership, corporation,
2 or other legal entity.

3 (e) "Ticket" means a writing, or combination of writings,
4 the honoring of which is sufficient to obtain transportation or
5 transportation related services.

6 (f) "Transportation" means the conveyance of individuals by
7 air, sea, rail, motor vehicle, or by any other means on any for-
8 eign or domestic carrier.

9 (g) "Transportation related services" means all services
10 reasonably related to transportation including, but not limited
11 to, car rentals, transfers, sightseeing tours, meals, and
12 lodging.

13 (h) "Travel promoter" means a person doing business in this
14 state that is primarily engaged in the sale of transportation or
15 transportation related services and that does 1 or more of the
16 following:

17 (i) Solicits the purchase of transportation or transporta-
18 tion related services.

19 (ii) Issues or delivers a ticket representing the sale of
20 transportation or transportation related services.

21 (iii) Collects from a customer a payment, charge, deposit,
22 or any other valuable consideration for the sale of transporta-
23 tion or transportation related services.

24 Sec. 5. A travel promoter shall not advertise the avail-
25 ability of transportation or transportation related services
26 unless, before advertising the availability, the travel promoter

1 has contracted for the transportation or transportation related
2 services.

3 Sec. 7. (1) Before the receipt of money or other valuable
4 consideration from a customer for transportation or transporta-
5 tion related services, a travel promoter shall furnish to the
6 customer a written statement clearly and conspicuously setting
7 forth not less than all of the following:

8 (a) The name, business address, and telephone number of the
9 travel promoter.

10 (b) The amount to be paid, the date a deposit or payment is
11 due, the purpose of the payment, and an itemized statement of any
12 balance due.

13 (c) The location and account number of the escrow account,
14 if the travel promoter is not exempt from the escrow requirement
15 imposed under section 11(1).

16 (d) A copy of the certificate or certificates evidencing
17 insurance coverage in the manner described in section 11(3), if
18 the travel promoter is exempt from the escrow requirement imposed
19 under section 11(1).

20 (e) The name of the provider or providers of transportation
21 with which the travel promoter has contracted, the type of trans-
22 portation, and the date, time, and place of each departure on the
23 itinerary.

24 (f) The names of the provider or providers of the transpor-
25 tation related services which the customer is purchasing and a
26 description of those transportation related services.

1 (g) All conditions under which the contract between the
2 travel promoter and the customer may be canceled.

3 (h) All conditions under which the contract between the
4 travel promoter and the providers of transportation or providers
5 of transportation related services may be canceled.

6 (i) A statement printed in 8-point boldfaced type stating
7 that, upon the cancellation of either the transportation or
8 transportation related services through no action of the custom-
9 er, any consideration paid to the travel promoter for transporta-
10 tion or transportation related services not furnished to the cus-
11 tomer according to the contract shall be refunded within 5 busi-
12 ness days of the date of cancellation.

13 (2) The contract between the travel promoter and the cus-
14 tomer shall not contain any provisions that conflict with or
15 render void the requirements of this section or section 9.

16 Sec. 9. (1) Subject to subsection (3), a travel promoter
17 shall refund any consideration paid for transportation or trans-
18 portation related services canceled through no action of the cus-
19 tomer and not provided to the customer. The refund shall occur
20 not less than 5 business days from the date of cancellation.

21 (2) Subject to subsection (3), a customer may request can-
22 cellation of a contract with a refund of any consideration paid,
23 and a travel promoter shall cancel a contract and refund any con-
24 sideration paid not less than 5 business days after the request,
25 under 1 or more of the following circumstances:

26 (a) The travel promoter willfully misrepresents the time,
27 date, or place of any departure or arrival.

1 (b) The travel promoter willfully misrepresents the type of
2 transportation or type of transportation related services under
3 the contract.

4 (c) The travel promoter is unable to deliver a ticket in the
5 manner described in section 13.

6 (3) A customer may waive the right to a refund for a cancel-
7 lation under this section if all of the following circumstances
8 exist:

9 (a) The waiver is in writing.

10 (b) The waiver is a document that is separate from the writ-
11 ten statement provided by the travel promoter under section 7.

12 (c) The waiver is executed not less than 5 days after either
13 of the following:

14 (i) The date of cancellation described in subsection (1).

15 (ii) The date of the customer's request for cancellation
16 described in subsection (2).

17 Sec. 11. (1) Unless exempt under subsection (3), a travel
18 promoter shall immediately deposit 90% of all money received from
19 a customer for payment of transportation or transportation
20 related services into an escrow account in a federally insured
21 lending institution. The travel promoter shall not encumber this
22 account in any manner.

23 (2) A travel promoter may withdraw money from the escrow
24 account only for 1 or more of the following reasons:

25 (a) Partial or full payment of transportation or transporta-
26 tion related services for a customer.

1 (b) A refund as required by section 9 or pursuant to the
2 contract between the travel promoter and a customer.

3 (c) On a monthly basis, interest earned on the escrow
4 account.

5 (3) A travel promoter who has in effect insurance coverage
6 of not less than \$1,000,000.00 for both professional errors and
7 omissions and insurance coverage of not less than \$100,000.00 for
8 insolvency or business failure, written by an insurance company
9 recognized and approved by the commissioner of insurance to do
10 business in this state is exempt from the escrow requirement
11 imposed under this section.

12 Sec. 13. (1) Upon payment in full by a customer by means of
13 cash or any method which allows the customer to immediately sat-
14 isfy his or her indebtedness to the travel promoter, the travel
15 promoter shall issue and deliver a ticket to the customer within
16 2 business days of the payment.

17 (2) Upon payment in full by a customer by means of a check,
18 credit card, draft, or any other method where a delay of more
19 than 8 hours exists between the tender of payment by the customer
20 and the crediting of the travel promoter's account, the travel
21 promoter shall issue and deliver a ticket to the customer within
22 2 business days of the earlier of the following time periods:

23 (a) The time the payment is credited to the travel
24 promoter's account.

25 (b) Upon the expiration of the maximum settlement period
26 authorized under section 4213 of the uniform commercial code,
27 1962 PA 174, MCL 440.4213.

1 (3) As used in this section, "deliver a ticket" means 1 or
2 more of the following:

3 (a) The physical handing over of a ticket to a customer or
4 an agent of the customer.

5 (b) The physical handing over of a ticket to a third party
6 transit service for delivery to the customer's address as indi-
7 cated in the contract for transportation or transportation
8 related services.

9 (c) Mailing the ticket through the United States postal
10 service to the customer's address as indicated in the contract
11 for transportation or transportation related services.

12 Sec. 15. The following are exempt from this act:

13 (a) A provider of transportation and its employees.

14 (b) A provider of transportation related services and its
15 employees.

16 (c) A religious, charitable, educational, or fraternal
17 organization exempt from taxation pursuant to section 501(c)(3)
18 or (8) of the internal revenue code if acting on behalf of its
19 members.

20 Sec. 17. A violation of this act by a person subject to and
21 not exempt from this act is considered a method, act, or practice
22 in the conduct of trade or commerce which is unfair, unconsciona-
23 ble, or deceptive as defined by section 3 of the Michigan con-
24 sumer protection act, 1976 PA 331, MCL 445.903.

25 Enacting section 1. This act does not take effect unless
26 Senate Bill No. _____ or House Bill No. _____ (request
27 no. 01083'97 a) of the 89th Legislature is enacted into law.