



**House
Legislative
Analysis
Section**

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REGULATE TRAVEL PROMOTERS

House Bill 4091 (Substitute H-2)

House Bill 4092 (Substitute H-2)

Sponsor: Rep. Burton Leland

First Committee: Tourism, Fisheries, and Wildlife

Second Committee: Consumers

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House Bill 4188 (Substitute H-2)

Sponsor: Rep. Judith Miller

Committee: Consumers

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Mich. State Law Library

First Analysis (10-16-89)

THE APPARENT PROBLEM:

It occasionally happens that would-be travelers pay deposits on tours that never happen because the tour promoter failed to pay the necessary airline and hotel deposits. Sometimes the failure appears due to outright fraud, sometimes it appears due to worsening business problems that the promoter can no longer contain. In any event, the result is that customers are left with vacation plans in ruin and monetary losses of hundreds, sometimes thousands, of dollars each. It is not unheard of for a travel business to fail while customers are on a tour, leaving travelers stranded and scrambling to find and pay for alternative accommodations and transportation home.

Two recent instances where travel plans dissolved and customers lost deposits have been well-publicized. In the spring of 1989, nearly two hundred Detroit high school students were ready to depart on a long-planned trip to Florida, but the buses that were to transport them did not arrive. Tour promoters had taken the students' money — about \$70,000, according to news reports — and failed to pay for the necessary arrangements. In September 1989, the abrupt failure of a Lathrup Village travel firm interrupted the travel plans of hundreds of people whose payments on tour packages were not used to make the necessary payments to bus lines, hotels, cruise lines, and other travel providers. Claims against the firm are reported to be in excess of \$500,000. Among those affected is the Henry Ford II High School marching band, which still intends to travel to San Diego in December to perform in the Holiday Bowl halftime show; the band is reported to have lost about \$60,000.

The incidents have highlighted the lack of protection afforded by Michigan law. The attorney general, consumer advocates, and others have called for legislation to better protect the customers of travel firms.

THE CONTENT OF THE BILL:

The bills constitute a package of bills to regulate the business of travel promotion and require travel promoters to register with the Department of Licensing and Regulation. A "travel promoter" would be someone who provided, contracted for, arranged, or advertised wholesale or retail transportation for a fee or other consideration, either separately or in conjunction with other transportation-related services. None of the bills could take effect unless all were enacted.

House Bill 4188 would create the "Travel Promotion Consumer Protection Act" to regulate the activities of travel promoters. A travel promoter would have to make certain

written disclosures to customers, and would have to maintain either an escrow account for customer deposits or a minimum amount of insurance against professional errors and omissions and against insolvency or business failure. The bill would specify conditions under which refunds were due and contracts could be canceled, and would provide for various civil remedies. Civil penalties and fines paid under the bill would, together with other available money, go into a revolving fund to be used to enforce the bill. Local units of government could not enact regulations inconsistent with the bill. A more detailed explanation follows.

Exemptions. Exempted from the bill would be providers of transportation and transportation-related services and their employees, and tax-exempt religious, charitable, educational, or fraternal organizations. Also exempted would be a travel promoter who was a member of a national organization that met standards of integrity and financial soundness as determined by rules jointly promulgated by the Departments of Licensing and Regulation and Attorney General.

Disclosures. Before accepting a customer's money, a travel promoter would have to give the customer a written statement explaining, among other things, the contractual arrangements made with travel providers, the names of those providers, the services that the customer is purchasing, all conditions under which customer-promoter and promoter-provider contracts could be canceled, and the customer's right to a refund within five days of a cancellation that was not the customer's fault. The statement also would have to include a notice of the availability of trip interruption insurance.

Refunds, cancellations, waivers. Unless a customer had waived the right to a refund, a travel promoter would have to refund after five or more business days money paid for services that were canceled through no action of the customer and that were not provided to the customer. Also unless he or she had waived the right to a refund, a customer could cancel a contract and be entitled to a refund if the promoter misrepresented the time, date, or place of any departure or arrival; if the travel promoter misrepresented the type of transportation or services to be provided; or if the travel promoter was unable to deliver a ticket within the prescribed time limit (generally two days; see below). A customer could waive the right to a refund only if the waiver was a written document separate from the disclosure statement, and if it was executed not less than five days after the date of a cancellation described by the bill.

H.B. 4091 et al (10-16-89)

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Escrow accounts. Unless he or she maintained a minimum amount of insurance coverage, a travel promoter would have to immediately deposit into an escrow account 90 percent of the money a customer paid for travel and related services. The account would have to be in a federally insured lending institution, could not be encumbered by the promoter in any manner, and would have to meet standards set by rules promulgated under the bill. A promoter could withdraw money from the account only as follows: for payment for transportation or related services; for a refund as required by the bill or under the contract between promoter and customer; or to withdraw the interest earned.

Insurance coverage. A travel promoter would be exempt from the escrow requirement if he or she had in effect the following insurance coverage: at least \$1 million in professional errors and omissions coverage, plus at least \$100,000 in insurance against insolvency or business failure. Insurance would have to be written by a company recognized and approved by the state insurance commissioner to do business in Michigan.

Ticket delivery. When a customer paid in full in cash, a travel promoter would have to issue and deliver a ticket within two business days of the payment in the case where a ticket was customarily made available to the customer. When a customer paid in full by check or credit card, the promoter would have to issue and deliver the ticket to the customer within two business days of the earlier of the following: the time the payment was credited to the promoter's account, or upon expiration of the maximum holding period authorized under Section 4213 of the Uniform Commercial Code.

Civil remedies, penalties. The bill would provide for the attorney general to seek injunctions and restraining orders, to accept promoter-provided assurances of discontinuance of unlawful acts (and to attach stipulations — such as restitution for aggrieved persons — to such acceptance), to seek subpoenas compelling an alleged violator to appear in court and to produce documents, and to file class action suits to obtain various sorts of equitable relief (such as reimbursing customers or fulfilling contract terms). Various provisions for notice and hearing would be made. Before seeking a temporary or permanent injunction, the attorney general would give an alleged violator at least ten days notice and the opportunity to discontinue the alleged violation.

A persistent and knowing violation of the bill would be subject to a civil penalty of up to \$25,000. A knowing violation of an order or judgment would be subject to a civil penalty of up to \$5,000 per violation. The following would be subject to a civil fine of up to \$5,000: knowingly and without good cause failing to appear when served with a notice; knowingly avoiding or preventing compliance with an investigation; and knowingly concealing relevant information.

A person could bring an action seeking damages, a declaratory judgment that a practice was in violation of the bill, or an injunction against a travel promoter who was violating or about to violate the bill. Except in a class action, a person who suffered a loss due to a violation of the bill could recover actual damages or \$250, whichever was greater, together with reasonable attorney fees. A person could bring a class action suit under provisions paralleling those under which the attorney general could bring one. (A "person" could be an individual, partnership, corporation, or other legal entity.)

Generally speaking, a six-year statute of limitations would apply to class actions brought by the attorney general and to actions brought by persons.

Confidentiality of subpoenaed information; violation. The bill would limit the disclosure of information contained in subpoenaed documents. Someone who violated the bill's confidentiality provisions would be guilty of a misdemeanor punishable by up to one year in jail, a fine of up to \$2,500, or both.

Prosecutors, law enforcement officers. A prosecuting attorney or law enforcement officer notified of a violation of the bill or an order issued under it would have to immediately forward written notice of the violation, together with any additional information, to the attorney general. If requested by the attorney general or a prosecuting attorney, a law enforcement officer would have to aid and assist in an investigation of an alleged or actual violation of the bill. A prosecutor could conduct an investigation and institute an action in the same manner as the attorney general.

Rules. Within one year after the bill took effect, the Departments of Licensing and Regulation and Attorney General would jointly promulgate rules that would, at a minimum: set standards of integrity and soundness of a national organization, the membership in which would exempt a person from the bill; and set standards for the administration and monitoring of escrow accounts.

Fund. A travel promotion consumer protection fund would be established as a revolving fund in the Department of Treasury. Civil penalties ordered under the bill would be paid into the fund, along with any appropriations and money from any other source. The money in the fund would be used exclusively for enforcing the bill.

House Bill 4091 would amend the Occupational Code to require travel promoters to register with the Department of Licensing and Regulation. A registrant would be required to comply with the Travel Promotion Consumer Protection Act (House Bill 4188) and to promptly notify the department of name and address changes and changes in board or partnership composition. A travel promoter could not sue to collect money or for performance of a travel-related contract unless he or she was registered or exempt from registration. The department would receive service of process in any noncriminal proceeding against a travel promoter.

The following would be exempt from registration: providers of transportation and related services, and their employees; an employee of a registered travel promoter; tax-exempt religious, charitable, educational, or fraternal organizations if the travel in question was arranged by a promoter registered under the bill; federally-regulated direct common carriers of passengers or property; licensed intrastate carriers of passengers or property; and places of public accommodation.

MCL 339.2901 et al.

House Bill 4092 would amend the State License Fee Act to set the following fees for travel promoters: initial registration fee, \$100; annual registration fee, \$25; annual branch office fee, \$10; and change of name or address fee, \$10.

MCL 338.2279

FISCAL IMPLICATIONS:

Fiscal information is not available. (10-16-89)

ARGUMENTS:**For:**

Michigan law does not at present provide adequate protection for consumers who pay to travel firms money that is supposed to secure travel plans. Countless sums have been lost when travel firms failed to make necessary arrangements and misappropriated customers' deposits. Adding to customers' unhappiness over money lost has been the disruption and loss of long-anticipated trips. Michigan consumers need protection for the payments made to travel firms. The bills would provide such protection in the form of the financial assurances offered by escrow accounts and insurance coverage, the state oversight provided by registration, and the redress available under explicit and strong civil remedies.

Against:

The bills would enact inappropriate burdens on travel agents while failing to protect consumers. The bills fail to distinguish between tour organizers and promoters, who are the entities that make and secure arrangements with travel providers, and ordinary travel agents, who simply "pass through" customers' money to tour promoters. The escrow arrangements thus represent an unwieldy and unnecessary complication for travel agents. Further, House Bill 4188 would require tickets to be delivered within two days of a payment received by credit card or check, even though this payment might be received months in advance of the tickets being issued by the travel provider. While the customers' deposits with some travel firms are "insured" by the professional associations to which the firms belong, House Bill 4188 limits acceptable insurance to coverage written by a regular insurance company. Finally, it is not clear that business insolvency insurance, as such, is available.

Many in the travel industry have expressed skepticism that the bills will protect consumers or prevent the sorts of situations that have prompted their introduction. The bills offer no real guarantees of protection for customers' money; there will likely continue to be people who misappropriate deposits despite any law prohibiting doing so. Further, the bills do not provide for the close supervision and auditing necessary to detect fraud and insolvency before customers' money is lost, and it is questionable whether they should. Such close financial supervision would be very costly, and of limited value, given the relative infrequency with which problems occur. There is a good deal of "regulation" that occurs within the industry; for example, airlines and cruise lines commonly require a measure of stability from those with whom they do business. Rather than enact ineffectual and burdensome legislation, the state should continue to employ the enforcement capability provided by existing antifraud and consumer protection laws. As they stand, the bills would provide unwary consumers with a false sense of security.

Response: House Bill 4188 provides for rules to exempt travel firms that are members of associations meeting standards of integrity and financial soundness. Under such rules, reputable and financially sound firms can be exempted from what would be for them unnecessary regulation. Further, while the bills may not eliminate fraud and mismanagement in conjunction with accepting travelers' deposits, they would establish regulation and remedies specific to the problem.

Against:

The bills suffer from a number of inconsistencies and technical flaws. "Providers of transportation" are exempted from the bills, yet the travel promoters to be regulated under the bills are persons who provide (or furnish, contract for, arrange, or advertise) transportation. Registration is supposed to offer protection of title, but House Bill 4091 fails to provide this, opting instead for the regulatory framework generally associated with licensure. Refunds are to be made "not less than" five days after the occurrence of an event, meaning that there is no deadline for their payment. Money could be withdrawn from an escrow account "pursuant to a contract between the travel promoter and a customer," which may offer a loophole to avoid the intent of the escrow requirement. Definitions are not consistent between House Bill 4188 and 4091, nor are the bills consistent in their treatment of nonprofit organizations. The bills should undergo further review and revision.

POSITIONS:

The attorney general supports the bills. (10-13-89)

The Michigan Consumers Council supports the bills. (10-13-89)

AAA Michigan opposes the bills in their present form. (10-13-89)

The Detroit Women's Travel Organization opposes the bills. (10-13-89)

The National Tour Association would oppose the bills unless certain provisions were amended. (10-13-89)

The Michigan Chapter of the American Society of Travel Agents (ASTA) opposes House Bill 4188 because as written it would not protect the consumer. (10-13-89)

The Department of Licensing and Regulation does not have a formal position on the bills at this time (10-16-89)