

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 274

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TAYLOR.

Read 1st time February 1, 2005, and ordered printed.

Read 2nd time February 3, 2005, and referred to the Committee on Small Business, Insurance and Industrial Relations.

Reported from the Committee March 17, 2005, with recommendation that the bill do pass.

Taken up for Perfection April 4, 2005. Bill declared Perfected and Ordered Printed.

0253L.02P

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 407, RSMo, by adding thereto five new sections relating to travel clubs, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto five new sections, to be known as sections 407.1240, 407.1243, 407.1246, 407.1249, and 407.1252, to read as follows:

407.1240. As used in sections 407.1240 to 407.1252, the following terms shall mean:

(1) "Business day", a day that government offices in this state are open for business;

(2) "Membership fee", the initial or reoccurring fee that is unrelated to actual pass-through costs associated with the use and enjoyment of travel benefits;

(3) "Rescission statement", a statement that shall be printed on all contracts pertaining to the purchase of travel club memberships from a travel club that shall provide in at least fourteen-point bold type the following statement:

"Assuming you have not accessed any travel benefits and have returned to the travel club all materials delivered to the purchaser at closing, you have the right to rescind this transaction for a period of three business days after the date of this agreement. To exercise the right of rescission, you must deliver to the travel club by certified mail within the three business day period, return receipt requested, at the address referenced in this contract, a written statement of your desire to rescind this transaction, and all materials that were provided and given to you at the time of the purchase of your travel club membership."

(4) "Surety bond", any surety bond, corporate guaranty, letter of credit, certificate of deposit, or other bond or financial assurance in the sum of fifty thousand dollars that is required to be delivered by travel clubs which have been adjudged to have violated subsection 4 or 5 of section 407.1252 and in the event that such surety bond is accessed subsequent to posting as a result of the need to reimburse purchasers, the amount of the surety bond shall be increased by ten thousand dollars per reimbursement. All surety bonds shall:

(a) Serve as a source of funds to reimburse purchasers of travel club memberships who validly exercise their rights under the rescission statement in their contract but who are not, after judgment, provided a refund equal to the purchase price of their unused travel club memberships or, after settlement, equal to the terms of the settlement;

(b) Serve as a source of funds to reimburse purchasers of travel club memberships who have been proven to be the subject of fraud;

(c) Remain in full force and effect during the period of time the travel club conducts its business activities; and

(d) Be deemed acceptable to the attorney general if:

a. It is issued by an insurance company that possesses at least a "B+" rating, or its equivalent by A.M. Best or its successors or by any other nationally recognized entity that rates the creditworthiness of insurance companies;

b. It is in the form of a letter of credit that is issued by a banking institution with assets of at least seventy-five million dollars;

c. It is in the form of a certificate of deposit; or

d. It is in a form that otherwise is acceptable to the attorney general;

(5) "Travel benefits", benefits that are offered to travel club purchasers and customers that include all forms of overnight resort, condominium, timeshare, hotel, motel, and other rental housing of every nature; all forms of air travel and rental car access; all forms of cruise line access and usage; and all other forms of discounted travel services of every nature;

(6) "Travel club", any business enterprise that either directly, indirectly, or through the use of a fulfillment company or other third party offers to sell to the public the reoccurring right to purchase travel benefits at prices that are represented as being discounted from prices otherwise not generally available to the public and charges members or customers a membership fee that collectively equals no less than seven hundred fifty dollars.

407.1243. 1. No travel club may offer vacation benefits for sale unless the travel club maintains an effective registration statement with the Missouri attorney general that discloses the following information:

(1) The name of the travel club, including the name under which the travel club is doing or intends to do business, if it is different from the name of the travel club;

(2) The name of any parent or affiliated organization that will engage in business transactions with the purchasers of travel benefits or accept responsibility for statements made by, or acts of, the travel club that relate to sales solicited by the travel club;

(3) The travel club's business type and place of organization;

(4) If the travel club is an entity, the travel club's formation and governing documents, including articles of organization, bylaws, operating agreements, and partnership agreements;

(5) If operating under a fictitious business name, the location where the fictitious name has been registered and the same information for any parent or affiliated organization disclosed under subdivision (2) of this subsection;

(6) The names and addresses of the principal owners, officers, and directors of the travel club;

(7) The addresses where the travel club shall offer travel club memberships for sale;

(8) The name and address of the registered agent in the state of Missouri for service of process for the travel club; and

(9) A brief description of the travel club memberships the travel club is offering for sale.

2. The attorney general shall evidence his or her receipt, approval, or disapproval, as the case may be, of a travel club's registration statement or registration renewal statement within thirty days from and after the submission. Upon compliance with the foregoing requirements, the attorney general shall approve the registration statement. Should any registration fail to address any of the registration conditions as set forth above, the attorney general shall advise in writing the registration deficiencies and the manner in which said deficiencies shall be cured. Such advice shall be provided by the attorney general within fifteen working days from the initial filing of the documents.

3. Travel clubs that are operational prior to the effective date of sections 407.1240 to 407.1252 may continue their business activities during the pendency of the attorney general's processing of their registration statements; provided that such registration statement is filed with the attorney general within ninety calendar days of the effective date of sections 407.1240 to 407.1252. Registration of a travel club shall not be transferable.

4. The registration statement shall additionally have appended thereto:

(1) The form of contract under which the travel club proposes to sell travel club memberships which contains the rescission statement;

(2) A check made to the order of the Missouri attorney general in the amount of fifty dollars.

407.1246. Each travel club registered under sections 407.1240 to 407.1252 may renew its registration by filing with the attorney general a registration renewal statement containing all of the information required in section 407.1243 within thirty calendar days of the anniversary date of the attorney general's issuance of its approval of the travel club's registration statement. The attorney general may charge an annual renewal fee in a sum not to exceed fifty dollars.

407.1249. Assuming a purchaser has not otherwise accessed any travel benefits and returns to the travel club all materials of value delivered to the purchaser at closing, all purchasers of travel club memberships from a travel club that is registered shall have the nonwaivable right for a period of three business days after the date of their purchase to rescind and cancel their travel club purchase and receive a full refund of all sums otherwise paid to the travel club within fifteen business days of such rescission, minus the cost of any services actually consumed or utilized. Individuals who purchase travel club memberships from a travel club that is not registered under sections 407.1240 to 407.1252 shall have a nonwaivable right for a period of three years from the date of purchase to rescind and cancel their travel club membership and shall receive a full refund within fifteen business days of such rescission.

407.1252. 1. Any individual who purchases a travel club membership from a travel club and has a complaint resulting from that purchase transaction has the option, in addition to filing a civil suit, to file a written complaint with the office of the state attorney general, or the county prosecuting attorney. The office which receives the complaint shall deliver to the travel club that is the subject of the complaint, by registered mail within ten working days, all written complaints received under this section in their entirety. Should the office receiving the complaint, including the attorney general, fail to deliver the complaint as stated herein, any action subsequently filed on the complaint shall be stayed for a period of thirty business days from the date the club is first notified and provided the written complaint, thereby allowing the travel club that is the subject of the complaint an opportunity to cure the complaint as provided in subsection 2 of this section.

2. Prior to being subject to any remedies available under sections 407.1240 to 407.1252, a travel club shall have thirty business days following the date that a filed complaint is provided to the travel club to cure any grievances stated in the

complaint. The parties shall not seek other forms of redress during this period. Upon satisfaction or settlement of any complaint, the parties shall execute a written mutual release which shall contain the terms of the settlement and operate to remove the matters contained in the release as a basis for further action by any entity or person under this chapter. Any payments to be made under a settlement shall be made within fifteen business days of the signing date of the settlement.

3. (1) The attorney general, prosecuting attorney, or complainant may bring an action in a court of competent jurisdiction to enjoin a violation of sections 407.1240 to 407.1252 if the conditions for a violation of sections 407.1240 to 407.1252 have been met.

(2) A person who violates any provision of sections 407.1240 to 407.1252 is guilty of a class D felony and shall be subject to a penalty of ten thousand dollars. Any fines collected under this subsection shall be transferred to the state school moneys fund as established in section 166.051, RSMo, and distributed to the public schools of this state in the manner provided in section 163.031, RSMo.

4. Any travel club registered to operate in this state which has been adjudged to have failed to provide a refund equal to the purchase price of the unused travel benefits of a person who has validly exercised his or her rights of rescission under sections 407.1240 to 407.1252 within fifteen business days of such valid exercise or has been adjudged to have failed to honor a settlement agreement entered into under the provisions of sections 407.1240 to 407.1252 shall post a surety bond upon the earlier of a judgment entered on said violations or its next annual registration.

5. Any travel club registered to operate in this state which has been adjudged to have engaged in fraud in the procurement or sale of contracts shall be required to post a security bond upon the earlier of the judgment finding such or its next annual registration.