

BILL ANALYSIS

Senate Research Center

S.B. 1792
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DIGEST

Currently, only 14 states, not including Texas, regulate travel sales or travel sellers within the travel and tourism industry. In recent years, there has been an increase in the number of fraudulent offers of travel services or travel-related opportunities made to Texas consumers. This bill would require registration and would set forth regulations governing certain entities and persons that offer travel and transportation-related services to Texas consumers.

PURPOSE

As proposed, S.B. 1792 requires the registration and sets forth regulations of certain entities and persons that provide travel and transportation-related services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the commissioner of licensing and regulation in SECTIONS 4(a) and (d), 5, 6(a) and 12, and to the Commission of Licensing and Regulation in SECTION 5(a).

SECTION BY SECTION ANALYSIS

SECTION 1. PURPOSE. Sets forth legislative findings relating to regulation of the travel and tourism industry.

SECTION 2. DEFINITIONS. Defines "commission," "commissioner," "department," "offer for sale," "person," "seller of travel," "transportation-related services," "travel counselor," and "traveler."

SECTION 3. CERTIFICATE OF REGISTRATION REQUIRED. Prohibits a person from acting as a seller of travel or a travel counselor in this state unless the person holds a certificate of registration under this Act. Provides that a person is eligible for registration as a seller of travel if the person meets certain conditions. Provides that a person is eligible for registration as a travel counselor if the person meets certain conditions. Requires the Department of Licensing and Regulation (department) to issue a certificate of registration on approval of the application and receipt of payment of all registration fees.

SECTION 4. APPLICATION FOR CERTIFICATE OF REGISTRATION; TERM AND RENEWAL. Requires a person applying for a certificate of registration to apply to the department on a form prescribed by the commissioner of licensing and regulation (commissioner). Requires the application to be accompanied by any required bond and any required registration fee. Sets forth the required contents for an application for registration by a corporation. Requires an application for registration by a person who is not a resident of the state to be accompanied by certain items. Requires a nonresident applicant to comply with all other application requirements under this Act. Requires a nonresident's application to be accompanied by a written irrevocable consent to service of process. Sets forth the required content of the consent to service of process. Requires the consent to service of process to be in a form prescribed by the commissioner and accompanied by additional information required by rule of the commissioner. Provides that a certificate of registration issued under this Act is valid for one year from the date of issuance. Requires a certificate of registration issued under this Act to be renewed before the 30th day after the expiration date of the certificate by written request by the registrant and the payment of the required registration fee.

SECTION 5. FEES; RULES. Requires the Commission of Licensing and Regulation (commission) to adopt fees under this Act in amounts necessary for the administration of this Act. Requires the commissioner to adopt rules relating to registering as a seller of travel or a travel counselor under this Act; and prescribe any form required under this Act.

SECTION 6. EVIDENCE OF FINANCIAL SECURITY. Requires an application for a certificate of registration as a seller of travel to be accompanied by a cash performance bond or surety issued in accordance with the insurance laws of this state in the amount prescribed by rule of the commissioner. Requires a bond under this section to be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages. Provides that the bond is open to successive claims, but the aggregate amount may not exceed the penalty of the bond. Authorizes a seller of travel, if the registered seller of travel is engaged exclusively in the sale of transportation and transportation-related services in connection with charter air transportation, in lieu of the required bond, to file with the department a copy of the person's application to the U.S. Department of Transportation for each public offering; a copy of the notice of receipt by the Department of Transportation; and a statement by the seller of travel that the application was not disapproved. Authorizes a seller of travel, if the registered seller of travel has contracted with the Airlines Reporting Corporation (ARC) or the Passenger Network Services Corporation (PNSC), in lieu of the required bond, to file with the department a certified copy of the official approval and appointment of the seller of travel from ARC or PNSC. Authorizes a seller of travel, in lieu of any bond or guarantee required to be provided by this section, to file with the department proof of professional liability and errors and omissions insurance in an amount of at least \$1,000,000 annually; or deposit with the department cash, securities, or a statement from a licensed financial institution guaranteeing the performance of the seller of travel in a similar amount or evidence satisfactory to the department of the deposit of the collateral to be held or applied to the purposes to which the proceeds of the bond would otherwise be applied.

SECTION 7. EXEMPTIONS. Provides that this Act does not apply to certain persons, common carriers, and entities.

SECTION 8. DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF REGISTRATION. Authorizes the commissioner to deny, suspend, or revoke the certificate of registration of a seller of travel or a travel counselor for performing certain actions. Provides that a proceeding under this Act is subject to Chapter 2001, Government Code. Provides that this section does not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

SECTION 9. TEMPORARY SUSPENSION OF REGISTRATION. Authorizes the commissioner, if the department determines that the public health, safety, or welfare requires emergency action to prevent immediate and irreparable harm to any person or to the public because of any act or practice of a registrant, to temporarily suspend a certificate of registration issued under this Act pending further proceedings under this Act.

SECTION 10. ADVERTISING; DISPLAY OF CERTIFICATE. Requires a seller of travel that advertises in this state to indicate in the advertisement the name and registration number of the person. Requires each seller of travel to display the person's certificate of registration in a prominent place in the location where the travel business is conducted. Requires the registrant, if a seller of travel conducts business in more than one location, to apply and to pay the fee for an additional certificate designated as a branch office certificate to comply with Subsection (b) of this section.

SECTION 11. EMPLOYMENT BY SELLER OF TRAVEL. Prohibits a registered travel counselor from acting as a travel counselor for a seller of travel unless the seller of travel is registered under this Act. Prohibits a registered seller of travel from employing a person as a travel counselor unless the travel counselor is registered under this Act.

SECTION 12. SUBSTITUTED SERVICE OF PROCESS. Requires the commissioner to adopt rules providing for the substituted service of process on a person registered under this Act.

SECTION 13. PREEMPTION. Prohibits a municipality or other political subdivision of this state from levying or collecting a registration tax or fee or from requiring the registration in any manner of a seller of travel or travel counselor registered under this Act.

SECTION 14. OFFENSE. Provides that a person commits a Class A misdemeanor if the person acts as a seller of travel or a travel counselor without holding a certificate of registration under this Act.

SECTION 15. (a) Effective date: September 1, 1997.

 (b) Effective date for SECTIONS 3 and 14: January 1, 1998.

 (c) Requires the commissioner and the commission to adopt rules as required by this Act and Article 9100, V.T.C.S., by November 1, 1998.

SECTION 16. Emergency clause.