

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
SENATE SUBSTITUTE
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FOR
SENATE BILL NO. 1034

AN ACT

To amend chapter 407, RSMo, by adding thereto
six 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
six new sections, to be known as sections 407.682, 407.685,
407.688, 407.691, 407.694, and 407.699, to read as follows:

407.682. As used in sections 407.682 to 407.699, the
following terms shall mean:

(1) "Membership fee", the initial or reoccurring fee that
is unrelated to actual pass-through costs associated with the use
and enjoyment of vacation benefits charged to travel club members
in exchange for their right to use and enjoy vacation benefits;

(2) "Rescission statement", a statement that shall be

1 printed on all contracts pertaining to the purchase of vacation
2 benefits from a travel club that shall provide in at least
3 fourteen-point bold type the following statement:

4 "Assuming you have not accessed any vacation benefits and
5 have returned to the travel club all materials delivered to the
6 purchaser at closing, you have the right to rescind this
7 transaction for a period of five working days after the date of
8 this agreement. To exercise the right of rescission, you must
9 deliver to the travel club by certified mail within the five
10 working day period, return receipt requested, at the address
11 referenced in this contract, a written statement of your desire
12 to rescind this transaction, and you must then deliver all
13 materials of value that were provided and given to you at the
14 time of the purchase of your vacation benefits. If you have a
15 complaint arising from this contract, several options are
16 available to you if you are dissatisfied after contacting the
17 travel club, including filing the complaint with the local county
18 mediation board, the local prosecutor, or the state attorney
19 general. The following contact information is provided in the
20 event any of the parties have questions or issues concerning the
21 rights and responsibilities contained herein:

22 1. The Office of the Attorney General

23 (Address of the Office of the Attorney General)

24 2. The Office of (county name) Prosecuting Attorney

1 (Address of the (county name) Prosecuting Attorney)

2 3. The Office of (county name) Board of Travel Club

3 Mediation

4 (Address of the (county name) Board of Travel Club

5 Mediation)

6 4. Office of the Travel Club

7 (Address of the travel club)

8 (3) "Surety bond", any surety bond, corporate guaranty,
9 letter of credit, certificate of deposit, or other financial
10 assurance in the sum of fifty thousand dollars that is required
11 to be delivered by travel clubs seeking registration pursuant to
12 sections 407.682 to 407.699. In the event that such surety bond
13 has been accessed as a result of the need to reimburse purchasers
14 after judgment and execution, the amount of the surety bond shall
15 be increased by twenty-five thousand dollars per reimbursement.

16 All surety bonds shall:

17 (a) Serve as a source of funds to reimburse purchasers of
18 vacation benefits who validly exercise their rights pursuant to
19 the rescission statement in their contract but who are not
20 provided a refund satisfactory to the purchaser or equal to the
21 purchase price of their unused vacation benefits after judgment
22 in favor of the purchaser and execution thereon;

23 (b) Serve as a source of funds to reimburse purchasers of
24 vacation benefits who have been proven to be the subject of fraud

1 and misrepresentation after judgment in favor of the purchaser
2 and execution thereon;

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

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

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

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

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

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

16 (4) "Travel agency", a business or service authorized to
17 make arrangements for customers for travel accommodations which
18 include, but are not limited to, transportation, lodging, and
19 entertainment;

20 (5) "Travel club", any business enterprise that either
21 directly, indirectly, or through the use of a fulfillment company
22 or other third party offers to sell to the public the reoccurring
23 right to purchase vacation benefits at prices that are
24 represented as being discounted from prices otherwise not

1 generally available to the public and charges members or
2 customers a membership fee that before July 1, 2005, collectively
3 equals no less than three hundred dollars and on or after July 1,
4 2005, collectively equals no less than one hundred dollars;

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

11 407.685. 1. No travel club may offer vacation benefits for
12 sale unless the travel club maintains an effective registration
13 statement with the Missouri attorney general that discloses the
14 following information:

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

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

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

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

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

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

11 (7) The addresses where the vacation club shall offer
12 vacation benefits for sale;

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

15 (9) A description of the vacation benefits the travel club
16 is offering for sale.

17 2. The attorney general shall evidence its receipt,
18 approval, or disapproval, as the case may be, of a travel club's
19 registration statement or registration renewal statement within
20 thirty days from and after the submission. Upon compliance with
21 the foregoing requirements, the attorney general shall approve
22 the registration statement. Should any registration fail to
23 address any of the registration conditions as set forth above,
24 the attorney general shall advise in writing the registration

1 deficiencies and the manner in which said deficiencies shall be
2 cured. Such advice shall be provided by the attorney general
3 within fifteen working days from the initial filing of the
4 documents.

5 3. Travel clubs that are operational prior to the effective
6 date of this act may continue their business activities during
7 the pendency of the attorney general's processing of their
8 registration statements; provided that such registration
9 statement is filed with the attorney general within ninety days
10 of the effective date of this act. Registration of a travel club
11 shall not be transferable.

12 4. The registration statement shall additionally have
13 appended thereto:

14 (1) The form of contract pursuant to which the travel club
15 proposes to sell vacation benefits which contains the rescission
16 statement;

17 (2) The form of surety bond that will be issued upon
18 acceptance and approval of the registration statement by the
19 attorney general;

20 (3) A check made to the order of the Missouri attorney
21 general in the amount of two hundred fifty dollars.

22 407.688. Each travel club registered pursuant to sections
23 407.682 to 407.699 may renew its registration by filing with the
24 attorney general a registration renewal statement containing all

1 of the information required in section 407.685 within thirty
2 calendar days of the anniversary date of the attorney general's
3 issuance of its approval of the travel club's registration
4 statement. The attorney general may charge an annual renewal fee
5 in a sum not to exceed two hundred fifty dollars.

6 407.691. Assuming a purchaser has not otherwise accessed
7 any vacation benefits and returns to the vacation club all
8 materials of value delivered to the purchaser at closing, all
9 purchasers of vacation benefits from a travel club that is
10 registered shall have the nonwaivable right for a period of five
11 working days after the date of their purchase to rescind and
12 cancel their vacation benefits purchase and receive a full or
13 partial refund of all sums otherwise paid to the travel club
14 minus the cost of any services actually consumed or utilized.
15 Individuals who purchase vacation benefits from a travel club
16 that is not registered pursuant to sections 407.682 to 407.966
17 shall have a nonwaivable right for a period of three years from
18 the date of purchase to rescind and cancel their vacation
19 benefits.

20 407.694. 1. Any county commission may establish the
21 "..... (county name) Board of Travel Club Mediation" and
22 select its membership. The board membership shall consist of one
23 individual who is a member of the chamber of commerce of a city,
24 town, or village within the county, one individual who is

1 associated with the travel industry, and one elected official
2 from a political subdivision within the county.

3 2. Any individual who purchases vacation benefits from a
4 travel club and has a grievance has the option to file a written
5 complaint with the office of the state attorney general, the
6 county prosecuting attorney, or any existing county travel club
7 mediation board. The office which receives the complaint shall
8 deliver to the travel club that is the subject of the complaint,
9 within ten working days by registered mail, all written
10 complaints received pursuant to this section. Should the office
11 receiving the complaint, including the attorney general, fail to
12 deliver the complaint as stated herein, any action based on the
13 complaint shall be stayed for a period of fifteen working days
14 from the date the club was first notified, thereby allowing the
15 travel club to cure the grievance.

16 3. Prior to utilizing any other remedies available pursuant
17 to sections 407.682 to 407.699, a travel club shall have thirty
18 working days following the filing of a complaint to cure any
19 grievances stated in the complaint. The parties may not seek
20 other forms of redress during this period. Any complaint filed
21 and the resolution of such complaint pursuant to this section
22 shall be subject to the provisions of chapter 610, RSMo. Upon
23 satisfaction of any complaint, the parties shall execute a
24 written mutual release which shall operate to remove the matters

1 contained in the release as a basis for further action by any
2 entity or person pursuant to sections 407.682 to 407.699.

3 4. Upon the failure of the travel club to cure any
4 grievance, and at the request of either party, the county
5 mediation board, if available, shall contact the other party to
6 determine if mediation is the acceptable means of dispute
7 resolution. If so, the board shall schedule a mediation session
8 within fifteen working days and select a mediator. The buyer
9 shall not be required to be physically present during the
10 mediation effort. The parties may not seek other forms of
11 redress during this fifteen working day period for mediation.
12 Within fifteen calendar days of the first meeting for the
13 mediation, but not more than forty-five working days from the
14 filing of the complaint, the parties must resolve the dispute or
15 seek alternative methods of redress. Any costs associated with
16 the mediation shall be paid for by the travel club. If mediation
17 is not available or is not an acceptable means of dispute
18 resolution, the parties may pursue arbitration, civil action, or,
19 if appropriate prosecution, as a course of redress.

20 5. (1) The attorney general, prosecuting attorney, or
21 buyer may bring an action in a court of competent jurisdiction to
22 enjoin a violation of sections 407.682 to 407.699.

23 (2) A person who violates any provision of sections 407.682
24 to 407.699 is guilty of a class D felony and shall be subject to

1 a penalty of ten thousand dollars. Any fines collected pursuant
2 to this subsection shall be transferred to the state school
3 moneys fund as established in section 166.051, RSMo, and
4 distributed to the public schools of this state in the manner
5 provided in section 163.031, RSMo.

6 407.699. 1. Notwithstanding any other provisions of law to
7 the contrary, sections 407.682 to 407.699 shall not apply to
8 travel agencies that are involved in the sale of airfare, hotel,
9 and related travel services to the general public.

10 2. Notwithstanding any other provision of law to the
11 contrary, sections 407.682 to 407.699 shall not apply to:

12 (1) Any publicly held corporation whose voting stock is
13 traded on a recognized exchange or over the counter and any
14 affiliate, subsidiary, or division of such corporation that is
15 controlling, controlled by, or under common control with such
16 corporation and any employee, subsidiary, or division; or

17 (2) A developer of a timeshare plan or exchange company as
18 defined in section 407.600.