

HOUSE No. 3418

By Mr. Galvin of Boston, petition of William F. Galvin relative to travel agencies. Government Regulations.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT RELATIVE TO TRAVEL AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 94 of the General Laws is hereby amended by adding
2 after section 326 the following section: —

3 *Section 327.* (1) No person, firm, partnership or corporation
4 shall act or hold himself out as a travel agency unless he holds
5 an unsuspending, unrevoked license issued by the executive office
6 of consumer affairs and business regulations within one year of
7 the effective date of this act pursuant to the provisions of this
8 section. Said licenses shall be conspicuously posted at the place
9 of business of each travel agency. A travel agency shall be any
10 person, firm, partnership or corporation who holds out directly
11 or indirectly that he is able or offering an undertaking to arrange
12 or travel reservations or accommodations, tickets for domestic or
13 foreign travel by air, rail, ship or other medium of transportation
14 or hotel or other lodging accommodations for a fee, commission
15 or other valuable consideration.

16 (2) Each travel agency shall deliver and file with the executive
17 office of consumer affairs and business regulation, before a license
18 is issued or reissued, a surety company bond, written by a
19 company recognized and approved by the commissioner of
20 insurance, and approved by said executive office with respect to
21 its form, manner of execution, and sufficiency in due form to the
22 commonwealth in the principal sum of ten thousand dollars
23 (\$10,000); provided however, the liability of the surety on the bond
24 shall be limited to indemnify the claimant only for his actual
25 damage. Such bond shall not limit or impair any right of recovery
26 otherwise available pursuant to law nor shall the amount of the

27 bond be relevant in determining the amount of damage or other
28 relief to which any claimant shall be entitled. The bond shall be
29 accessible only after all other legal remedies have been exhausted.

30 (3) Each licensed travel agency shall maintain a fixed office
31 within the commonwealth which shall be so located as to conform
32 with zoning laws.

33 (4) License fee for any person, firm, partnership or corporation
34 shall be fifteen dollars (\$15), paid annually to the executive office
35 of consumer affairs and business regulation. The fee for duplicate
36 licenses for additional locations or because of the loss or
37 mutilation of a license shall be five dollars (\$5). Application for
38 the renewal of a license must be received by said executive office
39 no less than twenty-one (21) days prior to the expiration date of
40 any previously held licenses subject to the right of the licensing
41 authority to permit late filing upon good cause shown. Renewals
42 shall be subject to the same provisions covering issuance,
43 suspension and revocation herein provided for original issuances.

44 (5) The executive office of consumer affairs and business
45 regulation shall promptly notify any licensee by certified mail of
46 its intent to refuse to renew his license. Said licensee shall receive
47 a hearing on such refusal, provided that within twenty-one (21)
48 days after receipt of such notice of intent, he requests such a
49 hearing. No travel agency shall be permitted to make any new
50 commitments, subsequent to receiving a notice of intent to refuse
51 renewal, but may honor any pre-existing commitments. Where an
52 applicant does not request a hearing, the licensing authority shall
53 carry out the proposal stated in the notice of intent.

54 (6) A travel agency shall be obligated to fulfill substantially any
55 promise, guarantee, or representation regarding any trip which
56 it makes to any person with whom the travel agency contracts for
57 such a trip, when such promise, guarantee or representation is in
58 writing by any employee of said travel agency, or in any
59 advertising or literature displayed by the travel agency, or read
60 or shown to any person by such travel agency. Any such travel
61 agency shall refund to any person with whom it contracts for a
62 trip, monies lost by said person as a result of a failure to fulfill
63 substantially any such promise, guarantee or representation, said
64 refund shall be made within thirty (30) days from the date it is
65 requested and shall not be contingent on the travel agency's first
66 recovering the amount sought from any other party which was

67 allegedly responsible for the failure. Nothing contained herein
68 shall restrict the right of said travel agency to refuse said refund
69 and to require ordinary civil adjudication of the dispute. This
70 section shall not limit the right of the travel agency to recover
71 from, or be indemnified by any other party which was responsible
72 for the failure of all or part of the monies it refunded to the
73 consumer pursuant to this section.

74 (7) A license issued pursuant to this chapter may be suspended
75 or revoked by the executive office of consumer affairs and business
76 regulation for any one or more of the following causes:

77 (a) Fraud or bribery in securing a license pursuant to this
78 chapter;

79 (b) Violation of any provision of this chapter;

80 (c) Practice which in the opinion of the secretary of consumer
81 affairs and business regulation, constitutes fraud in the operation
82 and conduct of a travel agency business, including, but not limited
83 to, intentionally misleading advertising;

84 (d) Aiding or abetting any person, firm, partnership or corpora-
85 tion not licensed in this state in the business of conducting a travel
86 agency.

87 (8) Every nonresident travel agency soliciting business in the
88 state of Massachusetts by mail, telephone, or otherwise, either
89 directly or indirectly, shall be deemed equivalent to an appoint-
90 ment by such nonresident of the secretary of consumer affairs and
91 business regulation to be his true and lawful attorney upon whom
92 may be served all lawful processes in any action or proceeding
93 against said non-resident arising or growing out of any transaction
94 involving travel and related services. Such acceptance or sollicita-
95 tion shall be a signification of said nonresident's agreement that
96 any such process against him which is served as herein provided
97 shall be of the same legal force and validity as if served on him
98 personally. Service of such process shall be made by leaving a copy
99 of the process with a fee of five dollars (\$5.00) in the hands of said
100 secretary or in her office with someone acting in her stead as such
101 director and such service shall be sufficient service upon the said
102 nonresident, provided, that notice of such service and a copy of the
103 process shall be sent by registered or certified mail prior to service
104 or forthwith after service by the plaintiff or his attorney of record
105 to the defendant at the address given by the nonresident in any
106 solicitation furnished by him, and the sender's post office receipt of

107 sending and the plaintiff's or his attorney's affidavit of compliance
108 herewith are returned with the process in accordance with applica-
109 ble procedural rules. Notwithstanding the foregoing requirements,
110 however, once service has been made on the secretary as provided
111 herein, the court shall have the authority in the event of failure to
112 comply with the requirement of notice to such nonresident to order
113 such notice as shall be sufficient to apprise him of the pendency of
114 the suit against him, and in addition thereto, may extend the time
115 for answering by such nonresident. It is also sufficient if such notice
116 and a copy of the process are served upon the defendant outside the
117 state in accordance with applicable procedural rules.

118 (9) Any person who engages in the business of conducting a
119 travel agency without obtaining a license as provided herein shall
120 be guilty of a misdemeanor and shall upon conviction be fined not
121 more than one thousand dollars (\$1,000). Such travel agency shall
122 be ineligible for a license for a period of one year, beginning at the
123 date of conviction.

124 (10) If any person recovers any amount in settlement of a claim
125 or toward satisfaction or a judgment against a licensed travel
126 agency involving the breach of a fiduciary relationship between the
127 customer and a travel agency, the license of such travel agency shall
128 be automatically revoked and no such travel agency shall be eligi-
129 ble to receive a new license until he has repaid in full. A discharge of
130 bankruptcy or receivership shall not relieve a person from the
131 penalties of this section.

132 (11) This chapter shall not prohibit any school system, fraternal
133 organization or similar group to conduct a tour where tours are
134 conducted without remuneration in any form to the organization
135 and does not include the general public, provided however, that
136 said exempt groups when conducting a tour shall register with the
137 department and give to each member of said group such written
138 notice as may be deemed appropriate by the department to include
139 a warning that said group is not licensed, bonded or regulated by
140 this chapter. Further, the provisions of this section shall not apply
141 to direct common carriers, persons, firms, partnerships or corpora-
142 tions owned by direct common carriers or employees of such
143 carriers, persons, firms, partnerships or corporations when engaged
144 in the business of their employers.

145 (12) The attorney general may bring an action on behalf of the
146 Commonwealth to restrain or prevent any violation of this section.