

By Representatives Melvin and Ogles

1 A bill to be entitled
2 An act relating to travel agencies; creating
3 the Travel Agency Fair Treatment Act; providing
4 findings and intent; providing definitions;
5 providing purposes of the act; providing for
6 construction; prohibiting the cancellation,
7 failure to renew, or alteration of appointments
8 without good cause; requiring notification of
9 termination or change in appointment; providing
10 contents of notice; providing applicability of
11 notice provisions; providing for damages;
12 providing for applicability with respect to
13 arbitration agreements; providing for temporary
14 injunction; providing severability; providing
15 an effective date.
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17 WHEREAS, the travel agency industry has a significant
18 effect upon the economy and well-being of the state and its
19 citizens, and
20 WHEREAS, the traveling public is dependent on travel
21 agents as the primary source of comprehensive and unbiased
22 information about alternative travel arrangements and the
23 value thereof, and
24 WHEREAS, the public interest requires remedial action
25 on the part of the Legislature to ensure the continued
26 availability of such comprehensive and unbiased information to
27 citizens of this state, and
28 WHEREAS, the continued availability of such
29 comprehensive and unbiased information is threatened by
30 overreaching and predatory practices of travel service
31 suppliers whose economic power is vastly greater than those

1 who sell transportation and related services under
2 appointments and who offer objective information and choices
3 of arrangements from a variety of travel service providers to
4 the citizens of this state, NOW, THEREFORE,

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6 Be It Enacted by the Legislature of the State of Florida:

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8 Section 1. This act shall be known and may be cited as
9 the "Travel Agency Fair Treatment Act."

10 Section 2. Definitions.--As used in this act, unless
11 the context otherwise requires, the following words and
12 phrases shall have the following meanings:

13 (1) "Appointment" means a contract or agreement,
14 either express or implied, whether oral or written, by which
15 one or more travel service suppliers, directly or through an
16 intermediary, grants to one or more persons the right to sell
17 or distribute travel or travel-related services, or to use a
18 travel or travel-related trade name, trademark, service mark,
19 logo, advertising, or other commercial symbol, in which there
20 is a community of interest in the business of offering,
21 selling, or distributing such services at retail, by lease, by
22 agreement, or otherwise. The term shall also include agencies,
23 distributorships, franchises, dealerships, and other
24 distribution arrangements, regardless of how denominated.

25 (2) "Community of interest" means a continuing
26 financial interest between the travel service supplier and the
27 travel agency in either the operation of the retail business
28 or the marketing of services.

29 (3) "Good cause" means the failure of a travel agency
30 to substantially comply with essential and reasonable
31 requirements imposed, or sought to be imposed, upon the travel

1 agency by a travel service, which requirements are not
2 discriminatory, either by their terms or in the manner of
3 their enforcement, when compared to requirements imposed on
4 other similarly situated travel agencies or requirements and
5 practices under which the travel service supplier conducts its
6 own activities that are in competition with the travel agency.

7 (4) "Travel service supplier" means a person who
8 grants an appointment as defined in subsection (1).

9 (5) "Person" means a natural person, partnership,
10 joint venture, corporation, or other entity.

11 (6) "Travel agency" means a seller of travel, as
12 defined in s. 559.927(10), Florida Statutes, with a principal
13 place of business in this state or organized under the laws of
14 this state, who is the grantee of one or more appointments as
15 defined in subsection (1). A person may, at the same time, be
16 a travel agency with respect to more than one travel service
17 supplier.

18 Section 3. Purposes; rules of construction; variation
19 by contract.--

20 (1) The underlying purposes of this act are:

21 (a) To promote the compelling public interest in fair
22 business relations between travel agencies and travel service
23 suppliers, and in the continuation of appointments on a fair
24 basis.

25 (b) To protect travel agencies against unfair
26 treatment by travel service suppliers who inherently have
27 superior economic power and superior bargaining power in the
28 granting of appointments.

29 (c) To provide travel agencies with rights and
30 remedies in addition to those existing by contract or common
31 law.

1 (d) To govern all appointments, including any renewals
2 or amendments, to the full extent consistent with the
3 constitutions of this state and the United States.

4 (e) To preserve for the public the convenience and
5 efficiency of access to multiple sources for travel and
6 travel-related services.

7 (f) To recognize and protect travel agencies'
8 investments of time and effort in creating goodwill for their
9 travel service suppliers.

10 (2) This act shall be liberally construed and applied
11 to promote its underlying remedial purposes and policies. The
12 effect of this act may not be varied by contract or agreement.
13 Any contract or agreement purporting to do so is void and
14 unenforceable to that extent only.

15 Section 4. Cancellation and alteration of
16 appointments.--No travel service supplier, directly or through
17 any officer, agent, employee or other representative, shall
18 terminate, cancel, fail to renew, or substantially change the
19 competitive circumstances of an appointment without good
20 cause. The burden of proving good cause is on the travel
21 service supplier. For the purposes of this act, the terms
22 "terminate," "cancel," and "fail to renew" shall mean either
23 actual or constructive termination, cancellation, or failure
24 to renew.

25 Section 5. Notice of termination or change in
26 appointment.--

27 (1) Except as provided in subsection (2), a travel
28 service supplier shall provide a travel agency not less than
29 90 days' prior written notice of termination, cancellation,
30 nonrenewal, or substantial change in the competitive
31 circumstances of an appointment. The notice shall state all

1 the reasons for termination, cancellation, nonrenewal, or
2 substantial change in competitive circumstances and shall
3 provide that the travel agency has 60 days in which to rectify
4 any claimed deficiency. If the deficiency is rectified within
5 60 days, the notice shall be void.

6 (2)(a) The notice provisions of this section shall not
7 apply if the reason for termination, cancellation, nonrenewal,
8 or substantial change in competitive circumstances is
9 insolvency, the occurrence of an assignment for the benefit of
10 creditors, or bankruptcy. If the reason for termination,
11 cancellation, nonrenewal, or substantial change in competitive
12 circumstances is nonpayment of sums due under the appointment,
13 the travel agency shall be entitled to written notice of such
14 default, and shall have 10 days from the date of delivery or
15 posting of such notice in which to remedy such default, or
16 such longer time as is provided for in any written agreement
17 between the travel agency and the travel service supplier or
18 its representative.

19 (b) The notice provisions of this section shall not
20 apply when the travel service supplier asserts that the travel
21 agency has engaged in fraudulent conduct and there is a clear
22 and present danger of substantial loss to the travel service
23 supplier unless action otherwise regulated by the notice
24 provisions of subsection (1) is taken without giving such
25 notice.

26 (3) If a proceeding under section 7 results in a
27 finding that there was no fraudulent conduct on the part of
28 the travel agency and there was no clear and present danger of
29 substantial loss to the travel service supplier, the damages
30 recoverable by the travel agency under section 7 shall be five
31 times the actual damages or \$5,000, whichever is greater,

1 together with actual costs of the action, including reasonable
2 attorney's fees.

3 Section 6. Application to arbitration
4 agreements.--This act shall not affect provisions for the
5 binding arbitration of disputes contained in an appointment if
6 the criteria for determining whether good cause existed for a
7 termination, cancellation, nonrenewal, or substantial change
8 in competitive circumstances, and the relief provided
9 thereunder, are no less than those provided for in this act.

10 Section 7. Action for damages.--Any travel agency who
11 suffers damage as a result of a violation of this act may file
12 a petition or complaint in any court of competent jurisdiction
13 in the state, and, if successful, shall recover three times
14 the actual damages or \$1,000, whichever is greater, together
15 with actual costs of the action, including reasonable
16 attorney's fees. Appointments shall continue in effect until
17 final determination of the issues raised in such petition or
18 complaint by the travel agency.

19 Section 8. Temporary injunction.--In any action
20 brought by a travel agency against a travel service supplier
21 under this act, any violation of this act by the travel
22 service supplier is deemed an irreparable injury to the travel
23 agency for determining whether a temporary injunction should
24 be issued.

25 Section 9. Severability.--If any provision of this act
26 or the application thereof to any person or circumstance is
27 held invalid, the invalidity shall not affect the other
28 provisions or applications of the act which can be given
29 effect without the invalid provision or application, and to
30 this end the provisions of this act are declared severable.

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1 Section 10. This act shall take effect upon becoming a
2 law and shall apply to all appointments in effect on the date
3 of its enactment.

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6 HOUSE SUMMARY

7
8 Creates the Travel Agency Fair Treatment Act. Provides
9 findings and intent. Defines terms for purposes of the
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11 cancellation, failure to renew, or alteration of
12 appointments without good cause. Requires notification of
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