

556-159X-32

Bill No. HB 3785

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ogles and Melvin offered the following:

Amendment (with title amendment)

On page 9, lines 1 and 2,
remove from the bill: all of said lines,

and insert in lieu thereof:

Section 11. (1) Short title.--This section may be cited as the "Travel Agency Fair Treatment Act."

(2) Definitions.--As used in this act, unless the context otherwise requires, the following words and phrases shall have the following meanings:

(a) "Appointment" means a written contract or agreement by which one or more travel service suppliers, directly or through an intermediary, grants to one or more persons the right to sell or distribute air travel services in which there is a community of interest in the business of offering, selling, or distributing such services at retail. The term shall also include agencies, distributorships, franchises, dealerships, and other distribution arrangements, regardless of how denominated.

1 (b) "Community of interest" means a continuing
2 financial interest between the travel service supplier and the
3 travel agency in either the operation of the retail business
4 or the marketing of services.

5 (c) "Good cause" means the failure of a travel agency
6 to substantially comply with essential and reasonable
7 requirements imposed, or sought to be imposed, upon the travel
8 agency by a travel service, which requirements are not
9 discriminatory, either by their terms or in the manner of
10 their enforcement, when compared to requirements imposed on
11 other similarly situated travel agencies or requirements and
12 practices under which the travel service supplier conducts its
13 own activities that are in competition with the travel agency.

14 (d) "Travel service supplier" means an air carrier.

15 (e) "Person" means a natural person, partnership,
16 joint venture, corporation, or other entity.

17 (f) "Travel agency" means a seller of travel, as
18 defined in s. 559.927(10), Florida Statutes, with a principal
19 place of business in this state or organized under the laws of
20 this state, who is the grantee of one or more appointments as
21 defined in paragraph (a). A person may, at the same time, be a
22 travel agency with respect to more than one travel service
23 supplier.

24 (3) Purposes; rules of construction; variation by
25 contract.--

26 (a) The underlying purposes of this act are:

27 1. To promote the compelling public interest in fair
28 business relations between travel agencies and travel service
29 suppliers, and in the continuation of appointments on a fair
30 basis.

31 2. To protect travel agencies against unfair treatment

1 by travel service suppliers who inherently have superior
2 economic power and superior bargaining power in the granting
3 of appointments.

4 3. To provide travel agencies with rights and remedies
5 in addition to those existing by contract or common law.

6 4. To govern all appointments, including any renewals
7 or amendments, to the full extent consistent with the
8 constitutions of this state and the United States.

9 5. To preserve for the public the convenience and
10 efficiency of access to multiple sources for travel and
11 travel-related services.

12 6. To recognize and protect travel agencies'
13 investments of time and effort in creating goodwill for their
14 travel service suppliers.

15 (b) This act shall be liberally construed and applied
16 to promote its underlying remedial purposes and policies. The
17 effect of this act may not be varied by contract or agreement.
18 Any contract or agreement purporting to do so is void and
19 unenforceable to that extent only.

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

29 (5) Notice of termination or change in appointment.--

30 (a) Except as provided in paragraph (b), a travel
31 service supplier shall provide a travel agency not less than

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1 90 days' prior written notice of termination, cancellation,
2 nonrenewal, or substantial change in the competitive
3 circumstances of an appointment. The notice shall state all
4 the reasons for termination, cancellation, nonrenewal, or
5 substantial change in competitive circumstances and shall
6 provide that the travel agency has 60 days in which to rectify
7 any claimed deficiency. If the deficiency is rectified within
8 60 days, the notice shall be void.

9 (b)1. The notice provisions of this section shall not
10 apply if the reason for termination, cancellation, nonrenewal,
11 or substantial change in competitive circumstances is
12 insolvency, the occurrence of an assignment for the benefit of
13 creditors, or bankruptcy. If the reason for termination,
14 cancellation, nonrenewal, or substantial change in competitive
15 circumstances is nonpayment of sums due under the appointment,
16 the travel agency shall be entitled to written notice of such
17 default, and shall have 10 days from the date of delivery or
18 posting of such notice in which to remedy such default, or
19 such longer time as is provided for in any written agreement
20 between the travel agency and the travel service supplier or
21 its representative.

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

29 (c) If a proceeding under subsection (7) results in a
30 finding that there was no fraudulent conduct on the part of
31 the travel agency and there was no clear and present danger of

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1 substantial loss to the travel service supplier, the damages
2 recoverable by the travel agency under subsection (7) shall be
3 five times the actual damages or \$5,000, whichever is greater,
4 together with actual costs of the action, including reasonable
5 attorney's fees.

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

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

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

27 (9) Application.--This act shall apply to all
28 appointments in effect on the effective date of this act.

29 (10) Severability.--If any provision of this act or
30 the application thereof to any person or circumstance is held
31 invalid, the invalidity shall not affect the other provisions

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1 or applications of the act which can be given effect without
2 the invalid provision or application, and to this end the
3 provisions of this act are declared severable.

4 Section 12. This act shall take effect October 1 of
5 the year in which enacted except section (11) shall take
6 effect upon becoming a law.

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9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, line 25,
12 remove from the title: providing an effective date.

13

14 and insert in lieu thereof:

15 creating the Travel Agency Fair Treatment Act;
16 providing findings and intent; providing
17 definitions; providing purposes of the act;
18 providing for construction; prohibiting the
19 cancellation, failure to renew, or alteration
20 of appointments without good cause; requiring
21 notification of termination or change in
22 appointment; providing contents of notice;
23 providing applicability of notice provisions;
24 providing for damages; providing for
25 applicability with respect to arbitration
26 agreements; providing for temporary injunction;
27 providing application; providing severability;
28 providing effective dates.

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