

## REGULATE TRAVEL PROMOTERS

### House Bill 5520 (Substitute H-1) House Bill 5521 as introduced First Analysis (5-21-98)

**Sponsor: Rep. Derrick Hale**  
**Committee: Consumer Protection**

#### **THE APPARENT PROBLEM:**

It occasionally happens that would-be travelers pay deposits on tours that never take place because the tour promoter fails to pay the necessary airline and hotel deposits. It is also not unheard of for a travel business to fail while customers are on a tour, leaving travelers stranded and scrambling to find and pay for alternative accommodations and transportation home. Sometimes the failure appears due to outright fraud; sometimes it appears due to worsening business problems that the promoter can no longer contain. In any event, the result is that customers are left with vacation plans in ruin and monetary losses of hundreds, sometimes thousands, of dollars each. A typical incident publicized several years ago serves to illustrate the nationwide extent of this problem: in the spring of the year, hundreds of high school students, many of whom had saved for a trip to Europe by working after school for many months, were shocked by the closing of the travel agency that had handled the travel arrangements. Similar incidents in Michigan, where travel plans have dissolved and customers have lost deposits, have highlighted the lack of protection afforded by Michigan law. Consumer advocates report that every summer finds them dealing with another disappointed high school tour group. And, at least once a year, there are reports of travel groups involving senior citizens who arrive at an airport to find that tickets have not been ordered or paid for, and the tour operator isn't to be found. Consumer advocates and others have called for legislation to better protect the customers of travel firms.

#### **THE CONTENT OF THE BILLS:**

House Bill 5520 would create a new act, the Travel Promotion Act, to regulate the business of travel promotion. Under the bill, a "travel promoter" would be a person primarily engaged in soliciting and/or selling tickets for transportation or transportation-related services. A person could not act as a travel promoter unless he or she had obtained at least one of the following: at least \$1 million in errors

and omissions insurance; a \$10,000 surety bond or letter of credit, payable to his or her customers; proof of accreditation in the Airline Reporting Corporation [ARC], but only if the accreditation required bonding equal to or exceeding the bill's \$10,000 surety bond provision; or an escrow fund. A travel promoter who did not have either insurance, a surety bond, or ARC accreditation would be required to have an escrow fund, and to immediately deposit 90 percent of all money received from a customer for payment of transportation or related services into the account. The account would have to be in a federally-insured depository institution and the travel promoter could not encumber the account in any manner. Withdrawals from the account could be made only for: partial or full payment of transportation or related services for a customer, a refund to a customer, or interest on the account, which could be withdrawn monthly.

A travel promoter would be required to conspicuously post a sign setting forth the following:

#### *MICHIGAN TRAVEL DISCLOSURES*

- *Be aware of travel offers that sound "too good to be true", especially if you have been solicited by telephone or received a postcard or certificate in the mail.*
- *Do not give your credit card number or any information about bank accounts prior to making travel decisions. Never give a courier a cashier's check or money order in exchange for information about a travel package.*
- *Get the complete details in writing about any trip prior to payment. These details should include the total cost (including taxes, port charges, service fees, and surcharges), terms and conditions, restrictions, cancellation penalties, if any, and specific information about all components of the package.*

- *Leave high-pressure sales presentations which do not allow time for evaluation of the offer or which require disclosure of your income.*

- *Be wary of companies that require you to wait at least 60 days before taking the trip or require you to select several dates of departure for the trip.*

- *Be fully informed of the need and reason for additional trip insurance coverage.*

- *If considering a tour package, ask if the tour operator is part of a consumer protection plan or bond program that would protect your payment in the case of the tour company's closing.*

- *Keep all receipts and documents needed to report a problem.*

- *In the event of a problem or cancellation due to the tour operator or travel agent, you may wish to contact the Michigan Better Business Bureau, the Consumer Affairs Department at the Attorney General's office, or an accredited national travel association or organization.*

- *You may have a legal right to sue under the travel promotion act and the Michigan consumer protection act.*

Before the receipt of money or other valuable consideration for transportation or related services from a customer, and at the first personal or telephone contact, a travel promoter could provide the customer a written statement of the above disclosures.

A violation of the bill would be considered an unlawful act under the Michigan Consumer Protection Act.

House Bill 5521 would amend the Michigan Consumer Protection Act (MCL 445.903) to include violations of House Bill 5520 within the definition of "unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce", which the act deems to be unlawful. Under the consumer protection act, a person harmed by an unlawful practice may bring a civil action to recover actual damages or \$250, whichever is greater; seek a declaratory judgment that an act is illegal; seek injunctive relief; or may bring a class action. Further, the attorney general may take action to restrain or enjoin illegal practices under the act, or may bring a class action on behalf of persons harmed.

Tie-bar. House Bills 5520 and 5521 are tie-barred.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available.

### ***ARGUMENTS:***

#### ***For:***

Tourism is Michigan's second largest industry, and it is important that the state promote standards that protect travel agency customers. Though the majority of travel agencies are small businesses and are properly accredited and bonded, there are other agencies that fail because they are managed by individuals who are well-meaning but inexperienced, and who lack proper training in the rudiments of the travel business. Often, free travel fares are the primary reason this type of entrepreneur enters the business. And others, of course, are simply unethical.

The bill would provide protection for consumers without creating an unnecessary bureaucracy to license travel agents. The bonding, insurance, and escrow provisions of the bill would not only serve as a guideline for consumers when trying to identify legitimate travel promoters, they would also serve to discourage those who aren't trained in the sale of travel and transportation-related services from attempting to enter the business. It is not unreasonable to require a travel promoter to carry a bond or letter of credit in the amount of \$10,000, since that person may receive and disburse thousands of dollars when dealing with customers. Also, requiring travel promoters to post the list of disclosures as outlined in the bill would provide consumers with information needed to make wise choices about purchasing travel services. Further, by making a violation of the Travel Promotion Act a violation of the Michigan Consumer Protection Act, the legislation would allow the attorney general to take action on behalf of consumers to shut down fraudulent operations, and would allow customers to sue for damages suffered in travel scams.

#### ***Response:***

According to travel industry representatives, the industry is already well regulated, since airlines and cruise lines require a measure of stability from those with whom they do business. For example, full service travel agencies that offer a broad range of travel services, including cruises, tours, car rental, hotel and airline reservations, and travel insurance, must be certified by the Airline Reporting Corporation (ARC) and must carry a bond and exhibit a very high

level of financial worth. Another type of travel agency, a "cruise only" agency, must be accredited by the Cruise Lines International Association (CLIA), but is not required to carry a bond or letter of credit. A third type of agency, an agency that sells prepackaged tours, may be accredited by ARC or the National Tour Association and must carry \$1 million in errors and omissions insurance.

***Against:***

The bill would impose unnecessary regulation on Michigan businesses with no benefit to Michigan consumers. The real problem with travel scams are when people try to "get something for nothing" by dealing with fly-by-night operations, most of them from out of state (and thus outside the jurisdiction of the attorney general and the Michigan Consumer Protection Act). And, no doubt the scams of the future will be conducted over the Internet, which is also outside the purview of Michigan legislation. Other problems are caused when legitimate businesses go bankrupt (due to such things as losses from theft, or large legal judgements); no legislation can prevent that from happening. While the committee version of the bill is less objectionable than earlier proposals, it would still impose burdens while not providing any effective protection from Michigan consumers.

***Against:***

The bill fails to differentiate between travel promoters and agents such as bus and airline ticket agents. (The bill would define a travel agent or "travel promoter" as a person primarily engaged in soliciting and/or selling tickets for transportation or transportation related services). Therefore, according to the provisions of the bill, travel agency customers could sue an innocent bus or airline ticket agent for damages should a travel promoter misappropriate customers' funds.

***POSITIONS:***

AAA - Michigan supports the committee version of the bills. (5-20-98)

The Michigan Chapter of the American Society of Travel Agents is neutral on the bills. (5-20-98)

The National Federation of Independent Businesses - Michigan opposes the bills. (5-20-98)

Analyst: D. Martens

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.