STATE OF NEW YORK

7032

IN SENATE

(Prefiled)

January 3, 2018

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to travel agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 157-a of the general business law, as added by chapter 754 of the laws of 1990, is amended to read as follows:

1. When a person agrees, in response to a solicitation by a travel promoter which is directed to the person individually, to purchase membership in a travel club or to enter into any travel services contract or other agreement to accept transportation, lodging, an interest or investment in a time share plan, travel investments, or other travel services, the travel promoter must provide such purchaser with written or electronic disclosure of all limitations on and terms of such purchase or agreement [~~within five business days of the date of the agreement~~] at the time or prior to the receipt of payment. Such disclosure shall clearly and conspicuously include:

a. the name, business address and telephone number of the travel promoter;

b. the amount due, the date of payment, the purpose of the payment and an itemized statement of the balance due, if any;

c. the name of the carrier with which the travel promoter has contracted to provide the transportation, the type and size of carrier to be used, and the date, time and place of each departure;

d. a detailed description of any other services provided in conjunction with the transportation;

e. conditions, if any, upon which the travel services contract between the travel promoter and the traveler may be cancelled, and the rights and obligations of all parties in the event of such cancellation;

f. the conditions, if any, upon which the travel services contract between the travel promoter and the carrier or other service provider

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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may be cancelled, and the rights and obligations of all parties in the event of such cancellation; and

g. a description of all contingencies, limitations and/or conditions of the agreement.

§ 2. The general business law is amended by adding a new section 157-b to read as follows:

§ 157-b. Additional prohibitive practices by travel consultants. A travel consultant shall not receive payment for travel or services connected therewith unless at the time or prior to the receipt of payment, the travel consultant provides the purchaser with written or electronic disclosure of the terms of the purchase. Such disclosure shall clearly and conspicuously include:

1. the name, business address and telephone number of the travel consultant;

2. the amount due, the date of payment, the purpose of the payment and an itemized statement of the balance due, if any;

3. the name of the carrier with which the travel consultant has contracted to provide the transportation, the type and size of carrier to be used, and the date, time and place of each departure;

4. a detailed description of any other services provided in conjunction with the transportation;

5. conditions, if any, upon which the services between the travel consultant and the traveler may be cancelled, and the rights and obligations of all parties in the event of such cancellation;

6. the conditions, if any, upon which the agreement between the travel consultant and the carrier or other service provider may be cancelled, and the rights and obligations of all parties in the event of such cancellation; and

7. a description of all contingencies, limitations and/or conditions of the agreement.

§ 3. Subdivisions 1 and 2 of section 159 of the general business law, as amended by chapter 754 of the laws of 1990, are amended to read as follows:

1. Except as otherwise provided by law, any travel consultant who shall violate the terms of section one hundred fifty-eight of this article shall be guilty of a misdemeanor **provided, however, that where such violation results in five thousand dollars or more of financial loss to a consumer, such violation shall constitute a class E felony**.

2. Except as otherwise provided by law, any travel promoter who shall knowingly violate the terms of section one hundred fifty-eight-a of this article shall be guilty of a misdemeanor **provided, however, that where such violation results in five thousand dollars or more of financial loss to a consumer, such violation shall constitute a class E felony**.

§ 4. Subdivision 4 of section 159 of the general business law, as added by chapter 754 of the laws of 1990, is amended to read as follows:

4. Enforcement; penalties. Whenever there shall be a violation of section one hundred fifty-seven-a, **one hundred fifty-seven-b,** one hundred fifty-eight or one hundred fifty-eight-a of this article, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof

that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty [~~of not more than five hundred dollars~~] **based on the amount of financial loss to the consumer whose agreement was the subject of such proceeding** for each violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 5. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all proceedings for violations of article 10-A of the general business law beginning on and after such effective date.