

LD2962136

HOUSE BILL NO. 1097

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 7, 1994)

(Patron Prior to Substitute—Delegate Brickley)

A BILL to amend and reenact §§ 59.1-445, 59.1-446, 59.1-447, 59.1-448, 59.1-449, and 59.1-453 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 59.1-447.1 and 59.1-448.1, relating to the Virginia Travel Club Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-445, 59.1-446, 59.1-447, 59.1-448, 59.1-449, and 59.1-453 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 59.1-447.1 and 59.1-448.1 as follows:

§ 59.1-445. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Accommodations" means any real property improvement provided by the travel club to its members for lodging purposes, including, without limitation, condominiums, hotels, motels or motor courts.

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Carrier" means any person engaged in the business of transporting persons for hire.

"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.

"Contract" shall be synonymous with "travel services agreement."

"Offer," or "offering" means any act to sell, solicit, induce, advertise, or execute a travel services agreement.

"Purchaser" means any person who enters into an agreement in whole or in part within this Commonwealth with a travel club for travel services.

"Travel club" means a for-profit organization that provides, in return for either an advance fee for membership or an annual charge for membership of more than \$100, the privilege for its members or participants to arrange or obtain future travel services through or from the organization. Travel club shall exclude credit card issuers whose cards are honored at any one time by 100 or more merchants, other than the issuer.

"Travel services" means transportation by carrier; accommodations in lodgings such as condominiums, hotels, motels, or motor courts; rental of motor vehicles; or any other service related to travel. For purposes of this chapter, "travel services" shall not include investments in time shares.

"Travel services agreement" means the agreement executed in whole or in part in this Commonwealth between the travel club and the purchaser of the membership in such club and does not include arrangements or agreements for specific travel transportation, accommodation or other specific services.

§ 59.1-446. Registration; fees.

A. It shall be unlawful for any travel club to offer or cause to be executed in this Commonwealth by the purchaser any travel services agreement unless such travel club at the time of such offering, or execution thereof has been properly registered with the Commissioner. Such registration shall (i) disclose the address, ownership, and nature of business of the travel club and (ii) be accompanied by a annual fee of \$350 per registration and annual renewal.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

§ 59.1-447. Bond or letter of credit required.

A. Every travel club, before entering into a travel services agreement with a purchaser of travel services, shall file and maintain with the Commissioner, in a form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Insurance Deposit Corporation, or cash in the amount of \$60,000. amounts indicated below:

Number of Contracts	Amount of Cash, Bond, or Letter of Credit
---------------------	--

0 to 1500	\$60,000
-----------	----------

1501 to 1750	\$70,000
--------------	----------

1751 to 2000	\$80,000
--------------	----------

59 2001 or more \$100,000

60
61 B. The bond or letter of credit required by subsection A of this section shall be in favor of the
62 Commonwealth of Virginia for the benefit of any purchaser who is damaged by any violation of this
63 chapter.

64 C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the
65 conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of
66 credit. The bond or letter of credit shall not be ~~canceled~~ canceled or terminated except with the consent
67 of the Commissioner. Bonds may be withdrawn by giving sixty-day advance written notice to the
68 Commissioner, thereby releasing the surety from accruing future liability beyond the effective date of
69 withdrawal. Such withdrawal shall not release the surety or otherwise cancel or terminate any liability
70 existing at the time of the effective date of the withdrawal.

71 § 59.1-447.1. Escrow of deposits.

72 A. Any deposit made in connection with the execution of a travel services agreement shall be held in
73 escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for
74 that purpose.

75 Such escrow account shall be insured by an instrumentality of the federal government and located in
76 Virginia. All deposits shall be held in escrow until (i) delivered to the travel club upon expiration of the
77 purchaser's cancellation period, provided the purchaser's right of cancellation has not been exercised,
78 or (ii) delivered to the travel club because of purchaser's default under the travel services agreement or
79 (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required
80 by this section is prima facie evidence of willful violation of this section.

81 B. The travel club shall disclose in the travel services agreement that the deposit may not be held in
82 escrow after expiration of the cancellation period and that such deposit is not protected as an escrow
83 after expiration of the cancellation period. This disclosure shall include a statement of whether or not
84 the travel club reserves the option to sell or assign any promissory note given by a purchaser to
85 another entity, whether or not such entity is affiliated with the travel club. Both disclosures shall appear
86 in boldface type of a minimum size of ten points.

87 C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to
88 subsection A, in favor of all purchasers. The bond shall be in an amount equal to the total of the
89 deposits in escrow at any given time or \$25,000, whichever is greater. Such bond shall be filed with the
90 Commissioner and shall be maintained for so long as the travel club offers travel services in Virginia.
91 The bond shall be with a surety company authorized to do business in Virginia. The travel club may
92 post cash in lieu of the bond.

93 § 59.1-448. Travel services agreement; disclosure.

94 A. The travel services agreement shall contain a written disclosure of all limitations on and terms of
95 the membership and shall be provided to the purchaser at the time the agreement is executed. The
96 disclosure shall clearly and conspicuously include:

97 1. The name, business address and telephone number of the travel club;

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

100 3. A detailed description of any other service provided in conjunction with the agreement;

101 4. The conditions, if any, upon which the travel services agreement or membership in the travel club
102 may be ~~canceled~~ canceled and the rights and obligations of all parties in the event of such cancellation;
103 and

104 5. A description of all contingencies, limitations or conditions of the agreement.

105 B. The purchaser may cancel the travel service agreement until midnight of the seventh calendar day
106 after the disclosure was received by the purchaser execution of the contract by use of the form
107 prescribed in subsection C of this section; however, notice of cancellation need not take the form
108 prescribed and shall be sufficient if it indicates the intention of the purchaser not to be bound. Notice of
109 cancellation, if given by mail, shall be deemed given when deposited in a mailbox, properly addressed
110 and postage prepaid. If the seventh calendar day falls on a Sunday or legal holiday, then the right to
111 cancel the travel service agreement shall expire on the day immediately following that Sunday or legal
112 holiday.

113 C. The written disclosure shall include, in addition to the requirements of subsections A and B of
114 this section, the following statement printed in letters of not less than ten-point, bold-faced type and
115 which shall appear immediately above the buyer's signature under the conspicuous caption, "BUYER'S
116 NONWAIVABLE RIGHT TO CANCEL," which caption shall be printed in no less than ten-point, bold
117 faced type:

118 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,
119 WITHIN SEVEN CALENDAR DAYS FROM THE RECEIPT OF THIS DISCLOSURE YOUR
120 EXECUTION OF THIS CONTRACT UNLESS YOU HAVE ALREADY USED THE TRAVEL

SERVICES PROVIDED IN CONNECTION WITH ~~THE~~ THIS TRAVEL SERVICES AGREEMENT. IF YOU HAVE ALREADY USED THE TRAVEL SERVICES PROVIDED IN CONNECTION WITH ~~THE~~ THIS TRAVEL SERVICES AGREEMENT, YOU MAY STILL CANCEL THIS TRANSACTION WITHIN SEVEN CALENDAR DAYS FROM YOUR RECEIPT OF THIS DISCLOSURE EXECUTION HEREOF, BUT YOU ARE NOT ENTITLED TO A REFUND OF ANY PRIOR PAYMENTS MADE FOR THE SPECIFIC TRAVEL SERVICES UTILIZED.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM TO:

(Name of Seller)	AT	(Address of Seller)
.....	
.....		NOT LATER THAN
Place of Business		MIDNIGHT OF THE SEVENTH
.....		DAY AFTER RECEIPT OF
.....		THIS DISCLOSURE
(Date)		

I HEREBY CANCEL THIS TRANSACTION
(Date)

.....
(Purchaser's Signature)

D. Within ~~ten~~ forty-five days after notice of cancellation is received, the travel club shall refund to the purchaser ~~concerned~~ any payments made by the purchaser ~~for~~ pursuant to the travel services agreement. However, the travel club may retain payments made for specific travel services utilized. The refund may be made by crediting the purchaser's credit card account if a credit card was used to make a payment and if the travel club informs the purchaser in writing that the credit card account has been credited.

E. The right of cancellation afforded the purchaser by this chapter is nonwaivable and any provision in any instrument to the contrary shall be null and void.

§ 59.1-448.1. Public offering statement.

A. The travel club shall prepare and distribute to any prospective purchaser, before execution thereby of a travel services agreement, a public offering statement which discloses fully and accurately the characteristics of the travel club and its travel services, the membership offered and shall make known to prospective purchasers all material circumstances affecting the travel club and its travel services. The proposed public offering statement shall be filed with the Commissioner, shall be in a form prescribed by his rules and shall include the following to the extent applicable:

1. The name and principal address of the travel club, including:
a. The name, principal occupation and address of every director, partner, or trustee of the travel club;

b. The name and address of each person owning or controlling an interest of twenty percent or more in the travel club;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the travel club for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to the rendition of travel services;

d. A statement of any unsatisfied judgments against the travel club, the status of any pending suits involving the rendition of travel services to which the travel club or any general partner, executive officer, director, or majority stockholder thereof is a defending party, and the status of any pending suits of significance to the travel club; and

e. The name and address of the travel club's agent for service of process.

2. A general description of the travel services offered by the travel club which are made available to purchasers.

3. A general description of the travel club and its more significant features including without limitation the duration of membership, the types of membership offered, all fees, costs, and charges imposed on the purchaser thereby, and any provision for its cancellation by the purchaser other than by default.

4. Provisions, if any, that have been made by the travel club for fulfilling the demand of the purchaser for accommodations in lodgings.

5. If the travel club's net worth is less than \$500,000, a copy of the travel club's current audited balance sheet; if such club's net worth exceeds said amount, a statement by such travel club that its

181 equity exceeds \$500,000.

182 6. Any initial or special fee due from the purchaser for membership in the travel club together with
183 a description of the purpose and method of calculating the fee.

184 7. A general description of any financing offered by or available through the travel club.

185 8. A statement that the purchaser has a right to cancel the travel service agreement directing the
186 purchaser to see such travel services agreement for the particulars of such right of cancellation.

187 9. Any restraints on alienation of the travel club membership by the purchaser.

188 10. A description of any insurance coverage provided for the benefit of the purchaser.

189 11. Any services which the travel club provides or expense it pays and which it expects may become
190 at any subsequent time an expense of the purchaser and which is to be paid thereby.

191 12. A description of the terms of the deposit escrow requirements, including a statement that deposits
192 may be removed from escrow at the termination of the cancellation period.

193 13. Any other information required by the Commissioner to assure full and fair disclosure to
194 prospective purchasers.

195 14. A statement, expressed in terms of a percentage, of the number of purchasers who applied for
196 accommodations from the travel club during the preceding year in contrast to the total number of
197 purchasers who actually received such accommodations for the same preceding year. For purposes of
198 calculation, an application shall be treated as only one application notwithstanding that the purchaser
199 contemporaneously requests accommodations at a number of different real property improvements. Such
200 statement shall be prepared by an independent certified public accounting firm and may take the form of
201 an exhibit to the public offering statement.

202 B. If any prospective purchaser of a travel club membership is offered the opportunity to subscribe
203 to or participate in any exchange program registered under the Virginia Real Estate Time-Share Act,
204 the public offering statement shall include as an exhibit or supplement, the disclosure document
205 prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of
206 the exchange program which shall include the following:

207 1. A statement of whether membership or participation in the program is voluntary or mandatory;

208 2. The name and address of the exchange company together with the names of the principal officers
209 and all directors of the exchange company;

210 3. A statement of whether the exchange company or any of its officers or directors are holders of a
211 ten percent or greater interest in the travel club;

212 4. A statement of whether the travel club or any of its officers or directors are holders of a ten
213 percent or greater interest in an exchange company;

214 5. A statement that the purchaser's contract with the exchange company is a contract separate and
215 distinct from the purchaser's contract with the travel club; and

216 6. A brief narrative description of the procedure whereby exchanges are conducted.

217 C. The travel club shall amend the public offering statement to reflect any material change in the
218 travel club membership. The travel club shall file with the Commissioner the public offering statement
219 amended to reflect any material change. The Commissioner may at any time require the travel club to
220 alter or supplement the form or substance of the public offering statement to assure full and fair
221 disclosure to prospective purchasers.

222 The following events shall not be deemed to be a material change necessitating an amendment to the
223 public offering statement:

224 1. A change correcting spelling, grammar, omissions, or other similar errors not affecting the
225 substance of the public offering statement;

226 2. A change in the fees, dues, or assessments of the purchasers or other similar recurring expense
227 items;

228 3. A change which is an aspect or result of the orderly development, operation, or management of
229 the travel club in accordance with the travel services agreement, including, without limitation, the
230 addition or deletion of accommodations, transportation or other service related to travel;

231 4. A change resulting from the adoption of a new budget;

232 5. A change occurring in the issuance of an exchange company's updated annual report or
233 disclosure documents provided upon its receipt by the travel club it shall commence distribution of same
234 in lieu of all others; and

235 6. A change in the ownership of the travel club, provided the change affects less than an ownership
236 interest of twenty percent.

237 § 59.1-449. Prohibited practices by travel club.

238 It shall be unlawful for any travel club to engage in any or all of the following practices:

239 1. Offer any other type of promotional inducement where the cost of the package equals or exceeds
240 the cost which would have been incurred without the travel club membership;

241 2. Misrepresent the type or size of aircraft, vehicle, ship or train; time of departure or arrival; points
242 served; route to be traveled; stops to be made; total trip-time from point of departure to destination; type

or size of lodging or other accommodation; availability of lodging or other accommodation; or other services available, reserved or contracted for in connection with any trip, tour or other travel services, unless such misrepresentation resulted from a reasonable belief as to the services available based upon representations made by the person offering such services;

3. Misrepresent the fares and charges for transportation or services in connection therewith, unless the misrepresentation resulted from a reasonable belief as to the fares and charges applicable based upon representations made by the person offering such services;

4. Misrepresent that special priorities for reservations are available when such special considerations are in fact granted to members of the public generally;

5. Sell transportation to any person on a reservation or charter basis for specified space, flight or time or represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold;

6. Sell or issue tickets or other documents to be exchanged or used for transportation if the tickets or other documents will not be or cannot be legally honored by carriers for transportation; or

7. Misrepresent the requirements that must be met by a person in order to qualify for charter or group fare rates, unless such misrepresentation resulted from a reasonable belief as to the requirements applicable based upon representations made by the person offering the charter or group fare; ;

8. *Offer accommodations in lodgings when the travel club has no written evidence of its legal right to possession of such lodgings; or*

9. *Use in any offering, advertisement, or promotion of any type or description the following terms: "time-share," "vacation ownership," "interval ownership," "time-share benefit" or "incidental benefit."*

§ 59.1-453. Exemptions.

This chapter shall not apply to:

1. Any agreement which meets the definition of "contract" under, and is subject to, the provisions of the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or the Virginia Membership Camping Act (§ 59.1-311 et seq.); or

2. An "exchange program" as defined by the Virginia Real Estate Time-Share Act and offered by an exchange company registered under the Virginia Real Estate Time Share Act.; or

3. ~~(Expires effective July 1, 1994) A developer registered under the Virginia Real Estate Time Share Act and a membership camping operator registered under the Virginia Membership Camping Act. This subdivision 3 shall expire July 1, 1994.~~

4. A "product" as defined in the Virginia Real Estate Time-share Act which is registered in accordance with its provisions.