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Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Travel Agents - Bonding Requirement**

3 FOR the purpose of requiring a seller of travel or an independent agent to file with
4 the Consumer Protection Division of the Office of the Attorney General certain
5 evidence of financial security meeting certain requirements; requiring a seller of
6 travel to file with the Division a list of independent agents affiliated with the
7 seller of travel; prohibiting a person from receiving certain compensation unless
8 certain filing requirements are met; providing for the purpose of certain
9 evidence of financial security; authorizing the Division to waive certain
10 requirements under certain circumstances; defining certain terms; providing
11 certain penalties; authorizing a person injured as result of a violation of this Act
12 to file a civil suit under certain circumstances; authorizing a court to award
13 damages subject to certain limitations; and generally relating to the financial
14 security of sellers of travel and independent agents.

15 BY adding to
16 Article - Commercial Law
17 Section 14-2901 through 14-2905, inclusive, to be under the new subtitle
18 "Subtitle 29. Travel Agents"
19 Annotated Code of Maryland
20 (1990 Replacement Volume and 1998 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Commercial Law**

24 **SUBTITLE 29. TRAVEL AGENTS.**

25 14-2901.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

1 (B) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF THE
2 OFFICE OF THE ATTORNEY GENERAL.

3 (C) "SELLER OF TRAVEL" MEANS A PERSON THAT:

4 (1) IS LOCATED IN THE STATE OR OFFERS TO SELL TRAVEL SERVICES TO
5 A PERSON LOCATED IN THE STATE;

6 (2) OFFERS OR UNDERTAKES TO ARRANGE OR PROVIDE FOR:

7 (I) TRAVEL RESERVATIONS OR ACCOMMODATIONS;

8 (II) TICKETS FOR TRAVEL BY ANY MODE OF TRANSPORTATION;

9 (III) HOTEL OR MOTEL ACCOMMODATIONS;

10 (IV) CAR RENTALS; OR

11 (V) SIGHTSEEING TOURS; AND

12 (3) RECEIVES VALUABLE CONSIDERATION DIRECTLY FROM THE
13 PURCHASER FOR THE SALE OF TRAVEL SERVICES OR FROM THE ULTIMATE TRAVEL
14 SUPPLIER.

15 (D) "SELLER OF TRAVEL" DOES NOT INCLUDE:

16 (1) AN AIR CARRIER;

17 (2) AN OCEAN CARRIER; OR

18 (3) A HOTEL, MOTEL, OR SIMILAR LODGING ESTABLISHMENT THAT, IN
19 THE COURSE OF SELLING, PROVIDING, OR ARRANGING TRANSIENT LODGING
20 ACCOMMODATIONS AND RELATED SERVICES FOR ITS REGISTERED GUESTS:

21 (I) ARRANGES OR PROVIDES FOR TRANSPORTATION; AND

22 (II) DOES NOT DIRECTLY OR INDIRECTLY RECEIVE MONEY OR
23 OTHER VALUABLE CONSIDERATION FOR ARRANGING OR PROVIDING THAT
24 TRANSPORTATION.

25 (E) "INDEPENDENT AGENT" MEANS A PERSON THAT OFFERS OR UNDERTAKES
26 TO ARRANGE FOR OR PROVIDE THE TRAVEL SERVICES SPECIFIED IN
27 SUBSECTION(C)(2) OF THIS SECTION BUT DOES NOT:

28 (1) RECEIVE MONEY OR OTHER VALUABLE CONSIDERATION DIRECTLY
29 FROM THE PURCHASER FOR THE SALE OF TRAVEL SERVICES OR FROM THE
30 ULTIMATE TRAVEL SUPPLIER;

31 (2) POSSESS AT ANY TIME ANY UNISSUED TICKET STOCK OR TRAVEL
32 DOCUMENT; OR

1 (3) HAVE THE ABILITY TO ISSUE TICKETS, VACATION CERTIFICATES, OR
2 ANY OTHER TRAVEL DOCUMENTS.

3 14-2902.

4 (A) (1) EACH SELLER OF TRAVEL OR INDEPENDENT AGENT SHALL FILE
5 ANNUALLY WITH THE DIVISION EVIDENCE OF FINANCIAL SECURITY AS REQUIRED
6 BY THIS SUBTITLE.

7 (2) EACH SELLER OF TRAVEL SHALL FILE ANNUALLY WITH THE
8 DIVISION A LIST OF INDEPENDENT AGENTS AFFILIATED WITH THE SELLER OF
9 TRAVEL.

10 (B) A PERSON MAY NOT RECEIVE VALUABLE CONSIDERATION IN PAYMENT
11 FOR SERVICES OFFERED FOR SALE BY A SELLER OF TRAVEL OR INDEPENDENT
12 AGENT UNLESS, AT THE TIME OF RECEIVING THE PAYMENT, THE SELLER OF TRAVEL
13 OR INDEPENDENT AGENT HAS MET THE ANNUAL FILING REQUIREMENTS UNDER
14 SUBSECTION (A) OF THIS SECTION.

15 (C) IN THE EVENT THAT THERE IS A MATERIAL CHANGE IN THE FINANCIAL
16 SECURITY OF A SELLER OF TRAVEL OR INDEPENDENT AGENT DURING THE PERIOD
17 BETWEEN THE ANNUAL FILINGS REQUIRED UNDER SUBSECTION (A)(1) OF THIS
18 SECTION, THE SELLER OF TRAVEL SHALL FILE AN ADDENDUM WITH THE DIVISION.

19 14-2903.

20 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, EVIDENCE OF THE
21 FINANCIAL SECURITY REQUIRED UNDER § 14-2902 OF THIS SUBTITLE SHALL BE A
22 SURETY OR CASH PERFORMANCE BOND IN THE PRINCIPAL AMOUNT OF \$25,000, IN
23 CONFORMITY WITH THE STATE INSURANCE CODE EXECUTED BY A SURETY
24 COMPANY AUTHORIZED TO DO BUSINESS IN THE STATE.

25 (B) IN LIEU OF THE BOND REQUIRED UNDER SUBSECTION (A) OF THIS
26 SECTION, A SELLER OF TRAVEL OR INDEPENDENT AGENT MAY:

27 (1) OBTAIN A CERTIFICATE OF DEPOSIT OR AN IRREVOCABLE LETTER
28 OF CREDIT FROM A STATE BANKING INSTITUTION IN THE AMOUNT OF THE
29 PERFORMANCE BOND;

30 (2) FILE WITH THE DIVISION PROOF OF PROFESSIONAL LIABILITY AND
31 ERRORS AND OMISSIONS INSURANCE IN AN AMOUNT OF \$1,000,000; OR

32 (3) DEPOSIT WITH THE DIVISION:

33 (I) CASH IN THE AMOUNT OF \$25,000;

34 (II) SECURITIES WITH A VALUE OF \$25,000;

1 (III) A STATEMENT FROM A LICENSED FINANCIAL INSTITUTION
2 GUARANTEEING THE PERFORMANCE OF THE SELLER OF TRAVEL OR INDEPENDENT
3 AGENT; OR

4 (IV) A SECURITY INTEREST IN PROPERTY WITH A VALUE OF \$25,000.

5 (C) THE BOND SHALL BE PAYABLE TO THE STATE AND THE BOND OR OTHER
6 EVIDENCE OF SECURITY SPECIFIED IN SUBSECTION (B) OF THIS SECTION SHALL BE
7 FOR THE USE AND BENEFIT OF ANY PERSON:

8 (1) WHO SUSTAINS A MONETARY LOSS AS A RESULT OF THE FRAUD,
9 MISREPRESENTATION, BREACH OF CONTRACT, FINANCIAL FAILURE, OR VIOLATION
10 OF ANY PROVISION OF THIS SUBTITLE BY THE SELLER OF TRAVEL OR INDEPENDENT
11 AGENT; OR

12 (2) FOR WHOM SERVICES HAVE NOT BEEN DELIVERED BY THE
13 WRONGFUL ACT OF:

14 (I) THE SELLER OF TRAVEL OR INDEPENDENT AGENT ACTING IN
15 THE COURSE OF BUSINESS; OR

16 (II) AN OFFICIAL, AGENT, OR EMPLOYEE OF THE SELLER OF
17 TRAVEL OR INDEPENDENT AGENT, ACTING IN THE COURSE OF THE OFFICIAL'S,
18 AGENT'S, OR EMPLOYEE'S EMPLOYMENT OR AGENCY.

19 14-2904.

20 (A) THE DIVISION MAY WAIVE THE ANNUAL FILING REQUIREMENT UNDER §
21 14-2902(A)(1) OF THIS SUBTITLE IF THE SELLER OF TRAVEL OR INDEPENDENT AGENT:

22 (1) HAS BEEN IN BUSINESS UNDER THE SAME OWNERSHIP FOR A
23 PERIOD OF 3 CONSECUTIVE YEARS IN THE STATE;

24 (2) HAS NOT HAD ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION
25 INSTITUTED AGAINST THE SELLER OF TRAVEL OR INDEPENDENT AGENT BY A
26 GOVERNMENTAL AGENCY ARISING OUT OF EMPLOYMENT AS A SELLER OF TRAVEL
27 OR INDEPENDENT AGENT;

28 (3) HAS NOT HAD ANY ACTION INSTITUTED AGAINST THE SELLER OF
29 TRAVEL OR INDEPENDENT AGENT INVOLVING FRAUD, THEFT, MISAPPROPRIATION
30 OF PROPERTY, OR MORAL TURPITUDE; AND

31 (4) HAS A CONSUMER COMPLAINT HISTORY THAT IS SATISFACTORY TO
32 THE DIVISION.

33 (B) THE DIVISION MAY NOT GRANT A WAIVER TO AN INDEPENDENT AGENT
34 UNDER THIS SECTION, UNLESS THE INDEPENDENT AGENT IS AFFILIATED WITH A
35 SELLER OF TRAVEL AS INDICATED ON THE LIST OF INDEPENDENT AGENTS
36 AFFILIATED WITH THE SELLER OF TRAVEL THAT IS ON FILE WITH THE DIVISION AS
37 REQUIRED UNDER § 14-2902 OF THIS SUBTITLE.

1 (C) THE DIVISION MAY REVOKE A WAIVER GRANTED UNDER SUBSECTION (A)
2 OF THIS SECTION IF THE SELLER OF TRAVEL OR INDEPENDENT AGENT VIOLATES
3 ANY PROVISION OF THIS SUBTITLE.

4 14-2905.

5 (A) AN INDIVIDUAL WHO VIOLATES THIS SUBTITLE IS GUILTY OF A
6 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT TO EXCEED \$500 OR
7 IMPRISONMENT NOT TO EXCEED 1 YEAR OR BOTH.

8 (B) A BUSINESS ENTITY THAT VIOLATES THIS SECTION IS GUILTY OF A
9 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT TO EXCEED \$2,000.

10 (C) AN INDIVIDUAL, ON CONVICTION OF A SECOND OR SUBSEQUENT OFFENSE
11 UNDER THIS SUBTITLE, IS GUILTY OF A MISDEMEANOR AND IS SUBJECT TO A FINE
12 NOT TO EXCEED \$1,000 OR IMPRISONMENT NOT TO EXCEED 2 YEARS OR BOTH.

13 (D) A BUSINESS ENTITY, ON CONVICTION OF A SECOND OR SUBSEQUENT
14 OFFENSE UNDER THIS SUBTITLE, IS GUILTY OF A MISDEMEANOR AND IS SUBJECT TO
15 A FINE NOT TO EXCEED \$5,000.

16 (E) (1) A PERSON INJURED AS A RESULT OF A VIOLATION OF THIS SUBTITLE
17 MAY BRING A CIVIL ACTION AGAINST A PERSON THAT:

18 (I) RECEIVED COMPENSATION AS A RESULT OF A VIOLATION OF
19 THIS SUBTITLE; AND

20 (II) WAS CONVICTED OF A VIOLATION OF THIS SUBTITLE.

21 (2) THE COURT MAY AWARD DAMAGES UNDER THIS SUBSECTION NOT
22 TO EXCEED THREE TIMES THE LOSS TO THE INJURED PERSON.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 1999.