

**CHAPTER 468K
TRAVEL AGENCIES**

REPEALED. L 1991, c 285.

Note

L 1991, c 285, §§4 to 6 provide as follows:

SECTION 4. Effective October 1, 1991, all funds remaining in the travel agency recovery fund shall be held for disbursement to claimants pursuant to section 468K-5, Hawaii Revised Statutes, until the fund is exhausted; provided, however, that all such claims are limited to claims arising from travel services purchased prior to October 1, 1991; provided further that no lawsuit commenced on or after October 1, 1993 shall be effective to result in a recovery from the travel agency recovery fund.

Upon being notified of a civil proceeding that may result in a claim against the travel agency recovery fund, pursuant to section 468K-5, Hawaii Revised Statutes, the director shall reserve \$8,000 for each licensee involved in each civil proceeding. The funds reserved shall be released only upon the entry of judgment and an order of payment, and shall be released and paid in accordance with the court's orders. Any reserved funds that remain after payment pursuant to court order shall revert to being unreserved funds within the travel agency recovery fund, subject to reservation in any future case.

All funds remaining in the travel agency recovery fund after the resolution of all civil proceedings commenced prior to October 1, 1993, if any, shall become part of the compliance resolution fund for use in travel agency-related cases.

SECTION 5. The department shall use the amounts available in the education fund to alert all current licensees under chapter 468K, Hawaii Revised Statutes, to the requirements of this Act and to inform the public about the rights and remedies provided in this Act. The fund may also be used to pay for any claim or expense of the recovery fund in the event the recovery fund becomes exhausted. Any amounts that remain after payment of educational expenses or for recovery fund claims and expenses shall become part of the compliance resolution fund for use in travel agency-related cases.

SECTION 6. Chapter 468K, Hawaii Revised Statutes, is repealed; provided that sections 468K-3, 486K-4, 468K-5, 468K-6, 468K-8, 468K-9, 468K-10, and 468K-11 shall remain in effect solely to receive claims pursuant to section 4 of this Act; and provided further that all references to "trustees" in those sections shall be amended to read "director" and shall mean the director of commerce and consumer affairs.

§468K-3 Travel agency recovery fund; use of fund; fees. There shall be established and maintained a travel agency recovery fund from which any person aggrieved by an act, omission of material fact, representation, transaction, or conduct of a licensee, that is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, may recover, by order of a court of competent jurisdiction within the State, an amount of not more than \$8,000 for damages sustained as a result of the act, representation, transaction, or conduct of each

licensee. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorneys' fee as determined by the court.

The director shall appoint three trustees, all of whom shall be licensed under this chapter, to maintain the travel agency recovery fund. The terms of the trustees shall be four years; provided that the terms of the initial trustees shall be two, three, and four years, respectively. The director may remove any trustee for good cause.

Every travel agency shall pay at the time of original licensure a nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

Every sales representative shall pay at the time of original licensure a nonrefundable fee of \$25 for deposit in the travel agency recovery fund.

§468K-4 Additional payment to fund. If, on December 31 of any year, the balance remaining in the travel agency recovery fund is less than \$30,000, the trustees shall order that every travel agency and sales representative be assessed the appropriate fee for deposit in the travel agency recovery fund.

§468K-5 Statute of limitations; recovery from fund. (a) No action for a judgment or proceeding for a consent judgment under section 480-22 which may subsequently result in an order for collection from the travel agency recovery fund shall be commenced later than six years from the accrual of the cause of action.

(b) When any person aggrieved commences an action for a judgment which may result in collection from the travel agency recovery fund, the person aggrieved shall notify the trustees in writing to that effect at the commencement of the action. The trustees shall have the right to intervene in and defend any action.

(c) When any person aggrieved recovers a valid judgment in a court of competent jurisdiction within the State against any licensee for any act, omission of a material fact, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the person aggrieved may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, apply to the court in which the judgment was entered for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section; provided that the trustees must be given ten days' written notice of the hearing on the application.

(d) When the office of consumer protection obtains a consent judgment pursuant to section 480-22, in any circuit court where the violation occurred, against any licensee for any act, omission of a material fact, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the office of consumer protection upon the finality of the consent judgment under section 480-22, may apply to the court in which the consent judgment was entered for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the consent judgment, subject to the limitations stated in this section; provided that the trustees must be

given ten days' written notice of the hearing on the application. The trustees shall have the right to intervene in and defend any application to the court for an order directing payment out of the travel agency recovery fund.

(e) The court shall proceed upon the application for an order directing payment out of the travel agency recovery fund in a summary manner, and, upon the hearing of the application, the person aggrieved shall be required to show that the person:

- (1) Is not a spouse of the judgment debtor, or the personal representative of the judgment debtor's spouse;
- (2) Has complied with all the requirements of this section;
- (3) Has obtained a judgment as set out in subsections (c), (d), or (g), stating the amount of the judgment and the amount owing on the judgment at the date of the application;
- (4) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
- (5) By the search required by this section, has discovered no personal or real property or other assets at the time of the application liable to be sold or applied, or has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied and has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(f) The court shall make an order directed to the trustees requiring payment from the travel agency recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the person aggrieved by subsection (e), and that the person aggrieved has fully pursued and exhausted all remedies for recovering the amount awarded by the judgment of the court. Upon a showing that the licensee is a debtor under the United States Bankruptcy Code (11 U.S.C. §101, et seq.), as amended, the person aggrieved shall have complied with the requirements stated in subsection (e)(4) and (5) and shall be deemed to have fully pursued and exhausted all remedies available to the person aggrieved for recovering the amount which may be awarded by the court.

(g) For purposes of this chapter, an order for restitution obtained by the office of consumer protection on behalf of a person aggrieved against a licensee shall be the judgment obtained by the person aggrieved against the licensee. For purposes of this chapter, any written notification to the trustees as required by subsection (b) by the office of consumer protection or any acts to recover restitution on behalf of the person aggrieved by the office of consumer protection shall be the acts of the person aggrieved.

(h) Subject to the limitations and requirements of this chapter, the office of consumer protection may apply to the court for an order directing payment out of the travel agency recovery fund on behalf of a person aggrieved; provided that the office of consumer protection obtains a court order directing the payment of restitution to the person aggrieved. The office of consumer protection shall not receive costs or attorney fees from the travel agency recovery fund.

(i) Upon the filing of an order for payment from the travel agency recovery fund to the office of consumer protection, or to any person aggrieved, which is based upon a consent judgment obtained by the office of consumer protection pursuant to section 480-22, the trustees may defer payment from the fund for six months, at the end of which period the trustees may discharge the trustees' obligations under the order and any order for payment from the fund obtained by any person aggrieved prior to and at any time during the six-month period, by disbursing the money from the fund, up to the maximum allowed under this chapter, to all of the persons aggrieved, including those persons aggrieved in whose behalf the office of consumer protection obtained its order, on a pro rata basis; provided that, prior to the disbursement of the money, the trustees file an affidavit with the court stating how the money is to be disbursed. The trustees may apply to the court for an extension of the six-month period upon good cause, but in no case shall payment to the office of consumer protection or any person aggrieved be deferred for more than one year except as provided in subsection (k).

(j) Should the trustees pay from the travel agency recovery fund any amount in settlement of a claim toward satisfaction of a judgment against a licensee, the license shall be automatically terminated upon the issuance of a court order authorizing payment from the travel agency recovery fund. The former licensee shall not be eligible to obtain a license until the fund is repaid in full, plus interest at the rate of ten per cent a year, the amount paid from the travel agency recovery fund on the account of the former licensee. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(k) If, at any time, the money deposited in the travel agency recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the trustees shall, when sufficient money has been deposited in the travel agency recovery fund, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed or in accordance with subsection (i).

§468K-6 Management of fund. The sums received for deposit in the travel agency recovery fund shall be held by the trustees in trust for carrying out the purposes of the travel agency recovery fund. The trustees may retain private legal counsel to represent the trustees in any action which may result in collection from the travel agency recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system, and the interest from these investments shall be deposited to the credit of the travel agency education fund, which is hereby created, and which shall be available to the trustees for educational purposes.

§468K-8 The trustees have standing in court. When the trustees receive notice, as provided in section 468K-5, the trustees may enter an appearance, file an answer, appear at the court hearing, defend the actions or take whatever other action they may deem appropriate. The trustees or the legal representative of the trustees shall be served with all pleadings in an action which may result in a recovery from the travel agency recovery fund.

Settlement of any claim against the travel agency recovery fund shall be made only by agreement of the trustees and attorney general that settlement is in the best interest of the travel agency recovery fund.

§468K-9 Subrogation to rights of creditor. When, upon the order of the court, the trustees have paid from the travel agency recovery fund any sum to the judgment creditor, the trustees shall be subrogated to the rights of the judgment creditor to the extent of the amount of the payment, and the judgment creditor shall assign the judgment creditor's right, title, and interest in the judgment to the trustees in the amount of that payment from the trustees. Any amount and interest so recovered by the trustees on the judgment shall be deposited to the credit of the travel agency recovery fund.

§468K-10 Waiver of rights. The failure of an aggrieved person to comply with this chapter relating to the travel agency recovery fund shall constitute a waiver of any right hereunder.

§468K-11 Maximum liability. Notwithstanding any other provision, the liability of the travel agency recovery fund shall not exceed \$8,000 for any travel agency or sales representative.