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The New York Truth in Travel Act

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THE NEW YORK TRUTH IN TRAVEL ACT

A New York couple arrange a vacation abroad through their travel agent.¹ They expect a direct flight, deluxe, centrally located accommodations, and guided tours of local attractions. Once they have set out, they discover to their dismay that their flight makes several lengthy stops, their reservations are at a drab and uncomfortable hotel in an inconvenient location, and there are no reservations for the tours.

This hypothetical situation is representative of instances of travel fraud, a frequent consumer grievance² in what is acknowledged as the considerable volume³ of travel business being conducted in the United States.

New York has attempted to protect travelers from specific fraudulent practices by enacting legislation⁴ effective September 1, 1974. This note will describe the new Truth in Travel Act, its potential for curbing travel fraud, its place in the framework of existing common law actions providing remedies for such fraud, and state and federal legislation regulating the travel business. Having examined the framework encompassing the Act, the note will conclude by comparing the Act to other federal and state regulatory efforts, in order to analyze its effectiveness and to suggest improvements.

I. GENERAL PROVISIONS

The purpose of the Truth in Travel Act is to deter or punish, by means of criminal penalties, two types of misrepresentation concerning travel: misrepresentation of the quality of service and misrepresentation that services have been secured for the customer when in fact there is no binding commitment from the direct supplier of the service. Typical examples of prohibited abuses include the fraud of promising a

¹ Americans use travel agents to arrange approximately 30 percent of their domestic trips and approximately 75 percent of their foreign trips. NEWSWEEK, June 3, 1974, at 66. In 1974, the number of travel agencies in the United States was estimated at 10,000, twice as many as a decade ago. *Id.*

² N.Y. Times, July 18, 1974, at 49, col. 3 (city ed.).

³ Travel business is a very significant item of world trade, with more than five billion dollars generated each year by the sale of travel and accompanying services to United States citizens through travel agents. S. REP. NO. 92-925, 92d Cong., 2d. Sess. 11 (1972).

⁴ N.Y. GEN. BUS. LAW §§ 155 to 159-a (McKinney Supp. 1974). (The New York Truth in Travel Act).

traveler a specified standard of service⁵ and delivering another, and the fraud of arranging specious charter flights or flights for which the return passage has not been contracted with a carrier.

The Act regulates "travel consultants," a term of art defined as any individual or business entity, other than a common carrier, who sells or offers for sale, holds himself out as a seller of, or negotiates for, any travel ticket.⁶ The Act reaches both the authorized sales representatives of carriers and travel consultants who do not represent any carrier on a recognized basis; it excludes only sellers who themselves are engaged in the business of transportation.

While the Truth in Travel Act is directed only to sellers of travel tickets, it is open to the construction that the scope of the prohibited misrepresentations includes those with respect to travel-related services, such as sales of accommodations, meals, entertainment, souvenirs, or guide service. For example, the Act prohibits

[k]nowingly misrepresent[ing] the quality or kind of service, type or size or aircraft, vehicle, ship, or train, time of departure or arrival, points served, route to be traveled, stops to be made, or total trip-time from point of departure to destination *or other services available, reserved or contracted for in connection with any trip or tour.*⁷

An *ejusdem generis* approach to this provision might lead to the construction that "other services" refers only to transportation services. However, the phrase, "in connection with any trip or tour," seems much broader than that; it could reasonably be read to cover accommodations and other services sold as part of a package including transportation. The latter construction is preferable because arrangements at the destination are an important source of travelers' complaints of fraud.⁸

The Truth in Travel Act prohibits seven practices and declares that

⁵ This is to be distinguished from a description of a trip as "fun-filled" or "exciting." Such a description would not amount to a guarantee or a contract term. *See Dorkin v. American Express Co.*, 74 Misc. 2d 673, 674, 345 N.Y.S.2d 891, 894 (Sup. Ct. 1973).

⁶ N.Y. GEN. BUS. LAW § 157 (McKinney Supp. 1974).

⁷ *Id.* § 158(1) (emphasis added).

⁸ Recent New York cases concerning such arrangements include *Siegel v. Council of Long Island Educators, Inc.*, 75 Misc. 2d 750, 348 N.Y.S.2d 816 (Sup. Ct. 1974); *Bucholtz v. Sirotkin Travel Ltd.*, 74 Misc. 2d 180, 343 N.Y.S.2d 438 (Dist. Ct. 1973); *Odysseys Unlimited, Inc. v. Astral Travel Service*, 77 Misc. 2d 502, 354 N.Y.S.2d 88 (Sup. Ct. 1974). Package tours consisting of transportation, accommodations, and the like are increasingly popular due to such factors as reduced cost per individual and an inclusive price fixed in advance. *See Wall Street J.*, July 12, 1973, at 1, col. 5.

knowingly⁹ engaging in any of them is a misdemeanor.¹⁰ Four of these practices include knowingly misrepresenting information concerning: the type of travel vehicle,¹¹ journey, or connected services;¹² the cost of the transportation or connected service;¹³ priorities available for reservations;¹⁴ and requirements to qualify for transportation at charter rates.¹⁵ The two prohibited practices which may be classified as misrepresentation of confirmation of transportation include selling transportation on a given vehicle when there is no binding commitment with the carrier¹⁶ and selling tickets or vouchers without a commitment to honor them from the carrier.¹⁷ In addition to the two categories of misinformation, the Act also prohibits offering transportation or services at less than the current tariff.¹⁸

II. RELATION OF THE TRUTH IN TRAVEL ACT TO EXISTING LAW

A. Common Law Remedies

The need for the Truth in Travel Act and its potential to curb fraud can best be understood by initially examining the defrauded travelers' remedies which antedate the Act. Common law provides actions for the wronged traveler against the travel consultant¹⁹ on theories

⁹ Presumably, "knowingly" is to be defined as in accordance with N.Y. PENAL LAW § 15.05(2) (McKinney 1967), which provides that a person acts knowingly when he is aware that his conduct is of such a nature or that such a circumstance exists as is described by the statute defining the offense. This definition of "knowingly" thus falls short of requiring intent as a part of the definition of the prohibited practice. See the Statement of Mr. Stephen Mindell, Assistant State Attorney General and Deputy Head of the Bureau of Consumer Frauds and Protection, N.Y. Times, July 18, 1974, at 49, col. 3 (city ed.). While remarking that this requirement somewhat weakens the new legislation, Mr. Mindell noted that courts had generally held that intent was not a necessary element of proof under existing consumer law.

¹⁰ N.Y. GEN. BUS. LAW § 159(1) (McKinney Supp. 1974). "Misdemeanor" is defined generally as an offense other than a traffic violation for which a sentence of imprisonment for between fifteen days and a year may be imposed. N.Y. PENAL LAW § 10(4) (McKinney 1967). The state attorney or county district attorney is authorized to seek an injunction against any violation. N.Y. GEN. BUS. LAW § 159(2) (McKinney Supp. 1974).

¹¹ N.Y. GEN. BUS. LAW § 158(1) (McKinney Supp. 1974).

¹² *Id.*

¹³ *Id.* § 158(2).

¹⁴ *Id.* § 158(4).

¹⁵ *Id.* § 158(7).

¹⁶ *Id.* § 158(5).

¹⁷ *Id.* § 158(6).

¹⁸ *Id.* § 158(3).

¹⁹ This note focuses on liability of the travel consultant, not on the liability of the direct supplier of the service. There may be several reasons for the traveler to sue the travel consultant. Generally, the plaintiff-traveler will have used a travel consultant doing business in the traveler's community. It may be easier for the plaintiff to identify the legal owner(s) and to serve process on the local consultant than to perform these steps on a carrier or hotel who may be far removed and not susceptible to service of process. It has been held

of negligence²⁰ and breach of contractual or agency relationship.

While the travel consultant can be viewed as conducting the independent business of bringing together a principal, such as a carrier or hotel, and a customer, New York courts do not hesitate to consider him an agent.²¹ A more difficult problem of characterization arose in *Bucholtz v. Sirotkin Travel Ltd.*²² the issue was for whom the travel consultant acted as agent.²³ The *Bucholtz* court answered that he was the agent of the passenger²⁴ and held that the traveler was entitled to recover \$106 of a total price of \$318 for inconvenience and discomfort resulting from being lodged in a motel half a mile out of town rather than in the promised hotel in the center of Las Vegas, Nevada. According to the court, the agent's responsibility included verifying reservations and using reasonable diligence in discovering the reliability of the direct supplier of travel services.²⁵ Viewing the travel consultant as agent of the traveler, rather than of the supplier, cuts off the traveler's access to a possibly more affluent third party. Although there is dictum in *Bucholtz* that a travel agency is generally "neither an agent nor an employee of the common carriers and innkeepers with whom it does business,"²⁶ at least one New York court seems to have held otherwise.²⁷

A contractual theory of liability is available²⁸ to a customer-plaintiff

that solicitation of customers and processing applications for hotel reservations through a travel consultant are not sufficient to subject a foreign principal to suit in a New York court. See *Miller v. Surf Properties*, 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958).

Even when the principal is available for service of process and is solvent, there may be a tactical advantage in joining the local consultant as a defendant in order to prevent removal to federal court.

²⁰ The negligence theory of liability of the travel consultant is based on a travel consultant's duty to refrain from conduct which might injure his client. If proximately caused harm occurs to the client, the consultant would be liable. Travel consultants are generally insulated from liability for the tortious conduct of the ultimate supplier of the travel service by the requirement of proximate cause; such conduct can not reasonably be foreseen by the consultant. See *Dorfen v. American Express Co.*, 74 Misc. 2d 673, 345 N.Y.S.2d 891 (Sup. Ct. 1973); *Sacks v. Loew's Theatres, Inc.*, 47 Misc. 2d 854, 263 N.Y.S.2d 253 (Sup. Ct. 1965).

²¹ Of course, the fact that a travel consultant typically calls himself a travel agent does not mean that the law will so characterize him. *Kirkland v. Sapphire Int'l Touring, Ltd.*, 262 F. Supp. 309, 314 (S.D.N.Y. 1966).

²² 74 Misc. 2d 180, 343 N.Y.S.2d 438 (Dist. Ct. 1973).

²³ *Id.* at 180, 343 N.Y.S.2d at 440.

²⁴ *Id.* at 182, 343 N.Y.S.2d at 442.

²⁵ *Id.* at 182, 343 N.Y.S.2d at 442.

²⁶ *Id.* at 181, 343 N.Y.S.2d at 440.

²⁷ *Unger v. Travel Arrangements*, 25 App. Div. 2d 40, 266 N.Y.S.2d 715 (1966). The court held that the plaintiff who purchased passage on a steamship which went bankrupt reasonably should have known that the travel agent did not supply the transportation directly but acted as agent for a carrier-principal. The travel consultant was not required to refund the price of passage, which had been turned over to the carrier, but he was required to refund the commission which the passenger had paid him.

²⁸ See *Odysseys Unlimited, Inc. v. Astral Travel Serv.*, 77 Misc. 2d 502, 354 N.Y.S.2d 88 (Sup. Ct. 1974), where travelers, as interpleaded defendants counterclaiming against a travel

for a breach of either an express promise, such as promise to secure reservations, or an implied promise (*i.e.*, one based on the implicit understanding that a travel agent would forward payment, distribute tickets, or obtain a refund).²⁹

These common law actions provide a plaintiff with a means to recover money for which no value was received; they also encourage travel consultants to police themselves and to perform services with due care. However, proof of damages is a limitation to the effectiveness of common law actions. Even where the plaintiff can show that the services provided were not as promised (which could be a difficult task where the issue concerns the quality of the services), he must still establish a measure of damages. While courts are willing to order restitution of a commission paid by the plaintiff to the travel consultant³⁰ or allow damages for inconvenience suffered,³¹ these damages are limited to an estimate of the extent to which the vacation was impaired. In only one case did the court order a return of the entire price paid for a trip.³² Since courts are reluctant to award special damages in civil actions concerning a travel consultant's wrongdoing, the Truth in Travel Act does create additional deterrence. Under the authority of the Act, the travel consultant faces a criminal penalty as well as the prospect of making restitution.

agency, alleged a breach of contract resulting from failure to furnish deluxe hotel accommodations as agreed.

²⁹ Travel agents may attempt to disclaim contractual liability for any implied promises as well as tort liability for the acts of any third-party direct suppliers of travel service. This disclaimer may appear on the back of a tour folder or written receipt signed by the traveler. See Quinn, *The United States Travel Agent and the Status of his Legal Liability*, in *Hearings on S. 2577 Before the Subcomm. on Foreign Commerce and Tourism*, 92d Cong., 1st Sess., ser. 38, 143 at 154 (1972) [hereinafter cited as *1972 Hearings*]. These disclaimers could be overturned, either on the theory that the customer did not consent because he lacked sufficient notice of the disclaimer, or on grounds of public policy. See *Siegel v. Council of Long Island Educators, Inc.*, 75 Misc. 2d 750, 348 N.Y.S.2d 816, 817 (Sup. Ct. 1973) (dictum).

³⁰ *Unger v. Travel Arrangements, Inc.*, 25 App. Div. 2d 40, 266 N.Y.S.2d 715 (1966).

³¹ In *Bucholtz*, the court decided that "[s]ubstantial justice will be accomplished" by awarding the plaintiff one-third of the price she paid. The court said that it was not limited to the difference in the price of accommodations. 74 Misc. 2d at 183, 343 N.Y.S.2d at 443.

³² In *Odysseys Unlimited, Inc. v. Astral Travel Serv.*, 77 Misc. 2d 502, 354 N.Y.S.2d 88 (Sup. Ct. 1974), the passengers had requested a return of the entire price and \$10,000 in damages for suffering inconvenience, humiliation, and pain. The court granted a full refund and said that it would have considered the award of additional damages had the plaintiff dealt directly with the wholesaler of the tour package. 77 Misc. 2d at 506, 354 N.Y.S.2d at 92. See *Walker v. Sheldon*, 10 N.Y.2d 401, 223 N.Y.S.2d 488, 179 N.E.2d 497 (1961) (permitting the award of punitive damages in instances where the public has been grossly defrauded in a manner demonstrating moral culpability in the regular course of the defendant's business). The reasoning of *Walker*, where the plaintiff was induced into entering a publishing contract by false and fraudulent representations made by the defendant in the regular course of his business, knowing that the plaintiff would, as others had in the past, act upon the representations, would be applicable to a travel consultant who consistently misled travelers.

B. Statutory Remedies

New York travel consultants are also regulated by provisions of the New York General Business Law which existed prior to the enactment of the Truth in Travel Act. Two sections³³ require licensing and bonding by individuals or business entities (other than carriers)³⁴ which sell tickets for voyages to or from a foreign country, and under these provisions any aggrieved party³⁵ may bring suit to recover on the bond.³⁶

The Truth in Travel Act overlaps a law³⁷ which prohibits transportation ticket sellers from giving false or misleading information, for most of the practices prohibited by the Truth in Travel Act also involve misrepresentation of information.³⁸ The Truth in Travel Act is an improvement because its misrepresentation prohibition can (and should) be read to extend to services accompanying transportation and because it authorizes injunctive relief in addition to the misdemeanor penalty provided by the earlier law.³⁹

C. Regulatory Agencies

Government agencies presently have the power to deter travel fraud, but that power is neither centrally located nor regularly exercised.⁴⁰ The Civil Aeronautics Board⁴¹ has jurisdiction over travel agents in three respects. The Board has jurisdiction over air carriers⁴² and thus has jurisdiction over travel agents if their actions make them indirect carriers—*i.e.*, travel agents who hold themselves out as prin-

³³ N.Y. GEN. BUS. LAW §§ 150 (licensing), 151 (bonding) (McKinney Supp. 1974).

³⁴ Carriers are regulated by N.Y. TRANSP. LAW § 101 *et seq.* (McKinney 1974), which prohibits discrimination in rates and services. Violation is not only a misdemeanor but also punishable by a fine of up to \$5,000 for each violation. *Id.* § 131.

³⁵ "An aggrieved party" includes all travel consultant customers to whom misrepresentations have been made or whose money has been converted by the travel consultant.

³⁶ N.Y. TRANSP. LAW § 151. While the statute provides that "any aggrieved party may bring suit on the bond," the courts have interpreted this to mean that multiple aggrieved parties have the right to share equally in the bond amount. *See Guffanti v. National Surety Co.*, 196 N.Y. 452, 134 Am. St. Rep., 848, 90 N.E. 174 (1909).

³⁷ N.Y. GEN. BUS. LAW § 117 (McKinney 1968).

³⁸ N.Y. GEN. BUS. LAW §§ 158(1), (2), (4), (7) (McKinney Supp. 1974). *See* notes 13-19 and accompanying text *supra*.

³⁹ N.Y. GEN. BUS. LAW § 119 (McKinney 1968) makes the violation of § 117 a misdemeanor.

⁴⁰ *See generally* 1972 Hearings, *supra* note 29, at 45 (the statement of Senator Inouye).

⁴¹ The statutory authority of the Civil Aeronautics Board is set forth in the Federal Aviation Act, 49 U.S.C. § 1301 *et seq.* (1970).

⁴² The Board has jurisdiction over air carriers, defined as any person who undertakes to engage directly or indirectly in air transportation. 49 U.S.C. §§ 1301(3), 1371(a) (1970). An indirect carrier is one who sells transportation by aircraft as other than an authorized agent of a direct carrier. *See Hacienda Hotels-U.S. Aircoach*, 26 C.A.B. 372, 385 (1958).

cipals in selling transportation.⁴³ The Board is authorized to take action against a ticket agent engaged in deceptive practices in the sale of air transportation.⁴⁴ Finally, the Board can proceed against a travel agent who, when acting as agent for the carrier, takes action prohibited to the carrier.⁴⁵

The Federal Trade Commission has authority over industry members engaging in deceptive practices,⁴⁶ but an agency spokesman has stated that the Commission expects to play only a limited role in the regulation of travel fraud,⁴⁷ due to limited resources.

To the extent that a travel consultant arranges transportation which is subject to the Motor Carrier Act,⁴⁸ he is subject to regulation as a motor carrier broker.⁴⁹

The Federal Maritime Commission has regulatory control concerning the financial trustworthiness of a broker each time that he arranges ship transportation (embarking at a United States port) for fifty or more persons.⁵⁰

At present there is no effective federal regulation of travel consultants because control is so scattered that no agency concentrates on the subject. Federal regulation may be desirable because it would be uniform, and travel agency business is primarily interstate in character. Legislation has been proposed⁵¹ to create a federal agency solely to regulate travel consultants. Under the proposed legislation,

⁴³ See Touragent International, Inc., CAB Order No. 71-8-18 (Aug. 4, 1971); Continental Express International, Inc., CAB Order No. 73-11-77 (Nov. 16, 1973); Regal Travel Corporation, CAB Order No. 73-8-110 (Aug. 23, 1973).

⁴⁴ Federal Aviation Act § 411, 49 U.S.C. § 1381 (1970).

⁴⁵ 1972 *Hearings*, *supra* note 29, at 52.

⁴⁶ The Federal Trade Commission Act § 5, 15 U.S.C. § 45 (1970), directs the FTC to prevent persons from unfairly competing in commerce or using unfair or deceptive practices. The number of complaints concerning travel agents to the Commission has recently sharply increased. 1972 *Hearings*, *supra* note 29, at 40.

⁴⁷ Statement of Thomas G. Krattenmaker, Assistant Director for Evaluation, Bureau of Consumer Protection, Federal Trade Commission, in 1972 *Hearings*, *supra* note 29, at 40-41.

⁴⁸ The Motor Carrier Act of Aug. 9, 1935, 49 U.S.C. §§ 301-327 (1970). The Motor Carrier Act covers the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce. 49 U.S.C. § 302(a)(1970). Except for the provisions of § 304 concerning qualifications, maximum hours of service for employees and safety of operation, the following are exempted by § 303(b): (1) taxicab service for six persons or less following an irregular route, and (2) transportation between a hotel and common carrier.

⁴⁹ Motor Carrier Act, 49 U.S.C. §§ 308(c), 311 (1970). See also 49 C.F.R. § 1043.4 (1974), requiring brokers to furnish a bond or other security in an amount of not less than \$5,000; statement of Hon. George M. Stafford, Chairman, 1972 *Hearings*, *supra* note 29, at 110-11.

⁵⁰ Shipping Act of 1916, 46 U.S.C. § 817(e) (1970). 46 U.S.C. § 817(e) gives the Commission the authority required to receive information which the Commission deems necessary to establish the financial responsibility of the arranger, or to require a bond. The bond must be for an amount equal to the estimated total revenue for the particular transaction. 46 U.S.C. § 817(e)(b).

⁵¹ S. 2577, 92d Cong., 1st Sess. (1971); S. 2300, 93d Cong., 1st Sess. (1973); H. 689, H. 1294, H. 1899, 94th Cong., 1st Sess. (1975).

carriers who contract with travel consultants uncertified by the agency could be punished by a fine or imprisonment. The agency would have the power to promulgate rules on certification, including the authority to require bonds as a condition of doing business.⁵²

This proposal has a provision which would preempt state regulation of travel consultants⁵³ on the theory that uniform regulation is the only feasible means of effective control.⁵⁴ A better approach would be to have the federal law provide a minimum level of protection to travelers and to allow individual states to set higher standards if they wish.⁵⁵ This approach would protect existing state legislation at least until sufficient time had elapsed to indicate the effectiveness of the federal regulation and to expose any problems in construction or use of the federal statute. Potential problems concerning the proposed legislation include escalating cost estimates⁵⁶ for implementing the proposal and the more theoretical problem of the ability of the new agency to evaluate the large and increasing number of travel consultants.

D. Summary: The Truth in Travel Act as a New Form of Deterrent to Travel Fraud

The Truth in Travel Act provides two forms of deterrence in addition to that of the private common law remedy: the possibility of injunctive relief and criminal punishment. As the Act now stands, there are some obstacles to maximizing this deterrence.

It is unclear whether the Act reaches the important area of travel-related services such as accommodations. Sale of travel services is as much a part of a travel consultant's trade as sale of transportation and provides at least as great an opportunity for misrepresentation. The present ambiguity hinders effective discouragement of a substantial aspect of travel fraud; therefore, the Act should be amended explicitly to extend its coverage to such travel-related services.

Incentive for the use of the Act must be developed. The incentive

⁵² 1972 *Hearings*, *supra* note 29, at 18.

⁵³ S. 2577, 92d Cong., 1st Sess. § 212 (1971).

⁵⁴ 1972 *Hearings*, *supra* note 29, at 21.

⁵⁵ See the dissenting opinion of Mr. Justice Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932), where he said,

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

⁵⁶ The yearly cost of the proposed federal agency was estimated at \$600,000 in 1971 and \$700,000 in 1972. S. REP. NO. 82-925, 92d Cong., 2d Sess. 30 (1972); 1972 *Hearings*, *supra* note 29, at 29.

for a common law suit is the possibility that the plaintiff will recover damages. Enforcement of the Truth in Travel Act, in contrast, requires instigation of suits by the state. The state, with limited resources and personnel, may be unable to enforce the Act vigorously. The mere existence of the Act may lead a travel consultant to settle with a complaining customer; however, to compensate for the state's probable inability to prosecute all violations, a provision should be added granting attorney's fees to victorious plaintiffs in common law suits.⁵⁷ Such a provision would not only discourage violation of the Act's prohibitions but would also pressure the defendants to settle and reimburse plaintiffs for litigation costs.

III. LICENSE AND BOND PROPOSALS

The sponsors of the Truth in Travel Act plan to introduce legislation in the New York 1975 Legislative Session to create licensing⁵⁸ and bonding⁵⁹ requirements for travel consultants. An advantage of this system is that improper conduct could lead to permanent exclusion of the guilty party from engaging in the business. Unlike a fine or criminal penalty, such a bar can not be shrugged off as a cost of doing business. However, the costs of such a system must ultimately be borne by the public and the industry and may be disproportionate to the small number of offenders. A bond would be prohibitively expensive if it

⁵⁷ Unless authorized by statute, New York courts will not award attorneys fees in actions for most torts or in contracts where such an award is not specified. *See* *Idyll v. Kohn*, 199 N.Y.S.2d 165, 169 (Sup. Ct. 1960), involving a fraud perpetrated upon purchasers of a heating system, who were not awarded attorneys fees.

⁵⁸ Licensing legislation has also been proposed in Michigan. S. 1157, 76th Legis., Reg. Sess. (1972); S. 1002, 77th Legis., Reg. Sess. (1973). Under the proposed Michigan Act a person would be prohibited from acting as a travel agent without a license. The license could be suspended or revoked for the commission of a substantial misrepresentation or an act demonstrating incompetency or dishonesty. The latter provision seems overly broad. The licensee would be required to file an annual personal and business financial statement.

An Illinois proposal, H. 1707, 77th Ass. (1971), was similar to Michigan's proposed licensing plan but included a bond payable to the state for the use of any person who had paid for but did not receive travel services. The Governor of Illinois vetoed this proposal on the ground that the interstate commerce clause precluded a state from regulating a travel agent who operated in Illinois only through the mail. 1972 *Hearings*, *supra* note 29, at 23.

⁵⁹ California has enacted a bonding plan for travel agents. CAL. PUBLIC UTILITIES CODE §§ 4900-4925 (1974). The California approach concentrates on the safety of funds given by the prospective traveler to the tourist agency. Travel agents must either hold 90 percent of the funds received for transportation or incidental services in trust or provide a bond for that amount until the funds are passed to the principal. *Id.* § 4920. The trust account must be in a state or federally chartered bank or savings and loan association. *Id.* § 4907. The bond amount must at least equal the contract amount between the travel agent and the principal. If the transportation is cancelled through no fault of the customer, the travel agent must promptly refund the entire price to the customer. *Id.* § 4923. An amendment exempts corporate promoters and their subsidiaries who can show a net worth of more than a million dollars. *Id.* § 4925.

were to serve as recompense for individual customers suffering violations. A smaller bond which escheated to the state or provided partial recompense to travelers might be an effective additional deterrent. Another plan would be an annual fee paid by each travel consultant to a state fund, the fund to be used to reimburse wronged travelers. The guilty travel consultant would be held liable to repay to the fund the amount paid from it to his customers. This plan might be coupled with a bonding requirement to remove any incentive for a travel consultant to abscond.

The cost and availability of such bonds⁶⁰ and the barrier that bonds and licenses create to entrance into the business should be weighed against their protective value. It appears likely that economy—considered in terms of direct cost as well as the cost to society represented by stepped-up prices of travel—can be best served by the present system of criminal penalties bolstering common law remedies.⁶¹

IV. CONCLUSION

The injunctive and criminal sanctions imposed by the New York Truth in Travel Act are intended to fill the interstices between the traditional common law and statutory remedies. While the Act has the potential to provide faster and more comprehensive relief to stranded and defrauded travelers, its ultimate effectiveness will depend largely on consistent and vigorous enforcement by New York officials.

—Lisa Kennedy

⁶⁰ See generally 1972 Hearings, *supra* note 29.

⁶¹ Some license and bond requirements for travel agents already exist. See text accompanying notes 33-36 *supra*.