

# IOWA

## **9D.1 Definitions.**

1. "*Applicant*" means a person applying for registration under this chapter.
2. "*Customer*" means a person who is offered or who purchases travel services.
3. "*Registrant*" means a person registered pursuant to this chapter.
4. "*Secretary*" means the secretary of state.
5. "*Solicitation*" means contact by a travel agency or travel agent of a customer for the purpose of selling or offering to sell travel services.
6. "*Travel agency*" means a person who represents, directly or indirectly, that the person is offering or undertaking by any means or method, to provide travel services for a fee, commission, or other valuable consideration, direct or indirect.
7. "*Travel agent*" means a person employed by a travel agency whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations.
8. "*Travel services*" means arranging or booking vacation or travel packages, travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation, or hotel or other lodging accommodations. Travel services include travel related prizes or awards for which the customer must pay a fee or, in connection with the prize or award, expend moneys for the direct or indirect monetary benefit of the person making the award, in order for the customer to collect or enjoy the benefits of the prize or award.

## **9D.2 Registration required.**

1. *a.* A travel agency doing business in this state shall register with the secretary of state as a travel agency if it or its travel agent conducts the solicitation of an Iowa resident.
- b.* A travel agency required to register under paragraph "*a*" shall not permit a travel agent employed by the travel agency to do business in this state unless the agency has filed the required registration statement.

2. A travel agent shall not knowingly do business in this state unless and until the travel agency employing the travel agent has registered with the secretary of state as a travel agency if the travel agency or any of the agency's travel agents conduct the solicitation of an Iowa resident.

3. This section does not require registration for, or prohibit, solicitation by mail or telecommunications of a person with whom the travel agency has a previous travel services provider-customer relationship, having previously arranged travel related services for that customer on at least one prior occasion.

4. "*Doing business*" in this state, for purposes of this chapter, means any of the following:

a. Offering to sell or selling travel services, if the offer is made or received within the state.

b. Offering to arrange, or arranging, travel services for a fee or commission, direct or indirect, if the offer is made or received in this state.

c. Offering to, or awarding travel services as a prize or award, if the offer or award is made in or received in this state.

5. An applicant shall complete the registration statement form provided by the secretary. The registration statement must be accompanied by the required bond or evidence of financial responsibility and the registration fee. The registration statement shall include all of the following:

a. The name and signature of an officer or partner of a business entity or the names and signatures of the principal owner and operator if the agency is a sole proprietorship.

b. The name, address, and telephone number of the applicant and the name of all travel agents employed by the applicant travel agency.

c. The name, address, and telephone number of any person who owns or controls, directly or indirectly, ten percent or more of the applicant.

d. If the applicant is a foreign corporation or business, the name and address of the corporation's agent in this state for service of process.

e. Any additional information required by rule adopted by the secretary pursuant to chapter 17A.

The application shall be accompanied by a written irrevocable consent to service of process. The consent must provide that actions in connection with doing business in this state may be commenced against the registrant in the proper jurisdiction in this state in which the cause of action may arise, or in which the plaintiff may reside, by service of

process on the secretary as the registrant's agent and stipulating and agreeing that such service of process shall be taken and held in all courts to be as valid and binding as if service of process had been made upon the person according to the laws of this or any other state. The consent to service of process shall be in such form and supported by such additional information as the secretary may by rule require.

An annual registration fee as established by the secretary by rule is required at the time the registration statement is filed with the secretary, and on or before the anniversary date of the effective date of registration for each subsequent year. The registration fee shall be established at a rate deemed reasonably necessary by the secretary to support the administration of this chapter, but not to exceed fifteen dollars per year per agency. If a registrant fails to pay the annual registration fee, the registration lapses and becomes ineffective.

A registrant shall submit to the secretary corrections to the information supplied in the registration statement within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an initial registration statement, except travel agents' names as required in subsection 5, paragraph "b". The names of travel agents shall be updated at the time of annual registration.

The secretary may revoke or suspend a registration for cause subject to the contested case provisions of chapter 17A.

### **9D.3 Evidence of financial security.**

1. An application for a travel agency must be accompanied by a surety or cash performance bond in conformity with rules adopted by the secretary in the principal amount of ten thousand dollars, with an aggregate limit of ten thousand dollars. The bond shall be executed by a surety company authorized to do business in this state, and the bond shall be continuous in nature until canceled by the surety with not less than sixty days' written notice to both the registrant and to the secretary. The notice shall indicate the surety's intent to cancel the bond on a date at least sixty days after the date of the notice.

2. The bond shall be payable to the state for the use and benefit of either:

a. A person who is injured by the fraud, misrepresentation, or financial failure of the travel agency or a travel agent employed by the travel agency.

b. The state on behalf of a person or persons under paragraph "a".

The bond shall be conditioned such that the registrant will pay any judgment recovered by a person in a court of this state in a suit for actual damages, including reasonable

attorney's fees, or for rescission, resulting from a cause of action involving the sale or offer of sale of travel services. The bond shall be open to successive claims, but the aggregate amount of the claims paid shall not exceed the principal amount of the bond.

3. If a registrant has contracted with the airlines reporting corporation or the passenger network services corporation, or similar organizations approved by the secretary of state with equivalent bonding requirements for participation, in lieu of the bond required by subsection 1, the registrant may file with the secretary a certified copy of the official approval and appointment of the applicant from the airlines reporting corporation or the passenger network services corporation.

4. In lieu of any bond or guarantee required to be provided by this section, a registrant may do any of the following:

*a.* File with secretary proof of professional liability and errors and omissions insurance in an amount of at least one million dollars annually.

*b.* Deposit with the secretary cash, securities, or a statement from a federally insured financial institution guaranteeing the performance of the registrant up to a maximum of ten thousand dollars to be held or applied to the purposes to which the proceeds of the bond would otherwise be applied.

#### **9D.4 Penalties.**

1. A person required to register as a travel agency, or an owner of ten percent or more of a travel agency, required to register by this chapter, which fails to register, fails to make required corrections to its registration statement, or fails to pay the required fee on or before thirty days after the fee becomes due, commits a serious misdemeanor.

2. If a person required to be registered or listed upon a registration statement by this chapter receives money, as a fee, commission, compensation, or profit in connection with doing business in this state in violation of section 9D.2, the person, in addition to the criminal penalty in subsection 1, shall be liable for a civil penalty of not less than three times the sum so received, as may be determined by the court, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person, or by the attorney general for the benefit of an aggrieved person or class of persons.

3. A violation of this chapter is also a violation of section 714.16.

#### **9D.5 Exemptions.**

1. This chapter does not apply to:

*a.* A bona fide employee of a travel agency who is engaged solely in the business of the agency, and whose principal duties do not include consulting with and advising persons concerning travel arrangements or accommodations.

*b.* A direct common carrier of passengers or property regulated by an agency of the federal government or employees of a common carrier when engaged solely in the transportation business of the carrier as identified in the carrier's certificate.

2. A travel agency is subject to this chapter, notwithstanding that the customer's name was obtained from the customer as part of a promotion where the customer signed up to receive a sales presentation or to enter a drawing for a prize prior to the solicitation. These activities do not constitute a previous travel services provider-customer relationship.