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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 62

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO TRAVEL INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1702, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1702. Definitions.

(z) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to any of the following:

(1) Interruption or cancellation of trip or ~~event~~; event.

(2) Loss of baggage or personal ~~effects~~; effects.

(3) Damages to accommodations or rental ~~vehicles~~; or vehicles.

(4) Sickness, accident, disability or death occurring during travel.

(5) Emergency evacuation.

(6) Repatriation of remains.

(7) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Commissioner.

"Travel insurance" does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including for example, those working or residing overseas as an expatriate or military personnel being deployed, or any other product that requires a specific insurance producer license.

Section 2. Amend §1771, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1771. Definitions.

For purposes of this chapter, the following terms have the meanings indicated.

(1) "Limited lines travel insurance producer" means a licensed managing general agent or third-party administrator, or licensed insurance producer, including a limited lines producer, or a travel administrator as

defined in § 5603 of this title ~~designated by an insurer as the travel insurance supervising entity as set forth in § 1775 of this title.~~

(2) "Offer and disseminate" means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the State.

(3) "Travel insurance" shall have the meaning stated in § 1702 of this title.

(4) "Travel retailer" means a business entity that makes, arranges or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Section 3. Amend §1772, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1772. Requirements.

Notwithstanding any other provision of law:

(1) The Commissioner may issue a limited lines travel insurance producer license to an individual or business entity that has filed with the Commissioner an application for such limited license in a form and manner prescribed by the Commissioner, ~~a limited lines travel insurance producer license, which authorizes the.~~ Such limited lines travel insurance producer shall be licensed to sell, solicit or negotiate travel insurance through a licensed insurer. No person may act as a limited lines travel insurance producer or travel insurance retailer unless properly licensed or registered, respectively.

(2) A travel retailer may offer and disseminate travel insurance on behalf of a limited lines travel insurance producer business entity only if the following conditions are met:

a. The limited lines travel insurance producer provides, or causes the travel retailer to provide, to purchasers of travel insurance, brochures or written materials that contain all of the following:

1. A description of the material terms or the actual terms of the insurance ~~coverage;~~ coverage.
2. A description of the process for filing a ~~claim;~~ claim.
3. A description of the review or cancellation process for the travel insurance ~~policy;~~ policy.
4. The identity and contact information of the insurer and limited lines travel insurance ~~producer;~~ producer.
5. An explanation that the purchase of travel insurance is not required in order to purchase any other product or service from the travel ~~retailer;~~ retailer.

53 6. An explanation that an unlicensed travel retailer is permitted to provide general information
54 about the insurance offered by the travel retailer, including a description of the coverage and
55 price, but is not qualified or authorized to answer technical questions about the terms and
56 conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the
57 customer's existing insurance ~~coverage~~; and coverage.

58 7. A disclosure that the coverage offered may duplicate existing coverage maintained by the
59 consumer and indicate that the consumer may wish to compare the terms with existing life,
60 health, home, and automobile policies, and other sources of protection.

61 b. At the time of licensure, the limited lines travel insurance producer shall establish and maintain a
62 register, on a form prescribed by the Commissioner, of each travel retailer that offers travel insurance on the
63 limited lines travel insurance producer's behalf. The register shall be maintained and updated annually by the
64 limited lines travel insurance producer and shall include the name, address, and contact information of the travel
65 retailer and an officer or person who directs or controls the travel retailer's operations, and the travel retailer's
66 Federal Tax Identification Number. The limited lines travel insurance producer shall submit such register to the
67 Commissioner upon reasonable request. The limited lines travel insurance producer shall also certify that all travel
68 retailers registered comply with 18 U.S.C. § 1033. The grounds for the suspension, revocation and the penalties
69 applicable to insurance producers under § 1712 of this title shall be applicable to the limited lines travel insurance
70 producers and travel retailers.

71 c. The limited lines travel insurance producer has designated one of its employees who is a licensed
72 individual producer as the person responsible (a "designated responsible producer" or "DRP") for the limited lines
73 travel insurance producer's compliance with the travel insurance laws, rules and regulations of this State
74 applicable to the limited lines travel insurance producer and its registrants.

75 d. The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the
76 limited lines travel insurance producer's insurance operations comply with the fingerprinting requirements
77 applicable to insurance producers in the resident state of the limited lines travel insurance producer.

78 e. The limited lines travel insurance producer has paid all applicable insurance producer licensing fees as
79 set forth in Chapter 7 of this title.

80 f. The limited lines travel insurance producer requires each employee and authorized representative of
81 the travel retailer whose duties include offering and disseminating travel insurance to receive a program of
82 instruction or training, which may be subject to review by the Commissioner. The training material shall, at a

minimum, contain adequate instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

g. Limited lines travel insurance producers are exempt from the examination and continuing education requirements under Chapter 17 of this title.

(3) If any of the above-listed conditions is not satisfied, the sale of travel insurance (whether by a limited lines travel insurance producer or travel retailer) shall be pursuant to the terms of Chapter 17 of this title.

(4) A travel retailer and any of its employees or authorized representatives, who are not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

c. Hold himself, herself or itself out as a licensed insurer, licensed producer, or insurance expert.

Section 4. Amend §1774, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1774. Policy.

Travel insurance may be provided under an ~~individual policy or under a~~ individual, group, or ~~master blanket~~ policy, as those terms are defined in § 5603 of this title ~~to the extent permitted under Delaware laws and regulations.~~

Section 5. Amend §1775, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1775. Responsibility.

~~The~~ As the insurer's designee, the limited lines travel insurance producer is responsible for the acts of the travel retailers and shall use reasonable means to ensure compliance by the travel retailers with this chapter.

Section 6. Amend Title 18 of the Delaware Code by creating a new chapter by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 56. TRAVEL INSURANCE.

§ 5601. Short Title.

This Act shall be known as the "Delaware Travel Insurance Act."

§ 5602. Scope and purposes.

(a) The purpose of this Act is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this State.

(b) The requirements of this Act shall apply to travel insurance that covers any resident of this State, and is sold solicited, negotiated, or offered in this State, and policies and certificates that are delivered or issued for delivery in this State. It shall not apply to cancellation fee waivers or travel assistance services, except as expressly provided herein.

(c) All other applicable provisions of this State's insurance laws shall continue to apply to travel insurance except that the specific provisions of this Act shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

§ 5603. Definitions.

(a) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(b) "Blanket travel insurance" means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.

(c) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(d) "Commissioner" shall have the meaning stated in § 102 of this title.

(e) Solely for the purposes of travel insurance, "eligible group" means 2 or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including any of the following:

(1) Any entity engaged in the business of providing travel or travel services, including: tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel agencies, property managers, cultural exchange programs, and common carriers or the operator, owner, or lessor of a means of transportation of passengers, including airlines, cruise lines, railroads, steamship companies, and public bus carriers, wherein with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel.

(2) Any college, school, or other institution of learning, covering students, teachers, employees, or volunteers.

142 (3) Any employer covering any group of employees, volunteers, contractors, board of directors,
143 dependents, or guests.

144 (4) Any sports team, camp, or sponsor thereof, covering participants, members, campers, employees,
145 officials, supervisors, or volunteers.

146 (5) Any religious, charitable, recreational, educational, or civic organization, or branch thereof, covering
147 any group of members, participants, or volunteers.

148 (6) Any financial institution or financial institution vendor, or parent holding company, trustee, or agent
149 of or designated by one or more financial institutions or financial institution vendors, including accountholders,
150 credit card holders, debtors, guarantors, or purchasers.

151 (7) Any incorporated or unincorporated association, including labor unions, having a common interest,
152 constitution and bylaws, and organized and maintained in good faith for purposes other than obtaining insurance
153 for members or participants of such association covering its members.

154 (8) Any trust or the trustees of a fund established, created or maintained for the benefit of and covering
155 members, employees or customers, of 1 or more associations meeting the requirements of paragraph (e)(7) of this
156 subsection, subject to the Commissioner's permitting the use of a trust and the state's premium tax provisions in §
157 5604 of this title.

158 (9) Any entertainment production company covering any group of participants, volunteers, audience
159 members, contestants, or workers.

160 (10) Any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or
161 other such volunteer group.

162 (11) Preschools, daycare institutions for children or adults, and senior citizen clubs.

163 (12) Any automobile or truck rental or leasing company covering a group of individuals who may
164 become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common
165 carrier, the operator, owner or lessor of a means of transportation, or the automobile or truck rental or leasing
166 company, is the policyholder under a policy to which this section applies.

167 (13) Any other group where the Commissioner has determined that the members are engaged in a
168 common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the
169 policy would not be contrary to the public interest.

170 (f) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the
171 purchase and providing the travel protection plan's coverage and assistance details.

(g) “Group travel insurance” means travel insurance issued to any eligible group.

(h) “Limited lines travel insurance producer” shall have the meaning stated in § 1771 of this title.

(i) “Offer and disseminate” shall have the meaning stated in § 1771 of this title.

(j) “Primary certificate holder”, for purposes of § 5604 of this title, means an individual person who elects and purchases travel insurance under a group policy.

(k) “Primary policyholder”, for purposes of § 5604 of this title, means an individual person who elects and purchases individual travel insurance.

(l) “Travel administrator” means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of this State, in connection with travel insurance, except that a person shall not be considered a travel administrator if that person’s only actions that would otherwise cause it to be considered a travel administrator are among any of the following:

(1) A person working for a travel administrator to the extent that the person’s activities are subject to the supervision and control of the travel administrator.

(2) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer’s license.

(3) A travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with § 1772 of this title.

(4) An individual adjusting or settling claims in the normal course of that individual’s practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage.

(5) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.

(m) “Travel assistance services” means non-insurance services for which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include: security advisories; destination information; vaccination and immunization information services; travel reservation services; entertainment; activity and event planning; translation assistance; emergency messaging; international legal and medical referrals; medical case monitoring; coordination of transportation arrangements; emergency cash transfer assistance; medical prescription replacement assistance; passport and travel document replacement assistance; lost luggage assistance; concierge services; and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and not related to insurance.

(n) “Travel insurance” shall have the meaning stated in § 1702 of this title.

(o) “Travel protection plans” means plans that provide one or more of the following: travel insurance; travel assistance services; and cancellation fee waivers.

(p) “Travel retailer” shall have the meaning stated in § 1771 of this title.

§ 5604. Premium tax.

(a) A travel insurer shall pay premium tax, as provided in § 702 of this title, on travel insurance premiums paid by any of the following:

(1) An individual primary policyholder who is a resident of this State.

(2) A primary certificate holder who is a resident of this State who elects coverage under a group travel insurance policy.

(3) A blanket travel insurance policyholder that is a resident in, or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in this State for eligible blanket group members, subject to any apportionment rules which apply to the insurer across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(b) A travel insurer shall:

(1) Document the state of residence or principal place of business of the policyholder or certificate-holder.

(2) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

§ 5605. Travel protection plans.

(a) Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this State if:

(1) The travel protection plan clearly discloses to the consumer, at or prior to the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers as applicable, and provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and

(2) The fulfillment materials shall:

a. Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

b. Include the travel insurance disclosures and the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

§ 5606. Sales practices.

(a) All persons offering travel insurance to residents of this State are subject to the Unfair Trade Practices Act at §§ 2301 et seq. of this title except as otherwise provided in this section. In the event of a conflict between this Act and other provisions of this title regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this Act shall control.

(b) Illusory travel insurance. Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under §§ 2301 et seq. of this title.

(c) Marketing.

(1) All documents provided to consumers prior to the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

(2) For travel insurance policies or certificates that contain pre-existing condition exclusions, information and an opportunity to learn more about the pre-existing condition exclusions shall be provided any time prior to the time of purchase, and in the coverage's fulfillment materials.

(3) The fulfillment materials and the information described in § 1772(2)a.1-4 of this title shall be provided to a policyholder or certificate holder as soon as practicable, following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

a. 15 days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

b. 10 days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

For the purposes of this section, delivery means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

(4) The company shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(5) Where travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.

(d) Opt out. No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may do so by using negative option or opt out, which would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(e) It shall be an unfair trade practice to market blanket travel insurance coverage as free.

(f) Where a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(1) Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package.

(2) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

§ 5607. Travel administrators.

(a) Notwithstanding any other provisions of this title, no person shall act or represent itself as a travel administrator for travel insurance in this State unless that person meets at least 1 of the following criteria:

(1) Is a licensed property and casualty insurance producer in this State for activities permitted under that producer license.

(2) Holds a valid managing general agent license in this State.

(3) Holds a valid third-party administrator license in this State.

(b) A travel administrator and its employees are exempt from the adjuster licensing requirements of § 1703 of this title for travel insurance it administers.

(c) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer, and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the Commissioner upon request.

§ 5608. Policy.

(a) Notwithstanding any other provision of this title, travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, provided, however, that travel insurance that provides coverage

for sickness, accident, disability or death occurring during travel, either exclusively, or in conjunction with related coverages of emergency evacuation or repatriation of remains, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(b) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet this State's underwriting standards for inland marine.

§5609. Regulations.

The Commissioner may promulgate regulations to implement the provisions of this Act.

Section 7. Effective date.

This Act takes effect 90 days after its enactment into law.

SYNOPSIS

This Act makes minor changes to licensing and registration of limited lines travel insurance producers and travel retailers and establishes a comprehensive framework for the sale and marketing of travel insurance. Specifically, the legislation establishes uniform meanings of key terms; allows travel products to continue to be offered in a manner that provides a seamless consumer experience and cost-saving efficiencies; clarifies impermissible and prohibited sales practices, and the applicability of the state's unfair trade practices law; requires several consumer disclosures; clarifies that travel insurance may be sold via individual, group, or blanket policies; clarifies current practice with respect to premium taxes; and clarifies that travel insurance is generally classified and filed as an inland marine line of insurance.

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