

STATE OF NEW YORK

5883

2023-2024 Regular Sessions

IN ASSEMBLY

March 23, 2023

Introduced by M. of A. HUNTER -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to enacting the "New York travel insurance act" regulating the licensing and registration of limited lines travel insurance producers and travel retailers, and the sale and marketing of travel insurance and related products

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York travel insurance act".

3 § 2. Subsection (a) of section 1113 of the insurance law is amended by
4 adding a new paragraph 35 to read as follows:

5 (35) "Travel insurance," means the kind of insurance specified in
6 section eight thousand one hundred two of this chapter.

7 § 3. Section 3435 of the insurance law is amended by adding a new
8 subsection (e) to read as follows:

9 (e) This section shall not apply to travel insurance policies written
10 pursuant to article eighty-one of this chapter.

11 § 4. Section 3452 of the insurance law is amended by adding a new
12 subsection (e) to read as follows:

13 (e) Nothing in this section shall restrict, limit, or prohibit a
14 travel insurance policy written pursuant to article eighty-one of this
15 chapter.

16 § 5. The insurance law is amended by adding a new article 81 to read
17 as follows:

ARTICLE 81

TRAVEL INSURANCE

Section 8101. Scope and purposes.

8102. Definitions.

8103. Licensing and registration.

8104. Premium tax.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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8105. Travel protection plans.

8106. Sales practices.

8107. Travel administrators.

8108. Policy.

8109. Regulations.

§ 8101. 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 chapter 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.

§ 8102. 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) "Superintendent" means the superintendent of the department of financial services.

(e) Notwithstanding any other provision of law, solely for the purposes of travel insurance, "eligible group" means two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including but not limited to any of the following:

(1) Any entity engaged in the business of providing travel or travel services, including but not limited to: 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 but not limited to 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;

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

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

1 (5) Any religious, charitable, recreational, educational, or civic
2 organization, or branch thereof, covering any group of members, partic-
3 ipants, or volunteers;

4 (6) Any financial institution or financial institution vendor, or
5 parent holding company, trustee, or agent of or designated by one or
6 more financial institutions or financial institution vendors, including
7 accountholders, credit card holders, debtors, guarantors, or purchasers;

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

12 (8) Any trust or the trustees of a fund established, created or main-
13 tained for the benefit of and covering members, employees or customers,
14 subject to the superintendent's permitting the use of a trust and the
15 state's premium tax provisions in section eight thousand one hundred
16 four of this article of one or more associations meeting the require-
17 ments of paragraph seven of this subsection;

18 (9) Any entertainment production company covering any group of partic-
19 ipants, volunteers, audience members, contestants, or workers;

20 (10) Any volunteer fire department, ambulance, rescue, police, court,
21 or any first aid, civil defense, or other such volunteer group;

22 (11) Preschools, daycare institutions for children or adults, and
23 senior citizen clubs;

24 (12) Any automobile or truck rental or leasing company covering a
25 group of individuals who may become renters, lessees, or passengers
26 defined by their travel status on the rented or leased vehicles. The
27 common carrier, the operator, owner or lessor of a means of transporta-
28 tion, or the automobile or truck rental or leasing company, is the poli-
29 cyholder under a policy to which this section applies; or

30 (13) Any other group where the superintendent has determined that the
31 members are engaged in a common enterprise, or have an economic, educa-
32 tional, or social affinity or relationship, and that issuance of the
33 policy would not be contrary to the public interest.

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

37 (g) "Group travel insurance" means travel insurance issued to any
38 eligible group.

39 (h) "Limited lines travel insurance producer" means a:

40 (1) Licensed managing general agent or third-party administrator;

41 (2) Licensed insurance producer, including a limited lines producer;
42 or

43 (3) Travel administrator.

44 (i) "Offer and disseminate" means providing general information,
45 including a description of the coverage and price, as well as processing
46 the application and collecting premiums.

47 (j) "Primary certificate holder", specific to section eight thousand
48 one hundred four of this article, means an individual who elects and
49 purchases travel insurance under a group policy.

50 (k) "Primary policyholder", specific to section eight thousand one
51 hundred four of this article, means an individual who elects and
52 purchases individual travel insurance.

53 (l) "Travel administrator" means a person who directly or indirectly
54 underwrites, collects charges, collateral or premiums from, or adjusts
55 or settles claims on residents of this state, in connection with travel
56 insurance, except that a person shall not be considered a travel admin-

1 istrator if that person's only actions that would otherwise cause it to
2 be considered a travel administrator are among the following:

3 (1) A person working for a travel administrator to the extent that the
4 person's activities are subject to the supervision and control of the
5 travel administrator;

6 (2) An insurance producer selling insurance or engaged in administra-
7 tive and claims-related activities within the scope of the producer's
8 license;

9 (3) A travel retailer offering and disseminating travel insurance and
10 registered under the license of a limited lines travel insurance produc-
11 er in accordance with this article;

12 (4) An individual adjusting or settling claims in the normal course of
13 that individual's practice or employment as an attorney-at-law and who
14 does not collect charges or premiums in connection with insurance cover-
15 age; or

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

19 (m) "Travel assistance services" means non-insurance services for
20 which the consumer is not indemnified based on a fortuitous event, and
21 where providing the service does not result in transfer or shifting of
22 risk that would constitute the business of insurance. Travel assistance
23 services include, but are not limited to: security advisories; destina-
24 tion information; vaccination and immunization information services;
25 travel reservation services; entertainment; activity and event planning;
26 translation assistance; emergency messaging; international legal and
27 medical referrals; medical case monitoring; coordination of transporta-
28 tion arrangements; emergency cash transfer assistance; medical
29 prescription replacement assistance; passport and travel document
30 replacement assistance; lost luggage assistance; concierge services; and
31 any other service that is furnished in connection with planned travel.
32 Travel assistance services are not insurance and not related to insur-
33 ance.

34 (n) "Travel insurance" means insurance coverage for personal risks
35 incident to planned travel, including:

36 (1) Interruption or cancellation of trip or event;

37 (2) Loss of baggage or personal effects;

38 (3) Damages to accommodations or rental vehicles;

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

40 (5) Emergency evacuation;

41 (6) Repatriation of remains; or

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

45 "Travel insurance" does not include major medical plans that provide
46 comprehensive medical protection for travelers with trips lasting longer
47 than six months, including, those working or residing overseas as an
48 expatriate, or any other product that requires a specific insurance
49 producer license.

50 (o) "Travel protection plans" means plans that provide one or more of
51 the following: travel insurance, travel assistance services, and cancel-
52 lation fee waivers.

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

1 § 8103. Licensing and registration. (a) The superintendent may
2 issue a limited lines travel insurance producer license to an individual
3 or business entity that has filed with the superintendent an application
4 for a limited lines travel insurance producer license in a form and
5 manner prescribed by the superintendent. Such limited lines travel
6 insurance producer shall be licensed to sell, solicit or negotiate trav-
7 el insurance through a licensed insurer. No person may act as a limited
8 lines travel Insurance producer or travel insurance retailer unless
9 properly licensed or registered, respectively.

10 (b) A travel retailer may offer and disseminate travel insurance under
11 a limited lines travel insurance producer license only if the following
12 conditions are met:

13 (1) The limited lines travel insurance producer or travel retailer
14 provides to purchasers of travel insurance:

15 (A) A description of the material terms or the actual material terms
16 of the insurance coverage;

17 (B) A description of the process for filing a claim;

18 (C) A description of the review or cancellation process for the travel
19 insurance policy; and

20 (D) The identity and contact information of the insurer and limited
21 lines travel insurance producer.

22 (2) At the time of licensure, the limited lines travel insurance
23 producer shall establish and maintain a register, on a form prescribed
24 by the superintendent, of each travel retailer that offers travel insur-
25 ance on the limited lines travel insurance producer's behalf. The regis-
26 ter shall be maintained and updated by the limited lines travel insur-
27 ance producer and shall include the name, address, and contact
28 information of the travel retailer and an officer or person who directs
29 or controls the travel retailer's operations, and the travel retailer's
30 federal tax identification number. The limited lines travel insurance
31 producer shall submit such register to the department upon reasonable
32 request. The limited lines travel insurance producer shall also certify
33 that the travel retailer registered complies with 18 USC § 1033. The
34 grounds for the suspension, revocation and the penalties applicable to
35 resident insurance producers under article twenty-one of this chapter,
36 shall be applicable to limited lines travel insurance producers and
37 travel retailers.

38 (3) The limited lines travel insurance producer has designated one of
39 its employees who is a licensed individual producer as the person (a
40 "designated responsible producer" or "DRP") responsible for the compli-
41 ance with the travel insurance laws and regulations applicable to the
42 limited lines travel insurance producer and its registrants.

43 (4) The DRP, president, secretary, treasurer, and any other officer or
44 person who directs or controls the limited lines travel insurance
45 producer's insurance operations complies with the fingerprinting
46 requirements applicable to insurance producers in the resident state of
47 the limited lines travel insurance producer.

48 (5) The limited lines travel insurance producer has paid all applica-
49 ble licensing fees as set forth in applicable state law.

50 (6) The limited lines travel insurance producer requires each employee
51 and authorized representative of the travel retailer whose duties
52 include offering and disseminating travel insurance to receive a program
53 of instruction or training, which is subject, at the discretion of the
54 superintendent, to review and approval. The training material shall, at
55 a minimum, contain adequate instructions on the types of insurance

1 offered, ethical sales practices, and required disclosures to prospec-
2 tive customers.

3 (c) Any travel retailer offering or disseminating travel insurance
4 shall make available to prospective purchasers brochures or other writ-
5 ten materials that have been approved by the travel insurer. Such mate-
6 rials shall include information which, at a minimum:

7 (1) Provides the identity and contact information of the insurer and
8 the limited lines travel insurance producer;

9 (2) Explains that the purchase of travel insurance is not required in
10 order to purchase any other product or service from the travel retailer;
11 and

12 (3) Explains that an unlicensed travel retailer is permitted to
13 provide only general information about the insurance offered by the
14 travel retailer, including a description of the coverage and price, but
15 is not qualified or authorized to answer technical questions about the
16 terms and conditions of the insurance offered by the travel retailer or
17 to evaluate the adequacy of the customer's existing insurance coverage.

18 (d) A travel retailer employee or authorized representative, who is
19 not licensed as an insurance producer may not:

20 (1) Evaluate or interpret the technical terms, benefits, and condi-
21 tions of the offered travel insurance coverage;

22 (2) Evaluate or provide advice concerning a prospective purchaser's
23 existing insurance coverage; or

24 (3) Hold himself or itself out as a licensed insurer, licensed produc-
25 er, or insurance expert.

26 (e) Notwithstanding any other provision of law, a travel retailer
27 whose insurance-related activities, and those of its employees and
28 authorized representatives, are limited to offering and disseminating
29 travel insurance on behalf of and under the direction of a limited lines
30 travel insurance producer meeting the conditions stated in this act, is
31 authorized to receive related compensation, upon registration by the
32 limited lines travel insurance producer as described in paragraph two of
33 subsection (b) of this section.

34 (f) As the insurer's designee, the limited lines travel insurance
35 producer is responsible for the acts of the travel retailer and shall
36 use reasonable means to ensure compliance by the travel retailer with
37 this act.

38 (g) Any person licensed in a major line of authority as an insurance
39 producer is authorized to sell, solicit and negotiate travel insurance.
40 A property and casualty insurance producer is not required to become
41 appointed by an insurer in order to sell, solicit, or negotiate travel
42 insurance.

43 § 8104. Premium tax. (a) A Travel insurer shall pay premium tax, as
44 provided in section fifteen hundred one of the tax law, on travel insur-
45 ance premiums paid by any of the following:

46 (1) An individual primary policyholder who is a resident of this
47 state;

48 (2) A primary certificate-holder who is a resident of this state who
49 elects coverage under a group travel insurance policy; or

50 (3) A blanket travel insurance policyholder that is a resident in, or
51 has its principal place of business or the principal place of business
52 of an affiliate or subsidiary that has purchased blanket travel insur-
53 ance in this state for eligible blanket group members, subject to any
54 apportionment rules which apply to the insurer across multiple taxing
55 jurisdictions or that permit the insurer to allocate premium on an

1 apportioned basis in a reasonable and equitable manner in those juris-
2 dictions.

3 (b) A travel insurer shall:

4 (1) Document the state of residence or principal place of business of
5 the policyholder or certificate-holder, as required in subsection (a) of
6 this section; and

7 (2) Report as premium only the amount allocable to travel insurance
8 and not any amounts received for travel assistance services or cancella-
9 tion fee waivers.

10 § 8105. Travel protection plans. Travel protection plans may be
11 offered for one price for the combined features that the travel
12 protection plan offers in this state if:

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

19 (b) The fulfillment materials:

20 (1) Describe and delineate the travel insurance, travel assistance
21 services, and cancellation fee waivers in the travel protection plan;
22 and

23 (2) Include the travel insurance disclosures and the contact informa-
24 tion for persons providing travel assistance services, and cancellation
25 fee waivers, as applicable.

26 § 8106. Sales practices. (a) All persons offering travel insurance to
27 residents of this state are subject to article twenty-four of this chap-
28 ter, except as otherwise provided in this section. In the event of a
29 conflict between this act and other provisions of this chapter regarding
30 the sale and marketing of travel insurance and travel protection plans,
31 the provisions of this act shall control.

32 (b) Illusory travel insurance. Offering or selling a travel insurance
33 policy that could never result in payment of any claims for any insured
34 under the policy is an unfair trade practice under article twenty-four
35 of this chapter.

36 (c) Marketing:

37 (1) All documents provided to consumers prior to the purchase of
38 travel insurance, including but not limited to sales materials, adver-
39 tising materials, and marketing materials, shall be consistent with the
40 travel insurance policy itself, including but not limited to, forms,
41 endorsements, policies, rate filings, and certificates of insurance.

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

47 (3) The fulfillment materials and the information described in
48 subparagraphs (A) through (D) of paragraph one of subsection (b) of
49 section eight thousand one hundred three of this chapter shall be
50 provided to a policyholder or certificate holder as soon as practicable,
51 following the purchase of a travel protection plan. Unless the insured
52 has either started a covered trip or filed a claim under the travel
53 insurance coverage, a policyholder or certificate holder may cancel a
54 policy or certificate for a full refund of the travel protection plan
55 price from the date of purchase of a travel protection plan until at
56 least:

1 (A) Fifteen days following the date of delivery of the travel
2 protection plan's fulfillment materials by postal mail; or

3 (B) Ten days following the date of delivery of the travel protection
4 plan's fulfillment materials by means other than postal mail.

5 For the purposes of this section, delivery means handing fulfillment
6 materials to the policyholder or certificate holder or sending fulfill-
7 ment materials by postal mail or electronic means to the policyholder or
8 certificate holder.

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

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

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

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

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

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

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

34 § 8107. Travel administrators. (a) Notwithstanding any other
35 provisions of this article, no person shall act or represent itself as a
36 travel administrator for travel insurance in this state unless that
37 person:

38 (1) Is a licensed property and casualty insurance producer in this
39 state for activities permitted under that producer license; or

40 (2) Holds a valid managing general agent license in this state; or

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

42 (b) A travel administrator and its employees are exempt from the
43 licensing requirements of section two thousand one hundred eight of this
44 chapter for travel insurance it administers.

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

50 § 8108. Policy. (a) Notwithstanding any other provision of this
51 chapter, travel insurance shall be classified and filed for purposes of
52 rates and forms under an inland marine line of insurance, provided,
53 however, that travel insurance that provides coverage for sickness,
54 accident, disability or death occurring during travel, either exclusive-
55 ly, or in conjunction with related coverages of emergency evacuation or
56 repatriation of remains, or incidental limited property and casualty

1 benefits such as baggage or trip cancellation, may be filed under either
2 an accident and health line of insurance or an inland marine line of
3 insurance.

4 (b) Notwithstanding any other provision of law, travel insurance may
5 be in the form of an individual, group, or blanket policy.

6 (c) Eligibility and underwriting standards for travel insurance may
7 be developed and provided based on travel protection plans designed for
8 individual or identified marketing or distribution channels, provided
9 those standards also meet the state's underwriting standards for inland
10 marine line of insurance.

11 § 8109. Regulations. The superintendent may promulgate regulations to
12 implement the provisions of this article.

13 § 6. This act shall take effect on the ninetieth day after it shall
14 have become a law.