STATE OF NEW YORK

1117

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. CAHILL, GALEF, LUPARDO -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to travel insurance

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

Section 1. Subsection (i) of section 2101 of the insurance law, as added by chapter 408 of the laws of 1990, is amended to read as follows:

(i) In this chapter, "limited licensee" shall mean a person authorized to sell certain coverages relating to the rental of motor vehicles**, the sale of wireless communications equipment, the rental of self-storage space, or the sale of travel-related products and services,** pursuant to the provisions of section two thousand one hundred thirty-one of this article.

§ 2. Section 2131 of the insurance law, as amended by chapter 582 of the laws of 2003, the section heading and subsections (a), (d), (e), (f), (h) and (i) as amended by chapter 368 of the laws of 2010, subsection (g) as amended by chapter 426 of the laws of 2005, is amended to read as follows:

§ 2131. Limited license for rental vehicle companies, wireless communications equipment vendors [~~and~~]**,** self-service storage companies**, and travel insurance agents**. (a) The superintendent may issue to a rental vehicle company, a wireless communications equipment vendor, a self-service storage company**, and a travel insurance agent,** or to a franchisee of a rental vehicle company, a wireless communications equipment vendor, [~~or a~~] self-service storage company**, or a travel insurance agent** which has complied with the requirements of this section, a limited license authorizing the licensee, known as a "limited licensee" for the purpose of this article, to act as agent, with reference to the kinds of insurance specified in this section, of any insurer authorized to write such kinds of insurance in this state.

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

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(b) The prerequisites for issuance of a limited license under this section shall be the filing with the superintendent of the following:

(1) an application, signed by an officer of the applicant, for the limited license in such form or forms, and supplements thereto, and containing such information, as the superintendent may prescribe; and

(2) an appointment of a limited licensee by the appointing insurer, in a format approved by the superintendent, no more than fifteen days after the date the agency contract is executed or the first insurance contract is submitted, whichever is later, stating that it has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent for this limited purpose and that the insurer will appoint such applicant to act as the agent in reference to the doing of such kind or kinds of insurance which are permitted by this section, if the limited license applied for is issued by the superintendent. Such appointment shall be subscribed by an officer or managing agent of such insurer and affirmed as true under the penalties of perjury.

(c) In the event that any provision of this chapter is violated, the superintendent may:

(1) revoke or suspend a limited license issued under this section in accordance with the provisions of section two thousand one hundred ten of this article; or

(2) after notice and hearing impose such other penalties, including suspending the transaction of insurance at specific locations where violations of this article have occurred, as the superintendent deems necessary or convenient to carry out the purposes of this section.

(d) The rental vehicle company, wireless communications equipment vendor, [~~or~~] self-service storage company, **or travel insurance agent,** or franchisee licensed pursuant to subsection (a) of this section may act as agent for an authorized insurer only in connection with **the sale of insurance in connection with** the rental of motor vehicles, the sale or offering for sale of wireless communications equipment, [~~or~~] the rental of storage space, **or the sale or offering for sale of travel-related products or services,** respectively, and only with respect to the following kinds of insurance:

(1) with respect to rental vehicle companies:

(A) excess liability insurance that provides coverage to the rental car company or franchisee and renters and other authorized drivers of rental vehicles, in excess of the standard liability limits provided by the rental vehicle company in its rental agreement, for liability arising from the negligent operation of the rental vehicle;

(B) accident and health insurance that provides coverage to renters and other vehicle occupants, in excess to the standard first party benefits provided pursuant to article fifty-one of this chapter, for accidental death and/or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;

(C) personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period;

(D) any other coverage which the superintendent may approve as meaningful and appropriate in connection with the rental of motor vehicles; or

(2) with respect to wireless communications equipment vendors, insurance issued to cover the loss, theft, mechanical failure, or malfunction of, or damage to, wireless communications equipment offered as either an individual policy issued to the consumer or as a group policy under which certificates or other evidence of coverage are issued to individ-

ual consumers who enroll in the program, provided however, that said insurance shall not extend to wireless services or service contracts governed by article seventy-nine of this chapter; or

(3) with respect to self-service storage companies, the following coverages offered as either an individual policy issued to the consumer or as a group policy:

(A) personal effects insurance that provides coverage to renters of storage spaces at the self-service storage company's facility for the loss of, or damage to, personal property stored at the facility, where the loss or damage occurs at the same facility during the rental period;

(B) any other coverage that the superintendent may approve as meaningful and appropriate in connection with the rental of storage space.

(4) with respect to travel insurance agents, the following coverages, each of which coverage is individually and collectively known as "travel insurance":

(A) insurance coverage for personal risks incident to planned travel, including but not limited to:

(i) interruption or cancellation of trip or event;

(ii) loss of baggage or personal effects;

(iii) damages to accommodations or rental vehicle; or

(iv) sickness, accident, disability or death occurring during travel.

(B) any other coverage that the superintendent may approve as meaningful and appropriate in connection with travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including for example, those working overseas as an expatriate or military personnel being deployed.

(e) No insurance may be issued pursuant to this section unless:

(1) with regard to the rental of vehicles only, the rental period of the rental agreement does not exceed thirty consecutive days; and

(2) at every location where rental vehicle agreements, wireless communications equipment agreements, or self-service storage agreements are executed, brochures or other written materials are readily available to the prospective consumer that:

(A) summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer and, with regard to wireless communications equipment insurance, the agent licensed under subsection (b) of section two thousand one hundred three of this article;

(B) disclose that these policies may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage;

(C) state that the purchase by the consumer of the kinds of insurance specified in this section is not required in order to rent a vehicle, to purchase or lease wireless communications equipment, or to rent storage space;

(D) describe the process for filing a claim in the event the consumer elects to purchase coverage;

(E) the price, deductible, benefits, exclusions and conditions or other limitations of such policies;

(F) disclose that the employee of the rental vehicle company, wireless communications equipment vendor or self-storage company is not qualified or authorized to evaluate the adequacy of the purchaser's existing coverages, unless otherwise licensed; and

(G) state that the customer may cancel the insurance at any time and any unearned premium will be refunded in accordance with applicable law.

(3) evidence of coverage is provided to every consumer who elects to purchase such coverage.

(f) Rates and forms for insurance under this section shall be subject to article twenty-three of this chapter. Any brochures used in connection with insurance under this section shall be filed with the superintendent for review and shall include disclosure of the claims filing process, premium, deductible amounts and limits and shall be prominently displayed in the brochure with at least twelve-point type bold headings. Any such brochures shall also be subject to section three thousand one hundred two of this chapter, provided, however, that any policy, certificate or other evidence of insurance coverage, whether or not contained in such brochure, shall not be subject to section three thousand one hundred two of this chapter, but shall be written in a clear and coherent manner and whenever practicable shall use words with common and everyday meaning to facilitate readability and to aid the policyholder in understanding the coverage provided.

(g) Any limited license issued under this section shall also authorize any salaried employee or any sales representative authorized by the licensee who, pursuant to subsection (h) of this section, is trained to act individually on behalf, and under the supervision, of the licensee with respect to the kinds of insurance specified in this section.

(h) Each company or franchisee licensed pursuant to this section shall conduct a training program, which shall be submitted to the superintendent for approval prior to use, and which shall meet the following minimum standards:

(1) each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of rental vehicles, purchasers or lessors of wireless communications equipment, or renters of storage space;

(2) each trainee shall be instructed with respect to the disclosures required under subsection (e) of this section and to acknowledge to a prospective renter of a rental vehicle, purchaser or lessor of wireless communications equipment, or renter of storage space that purchase of any such insurance specified in this section is not required in order for the consumer to rent a motor vehicle, purchase or lease wireless communications equipment, or rent storage space;

(3) each trainee shall be instructed to acknowledge to a prospective consumer of the kinds of insurance specified in this section that the consumer may have insurance policies that already provide the coverage being offered by the rental vehicle company, the wireless communications equipment vendor, or self-service storage company pursuant to this section; and

(4) with regard to wireless communications equipment insurance and self-service storage company insurance, training materials may be developed and provided by an agent licensed pursuant to subsection (b) of section two thousand one hundred three of this article.

(i) Limited licensees acting pursuant to and under the authority of this section shall comply with all applicable provisions of this article, except that notwithstanding section two thousand one hundred twenty of this article, a limited licensee pursuant to this section shall not be required to treat premiums collected from consumers purchasing such insurance when renting motor vehicles, purchasing or leasing wireless communications equipment, or renting storage space as funds received in a fiduciary capacity, provided that:

(1) the insurer represented by the limited licensee has consented in writing, signed by the insurer's officer, that premiums need not be segregated from funds received by the rental vehicle company, wireless communications equipment vendor, or self-storage company on account of vehicle rental, wireless communications equipment purchase or lease, or storage space rental; and

(2) the charges for insurance coverage are itemized but not billed to the consumer separately from the charges for rental vehicles, purchase or lease of wireless communications equipment, or storage space rental.

(j) No limited licensees under this section shall advertise, represent or otherwise hold itself or any of its employees themselves out as licensed insurance agents or brokers.

(k) The superintendent may issue a replacement for a currently in force license which has been lost or destroyed. Before such replacement license shall be issued, there shall be on file in the office of the superintendent a written application for such replacement license, affirming under penalty of perjury that the original license has been lost or destroyed, together with a fee of fifteen dollars.

(l) For purposes of this section "wireless communications equipment" shall mean wireless handsets, pagers, personal digital assistants, wireless telephones or wireless telephone batteries and other wireless devices and accessories related to such devices that are used to access wireless communications services and includes wireless services.

(m) Provisions related specifically to travel insurance coverage.

(1) Definitions.

(A) In this article, a "travel insurance agent" shall mean an agent licensed under section two thousand one hundred three of this article or a limited licensee under subsection (a) of this section that is designated by an insurer as a travel insurance supervising entity as set forth in paragraph four of this subsection.

(B) In this article, "offer and disseminate" shall mean providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other non-licensable activities permitted by the state.

(C) In this article, "travel company" shall mean 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 travel insurance agent.

(2) Requirements. Notwithstanding any other provision of law:

(A) A travel company may offer and disseminate travel insurance on behalf of and under the license of a travel insurance agent if the following conditions are met:

(i) The travel insurance agent or travel company provides to purchasers of travel insurance:

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

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

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

(4) The identity and contact information of the insurer and travel insurance agent.

(ii) At the time of licensure, the travel insurance agent shall establish and maintain a register on a form prescribed by the superintendent, of each travel company that offers travel insurance on the travel insurance agent's behalf. The register shall be maintained and updated by the travel insurance agent and shall include the name, address, and contact

information of the travel company and an officer or person who directs or controls the travel company's operations, and the travel company's federal tax identification number. The travel insurance agent shall submit such register to the superintendent upon reasonable request. The travel insurance agent shall also certify that the travel company register complies with 18 USC 1033.

(iii) The travel insurance agent has designated one of its employees who is a licensed individual agent as the person (a "designated responsible producer" or "DRP") responsible for the travel insurance agent's compliance with the travel insurance laws, rules and regulations of the state.

(iv) The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the travel insurance agent's insurance operations comply with the fingerprinting requirements applicable to insurance agents in the resident state of the travel insurance agent.

(v) The travel insurance agent has paid all applicable insurance agent licensing fees as set forth in applicable state law.

(vi) The travel insurance agent requires each employee and authorized representative of the travel company whose duties include offering and disseminating travel insurance to receive a program of instruction or training that shall, at minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(B) Any travel company offering and disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

(i) Provide the identity and contact information of the insurer and the travel insurance agent;

(ii) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel company;

(iii) Explain that the travel insurance coverage is not intended to duplicate any other insurance coverage the purchaser might have, but the purchaser may wish to compare the terms of coverage with existing policies; and

(iv) Explain that an unlicensed travel company is permitted to provide general information about the insurance offered by the travel company, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel company or to evaluate the adequacy of the customer's existing insurance coverage.

(C) A travel company employee or authorized representative who is not licensed as an insurance agent may not:

(i) Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

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

(iii) Hold himself, herself, or itself out as a licensed insurer, licensed agent, or insurance expert.

(3) Notwithstanding any other provision of law, a travel company whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a travel insurance agent meeting the conditions stated in this subsection, is authorized to do so and receive related compensation, upon registration by the travel insurance agent as described in this section. No employee of the travel company may be compensated based primarily on the number of customers

who purchase travel insurance coverage but nothing in this article shall prohibit payment of compensation to a travel company or its employees for activities as a registrant under the travel insurance agent's license that is incidental to the overall compensation of the travel company or its employees.

(4) As the insurer's supervising designee, the travel insurance agent is responsible for the acts of the travel company and shall use reasonable means to ensure compliance by the travel company with this article.

(5) Travel insurance may be provided under an individual, group or master policy, and may be filed under an inland marine line of insurance, pursuant to subparagraph (B) of paragraph twenty of subsection (a) of section one thousand one hundred thirteen of this chapter, as long as any health benefits offered are not offered on a stand-alone basis and are incidental to other property and casualty travel coverages.

(6) (A) The travel insurance agent and any travel company offering and disseminating travel insurance under a travel insurance agent's license shall be subject to (i) the unfair trade practices rules and enforcement provisions of article twenty-four of this chapter and (ii) any other enforcement provisions applicable to insurance producers generally.

(B) If the superintendent determines that a travel company, or a travel company's employee has violated any provision of this article or any other provision of this chapter, the superintendent may:

(i) Direct the limited lines travel insurance producer to implement a corrective action plan with the travel company.

(ii) Direct the limited lines travel insurance producer to revoke the authorization of the travel company to transact travel insurance on its behalf and under its license and to remove the travel company's name from its register.

(C) If the superintendent determines that a travel company, or a travel company's employee has violated a provision in this article or any other provision of this chapter, the superintendent, after notice and a hearing, may:

(i) Suspend or revoke the license of the limited lines travel insurance producer as authorized under this chapter.

(ii) Impose a monetary fine on the limited lines travel insurance producer.

§ 3. Subsection (a) of section 3452 of the insurance law, as added by chapter 318 of the laws of 2008, paragraphs 3, 4 and 5 as amended by section 3 of subpart K of part XX of chapter 55 of the laws of 2020, is amended to read as follows:

(a)(1) A group property travel insurance policy, and certificates thereunder, may be issued or delivered in this state only in accordance with the provisions of this section.

(2) A group property travel insurance policy, and certificates thereunder, may be issued only by an authorized insurer.

(3) The policy may be issued to:

(A) any railroad company, steamship company, carrier by air, public bus carrier, or other common carrier of passengers or travel company, which shall be deemed the policyholder, where the policy insures its passengers or travel customers;

(B) an institution of higher education as provided in paragraph two of subsection (a) of section three thousand two hundred forty of this chapter; or

(C) any other group where the superintendent has determined in a regulation that the members are engaged in a common enterprise, or have an

economic or social affinity or relationship, and that the issuance of the policy would not be contrary to the best interests of the public.

(4) (A) Except as provided in subparagraph (B) of paragraph one of subsection (a) of section three thousand two hundred forty of this chapter, the **travel insurance** policy may provide coverage [~~**for trip cancellation, trip interruption, baggage, and personal effects**~~] **as specified in paragraph four of subsection (d) of section two thousand one hundred thirty-one of this chapter,** when limited to a specific trip. The policy shall be sold in connection with transportation provided by the common carrier or **travel company or**, with respect to other groups as permitted by the superintendent in accordance with subparagraph (C) of paragraph three of this subsection, subject to such limitations provided in the regulation promulgated by the superintendent.

(B) A policy issued to an institution of higher education shall comply with clause (V) of item (iv) of subparagraph (B) of paragraph one of subsection (a) of section three thousand two hundred forty of this chapter.

(5) Coverage under the policy shall be limited to the group member's risks with respect to a particular trip, except a policy issued to an institution of higher education shall comply with item (iv) of subparagraph (B) of paragraph one of subsection (a) of section three thousand two hundred forty of this chapter.

(6) A person shall not be required to purchase any product or service to be eligible for group property travel insurance coverage, or required to purchase coverage as a condition of becoming a passenger or a group member.

§ 4. This act shall take effect on the one hundred twentieth day after it shall have become a law.