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:

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

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

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

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

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

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

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

§ 5. The insurance law is amended by adding a new article 81 to read 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;

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

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

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

(8) Any trust or the trustees of a fund established, created or maintained for the benefit of and covering members, employees or customers, subject to the superintendent's permitting the use of a trust and the state's premium tax provisions in section eight thousand one hundred four of this article of one or more associations meeting the requirements of paragraph seven of this subsection;

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

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

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

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

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

(f) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the 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" means a:

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

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

(3) Travel administrator.

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

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

(k) "Primary policyholder", specific to section eight thousand one hundred four of this article, means an individual 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 admin-

istrator if that person's only actions that would otherwise cause it to be considered a travel administrator are among 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 this article;

(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; or

(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, but are not limited to: 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" means insurance coverage for personal risks incident to planned travel, including:

(1) Interruption or cancellation of trip or event;

(2) Loss of baggage or personal effects;

(3) Damages to accommodations or rental vehicles;

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

(5) Emergency evacuation;

(6) Repatriation of remains; or

(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 superintendent.

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

(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" means a business entity that makes, arranges or offers planned travel 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.

§ 8103. Licensing and registration. (a) The superintendent may issue a limited lines travel insurance producer license to an individual or business entity that has filed with the superintendent an application for a limited lines travel insurance producer license in a form and manner prescribed by the superintendent. 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.

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

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

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

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

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

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

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

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

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

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

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which is subject, at the discretion of the superintendent, to review and approval. 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.

(c) Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials shall include information which, at a minimum:

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

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

(3) Explains that an unlicensed travel retailer is permitted to provide only general information about the insurance offered by the travel retailer, 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 retailer or to evaluate the adequacy of the customer's existing insurance coverage.

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

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

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

(3) Hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

(e) Notwithstanding any other provision of law, a travel retailer 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 limited lines travel insurance producer meeting the conditions stated in this act, is authorized to receive related compensation, upon registration by the limited lines travel insurance producer as described in paragraph two of subsection (b) of this section.

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

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

§ 8104. Premium tax. (a) A Travel insurer shall pay premium tax, as provided in section fifteen hundred one of the tax law, 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; or

(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, as required in subsection (a) of this section; and

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

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

(a) 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

(b) The fulfillment materials:

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

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

§ 8106. Sales practices. (a) All persons offering travel insurance to residents of this state are subject to article twenty-four of this chapter, except as otherwise provided in this section. In the event of a conflict between this act and other provisions of this chapter 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 article twenty-four of this chapter.

(c) Marketing:

(1) All documents provided to consumers prior to the purchase of travel insurance, including but not limited to sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy itself, including but not limited to, 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 subparagraphs (A) through (D) of paragraph one of subsection (b) of section eight thousand one hundred three of this chapter 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) Fifteen days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

(B) Ten 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 travel insurance provider 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; or

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

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

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

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

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

(b) A travel administrator and its employees are exempt from the licensing requirements of section two thousand one hundred eight of this chapter 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 superintendent upon request.

§ 8108. Policy. (a) Notwithstanding any other provision of this chapter, 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, or incidental limited property and casualty

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

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

(c) 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 the state's underwriting standards for inland marine line of insurance.

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

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