

# STATE OF NEW YORK

6087

2023-2024 Regular Sessions

## IN SENATE

March 28, 2023

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed 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

20 Section 8101. Scope and purposes.

21 8102. Definitions.

22 8103. Licensing and registration.

23 8104. Premium tax.

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

LBD08574-02-3

1 8105. Travel protection plans.

2 8106. Sales practices.

3 8107. Travel administrators.

4 8108. Policy.

5 8109. Regulations.

6 § 8101. Scope and purposes. (a) The purpose of this act is to  
7 promote the public welfare by creating a comprehensive legal framework  
8 within which travel insurance may be sold in this state.

9 (b) The requirements of this act shall apply to travel insurance that  
10 covers any resident of this state, and is sold, solicited, negotiated,  
11 or offered in this state, and policies and certificates that are deliv-  
12 ered or issued for delivery in this state. It shall not apply to cancel-  
13 lation fee waivers or travel assistance services, except as expressly  
14 provided herein.

15 (c) All other applicable provisions of this chapter shall continue to  
16 apply to travel insurance except that the specific provisions of this  
17 act shall supersede any general provisions of law that would otherwise  
18 be applicable to travel insurance.

19 § 8102. Definitions.

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

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

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

34 (d) "Superintendent" means the superintendent of the department of  
35 financial services.

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

41 (1) Any entity engaged in the business of providing travel or travel  
42 services, including but not limited to: tour operators, lodging provid-  
43 ers, vacation property owners, hotels and resorts, travel clubs, travel  
44 agencies, property managers, cultural exchange programs, and common  
45 carriers or the operator, owner, or lessor of a means of transportation  
46 of passengers, including but not limited to airlines, cruise lines,  
47 railroads, steamship companies, and public bus carriers, wherein with  
48 regard to any particular travel or type of travel or travelers, all  
49 members or customers of the group must have a common exposure to risk  
50 attendant to such travel;

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

53 (3) Any employer covering any group of employees, volunteers, contrac-  
54 tors, board of directors, dependents, or guests;

55 (4) Any sports team, camp, or sponsor thereof, covering participants,  
56 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.