

HOUSE BILL NO. 591

INTRODUCED BY E. BUTTREY, A. BUCKLEY, K. SEEKINS-CROWE, R. MARSHALL, D. HARVEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO TRAVEL INSURANCE;
PROVIDING DEFINITIONS; PROVIDING FOR A LIMITED LINES LICENSE; PROVIDING FOR TRAVEL
PROTECTION PLANS; PROVIDING FOR SALES PRACTICES; PROVIDING FOR TRAVEL
ADMINISTRATORS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 33-17-1401, 33-
17-1402, AND 33-17-1404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-17-1401, MCA, is amended to read:

"33-17-1401. Definitions. As used in this part, the following definitions apply:

~~(1) "Administrator" means an administrator as defined in 33-17-102.~~

(1) "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.

(2) "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.

(3) "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.

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

(5) "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.

~~(2)(6)~~ "Limited lines travel insurance producer" means a:

(a) managing general agent or third-party administrator; or

(b) licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity as set forth in 33-17-1404.

~~(3)(7)~~ "Offer and disseminate" means providing general information, including a description of coverage and price, as well as processing applications, collecting premiums, and performing other activities not requiring licensure by the state.

(8) "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 may not be considered a travel administrator if that person's only actions that would otherwise cause it to be considered a travel administrator are among the following:

(a) 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;

(b) an insurance producer selling insurance or engaged in administrative and facilitation of claims-related activities within the scope of the producer's license;

(c) a travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this part;

(d) 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

(e) 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.

(9) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event and that do not result in the 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 are not related to insurance.

~~(4)(10)~~ (a) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to:

- (i) interruption or cancellation of a trip or event;
- (ii) loss of baggage or personal effects;
- (iii) damages to accommodations or rental vehicles; ~~and~~
- (iv) sickness, accident, disability, or death occurring during travel;
- (v) emergency evacuation;
- (vi) repatriation of remains; or
- (vii) any other contractual obligations to indemnify or pay a specified amount to the traveler upon

determinable contingencies related to travel as approved by the commissioner.

(b) The term does not include major medical plans that provide comprehensive medical protection for travelers on trips lasting 6 months or longer, including those working overseas and military personnel being deployed.

(11) "Travel protection plans" means plans that provide one or more of the following:

- (a) travel insurance;
- (b) travel assistance services; or
- (c) cancellation fee waivers.

~~(5)(12)~~ "Travel retailer" means a business entity that makes, arranges, or offers travel services and that may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer."

Section 2. Section 33-17-1402, MCA, is amended to read:

"33-17-1402. Requirements to offer and disseminate travel insurance -- ~~fees~~ -- types of policies -- rulemaking. (1) The commissioner may issue a limited lines travel insurance producer license to an individual or business entity that has filed with the commissioner an application for a limited lines travel

insurance producer license in a form and manner prescribed by the commissioner. The limited lines travel insurance producer must be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed.

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

(a) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance with:

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

(ii) a description of the process for filing a claim;

(iii) a description of the review or cancellation process for the travel insurance policy; and

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

~~(b) at the time of licensure, the limited lines travel insurance producer establishes and maintains a registry on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf. The registry must be maintained and updated annually by the limited lines travel insurance producer and must include the name, address, and contact information of each travel retailer and of an officer or person who directs or controls each travel retailer's operations, the travel retailer's federal tax identification number, and a statement that the travel retailer has not been convicted of a violation of 18 U.S.C. 1033. The limited lines travel insurance producer shall submit its registry to the commissioner within 10 business days of the commissioner's request. The commissioner shall require a fee for filing the registry that is commensurate with the cost of maintaining a file for all registries filed with the commissioner.~~

~~(c)(b)~~ the limited lines travel insurance producer designates an employee who is an individual licensed producer as the designated responsible producer responsible for the limited lines travel insurance producer's compliance with the applicable insurance laws and rules of this state;

~~(d)(c)~~ the designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations have complied with the fingerprinting requirements in the resident state of the limited lines travel insurance producer;

~~(e)~~(d) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees required pursuant to 33-2-708 or other applicable state law; and

~~(f)~~(e) 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 may be subject to review by the commissioner. The training material must, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

~~(2)~~(3) A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

(a) provide the identity and contact information of the insurer and the limited lines travel insurance producer;

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

(c) explain that a travel retailer employee or authorized representative who is not licensed as an insurance producer is permitted to provide 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.

~~(3)~~(4) A travel retailer's employees or authorized representatives who are not licensed as insurance producers may not:

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

(b) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage;
or

(c) hold themselves out as licensed insurers, licensed producers, or insurance experts.

~~(4)~~(5) Travel insurance may be provided under an individual policy or under a group or master policy.

~~(5) The commissioner may adopt rules to implement the provisions of this part.~~

~~(6) A person licensed in property and casualty 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."

Section 3. Section 33-17-1404, MCA, is amended to read:

"33-17-1404. Responsibility -- enforcement -- penalties. (1) The limited lines travel insurance producer is the supervising entity responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with the provisions of this part.

(2) A limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under the limited lines travel insurance producer's license are subject to the ~~applicable unfair trade practices provisions of Title 33, chapter 18, including penalty provisions, and to other enforcement~~ provisions applicable to insurance producers generally."

NEW SECTION. Section 4. Travel protection plans. (1) 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 fulfilment materials:

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

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

NEW SECTION. Section 5. Sales practices. (1) All persons offering travel insurance to residents of this state are subject to the provisions of the unfair trade practice provisions of Title 33, chapter 18, except as otherwise provided in this section. In the event of a conflict between this part and other provisions of Title 33 regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this part

1 control.

2 (2) Offering or selling a travel insurance policy that could never result in payment of any claims for
3 any insured under the policy is an unfair trade practice under Title 33, chapter 18.

4 (3) The marketing of a travel insurance policy must meet the following requirements:

5 (a) All documents provided to consumers prior to the purchase of travel insurance, including but
6 not limited to sales materials, advertising materials, and marketing materials, must be consistent with the travel
7 insurance policy itself, including but not limited to forms, endorsements, policies, rate filings, and certificates of
8 insurance.

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

12 (c) (i) The fulfillment materials and the information described in ~~this subsection (3)~~ 33-17-
13 1402(2)(A)(I) THROUGH (2)(A)(IV) must be provided to a policyholder or certificate holder as soon as practicable
14 following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a
15 claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate
16 for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at
17 least:

18 (A) 15 days following the date of delivery of the travel protection plan's fulfillment materials by
19 postal mail; or

20 (B) 10 days following the date of delivery of the travel protection plan's fulfillment materials by
21 means other than postal mail.

22 (ii) For the purposes of subsection (3)(c)(i), "delivery" means handing fulfillment materials to the
23 policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the
24 policyholder or certificate holder.

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

27 (e) When travel insurance is marketed directly to a consumer through an insurer's website or by
28 others through an aggregator site, it is not an unfair trade practice or other violation of law if an accurate

summary or short description of coverage is provided on the web page and as long as the consumer has access to the full provisions of the policy through electronic means.

(4) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not 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.

(5) It is an unfair trade practice to market blanket travel insurance coverage as free.

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

(a) 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

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

NEW SECTION. Section 6. Travel administrators. (1) A person may not act or represent itself as a travel administrator for travel insurance in this state unless the person:

(a) is a licensed property and casualty insurance producer in this state for activities permitted under the producer's license; or

(b) holds a valid third-party administrator certificate in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of Title 33, chapter 17, part 3, for travel insurance it administers.

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

NEW SECTION. Section 7. Rulemaking. The commissioner may adopt rules necessary to implement the provisions of this part.

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