

Key: **Green** = existing Code. **Red** = new code to be enacted

WEST VIRGINIA LEGISLATURE
2023 REGULAR SESSION
ENROLLED
Committee Substitute
for
House Bill 2540

BY DELEGATES WESTFALL, HOTT, ESPINOSA AND ROWE
[Passed March 11, 2023; in effect ninety days from passage.]

AN ACT to repeal **§33-12-32b** of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated **§33-62-1**, **§33-62-2**, **§33-62-3**, **§33-62-4**, **§33-62-5**, **§33-62-6**, **§33-62-7**, **§33-62-8**, **§33-62-9**, **§33-62-10**, **§33-62-11**, and **§33-62-12**, all relating to adopting the Travel Insurance Model Act; providing a short title; setting forth scope and purposes; providing definitions; providing licensing and registration requirements; setting forth annual license fee; requiring payment of premium taxes; specifying forms and rates; establishing acceptable and prohibited sales practices; making persons offering travel insurance subject to the Unfair Trade Practices Act; establishing requirements for travel administrators; allowing individual, group, or blanket travel insurance policies; granting the Insurance Commissioner enforcement powers; and providing rulemaking authority to the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32b. Travel Insurance Entity Producer Limited License Act.

[Repealed.]

ARTICLE 62. TRAVEL INSURANCE MODEL ACT.

§33-62-1. Short title.

This article shall be known as the "Travel Insurance Model Act."

§33-62-2. Purposes and scope.

(a) The purpose of this article is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state through the establishment of clear regulatory obligations for those involved in the development and distribution of travel insurance, preserving the unique aspects of travel protection plans, and protecting and benefiting consumers by encouraging fair and effective competition within the market.

(b) The requirements of this article shall apply to travel insurance, whether or not provided as part of a travel protection plan, where policies and certificates are delivered or issued for delivery in this state. This article shall not be applicable to cancellation fee waivers and travel assistance services, except as expressly provided herein.

(c) All other applicable provisions of chapter 33 of this code shall continue to apply to travel insurance, except that the specific provisions of this article shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

§33-62-3. Definitions.

As used in this article:

(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 travel insurance issued to any eligible group providing coverage for specified circumstances and 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 arrangements or travel services and its customer to waive some or all of the non-refundable cancellation fee or penalty provisions of the underlying travel contract between the supplier and customer 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 this state;

(5) "Eligible group" means any of the following:

(A) 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;

(B) Any college, school, or other institution of learning covering students, teachers, or employees defined by reference to specified hazards incident to activities or operations of the institution of learning;

(C) Any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests, defined by reference to specified hazards incident to activities or operations of the employer;

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

(E) Any religious, charitable, recreational, educational, or civic organization or branch thereof covering any group of members, participants, or volunteers defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by or on the premises of such organization or branch;

(F) Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institution or financial institution vendor, under which accountholders, credit card holders, debtors, guarantors, or purchasers are insured;

(G) 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;

(H) Any trust or the trustees of a fund established, created, or maintained for the benefit of members or customers of one or more associations meeting the above requirements;

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

(J) Any newspaper or other publisher covering its journalists and carriers;

(K) Any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or other such volunteer group, or agency having jurisdiction thereof, covering all or any group of the members, participants, or volunteers of such group;

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

(M) 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

(N) Any other group where the commissioner 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 best interests of the public;

(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;

(6) "Group travel insurance" means travel insurance issued to any eligible group;

(7) "Limited lines travel insurance producer" means a:

(A) Licensed managing general agent or third party administrator;

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

(C) Travel administrator;

(8) "Offer and disseminate" means 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;

(9) "Primary certificate holder" means an individual person who elects and purchases travel insurance under a group policy;

(10) "Primary policyholder" means an individual person who elects and purchases individual travel insurance;

(11) "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 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 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 article;

(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;

(12) "Travel assistance services" means non-insurance services that may be distributed by limited lines travel insurance producers or other entities, and for which there is no indemnification for the travel protection plan customer based on a fortuitous event, nor any 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;

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

(A) Interruption or cancellation of trip or event;

(B) Loss of baggage or personal effects;

(C) Damages to accommodations or rental vehicles;

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

(E) Emergency evacuation;

(F) Repatriation of remains; or

(G) 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.

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, or any other product that requires a specific insurance producer license;

(14) "Travel protection plans" means plans that provide one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers; and

(15) "Travel retailer" means 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 limited lines travel insurance producer.

§33-62-4. Licensing and registration.

(a) The commissioner may issue to an individual or business entity that has filed with the commissioner an application for such limited license in a form and manner prescribed by the commissioner, a limited lines travel insurance producer license that authorizes the limited lines travel insurance producer 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. The annual fee for a limited lines travel insurance producer license is \$200.

(b) 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:

(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 commissioner 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 commissioner upon reasonable request. The limited lines travel insurance producer shall also certify that the travel retailer registered complies with 18 U.S.C. § 1033. The grounds for the suspension, revocation, and the penalties applicable to resident insurance producers under [§33-12-24](#) of this code shall be applicable to the 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 limited lines travel insurance producer's compliance with the travel insurance laws, rules, and regulations of the state;

(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 comply 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 insurance producer licensing fees as set forth in applicable state law; and

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

(c) Limited lines travel insurance producers, and those registered under their licenses, are exempt from the examination requirements under [§33-12-9](#) of this code and the pre-licensing and continuing education requirements of [§33-12-8](#) of this code.

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

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

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

(3) Explain that an unlicensed travel retailer 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.

(e) A travel retailer's 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.

(f) Notwithstanding any other provision in this chapter, 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 article, is authorized to do so and receive related compensation, upon registration by the limited lines travel insurance producer as described in subdivision (2), subsection (b) of this section.

(g) *Responsibility.* "As the insurer 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 article.

(h) A licensee under this section is subject to the provisions of **§ 33-12-6b** of this code as if it were an insurance agency.

(i) *License renewal.* "The commissioner shall annually renew, on the expiration date as provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form prescribed by the commissioner and pays the fee set forth in subsection (a) of this section: *Provided*, That the commissioner may fix the dates of expiration of limited lines travel insurance producer licenses as he or she considers advisable for efficient distribution of the workload of his or her office:

(1) If the fixed expiration date would upon first occurrence shorten the period for which a license fee has been paid, no refund of unearned fee shall be made;

(2) If the fixed expiration date would upon first occurrence lengthen the period for which a license fee has been paid, the commissioner may charge no additional fee for the lengthened period;

(3) If a date is not fixed by the commissioner, each license shall, unless continued as provided in this subsection, expire at midnight on June 30 following issuance; and

(4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the expiration date, upon submission of the renewal application within 12 months after the expiration date and payment of a penalty in the amount of \$50.

(j) *Appointment.* "Limited lines travel insurance producer may not act as an agent of an insurer unless the insurer appoints the limited lines travel insurance producer as its agent, as follows:

(1) The insurer shall file, in a format approved by the commissioner, a notice of appointment within 15 days from the date the agency contract is executed and shall pay a nonrefundable appointment processing fee in the amount of \$25: *Provided*, That an insurer may elect to appoint a limited lines travel insurance producer to all or some insurers within the insurer's holding company system or group by filing a single notice of appointment;

(2) Upon receipt of a notice of appointment, the commissioner shall verify within a reasonable time, not to exceed 30 days, that the limited lines travel insurance producer is eligible for appointment: *Provided*, That the commissioner shall notify the insurer within five days of a determination that the limited lines travel insurance producer is ineligible for appointment;

(3) The insurer shall remit, no later than midnight on May 31 annually and in a manner prescribed by the commissioner, a renewal appointment fee for each appointed limited lines travel insurance producer in the amount of \$25; and

(4) The insurer shall maintain a current list of limited lines travel insurance producers appointed to accept applications on behalf of the insurer, and shall make the list available to the commissioner upon reasonable request for purposes of conducting investigations and enforcing the provisions of this chapter.

§33-62-5. Premium tax.

(a) A travel insurer shall pay premium tax, as provided in §33-3-14 and [§33-3-14a](#) of this code, 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) An eligible group policyholder that is a resident in, or has its principal place of business or the principal place of business of an affiliate or subsidiary in, this state that purchases a blanket travel insurance policy for eligible blanket group members, subject to any apportionment rules that apply 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) An insurer shall obtain and maintain documentation necessary to determine the state to which premium tax should be reported based on information provided by the policyholder or certificate holder, as applicable, and shall report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

§33-62-6. Forms and rates.

(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*, 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, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(b) All travel Insurance policies, certificates of insurance, endorsements, riders, and rates delivered, issued for delivery, or charged in this state shall be filed with the commissioner before being used. No policy, certificate of insurance, or endorsement shall be issued until the expiration of 30 days after it has been filed, unless the commissioner shall have given prior written approval.

(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, and the travel insurance offered as part of the travel protection plan may be offered as individual travel insurance, group travel insurance, or blanket travel insurance.

§33-62-7. Travel protection plans.

Travel protection plans may be offered for one price in this state if:

- (1) The travel insurance, travel assistance services, and cancellation fee waivers are clearly delineated in the travel protection plan's fulfillment materials. The fulfillment materials shall include the travel insurance disclosures required under this code and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable; and
- (2) The travel protection plan clearly discloses to the consumer at or prior to the time of purchase and fulfillment that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides an opportunity for the consumer to obtain additional information regarding the features and pricing of each.

§33-62-8. Sales practices.

(a) All persons offering travel insurance to residents of this state are subject to the Unfair Trade Practices provisions of [§33-11-1](#) *et seq.* of this code, except as otherwise provided in this section. In the event of a conflict between this article and other provisions of this chapter regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this article shall control.

(b) *Illusory Travel Insurance.* â"€ 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 [§33-11-1](#) *et seq.* of this code.

(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 all travel insurance policy documents, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(2) Travel insurance policies or certificates that contain preexisting condition exclusions must provide information and an opportunity to learn more about the preexisting condition exclusions any time prior to purchase, and in the coverage's fulfillment materials.

(3) The fulfillment materials and the information described in [§33-62-4\(b\)\(1\)](#) of this code 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 company shall disclose in the policy fulfillment and documentation 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.* Unless otherwise permitted by this code or federal law, no person offering travel insurance or travel protection plans on an individual or group basis may do so 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.

§33-62-9. Travel administrators.

(a) Notwithstanding any other provisions of this chapter, no person shall act or represent itself as a travel administrator 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;

(2) Holds a valid managing general agent (MGA) license in this state pursuant to [§33-37-1 et seq.](#) of this code; or

(3) Holds a valid third-party administrator (TPA) license in this state pursuant to [§33-46-1 et seq.](#) of this code.

(b) A travel administrator and its employees are exempt from the licensing requirements of [§33-12B-1 et seq.](#) of this code.

(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 commissioner upon request.

§33-62-10. Policy.

Travel insurance may be provided under an individual policy or under a group or blanket policy.

§33-62-11. Enforcement.

(a) The commissioner may conduct investigations or examinations of travel insurers, limited lines travel insurance producers, travel retailers, and travel administrators to enforce the provisions of this article to protect resident travel insurance consumers.

(b) The commissioner may take action, following notice and a hearing pursuant to [§33-2-13](#) of this code, as necessary or appropriate to enforce the provisions of this article, any order of the commissioner, and any other provision of state law to protect consumers of travel insurance in this state.

§33-62-12. Rulemaking.

The commissioner may propose rules for legislative approval in accordance with the provisions of [§29A-3-1](#) et seq. of this code to implement the provisions of this article.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

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Day of, 2023.

Governor

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