

ARKANSAS INSURANCE DEPARTMENT

DRAFT RULES

POST-HEARING MARKUP

RULE 112

TRAVEL INSURANCE

RECEIVED

SEP 21 2020

BUREAU OF
LEGISLATIVE RESEARCH

Table of Contents

Section 1.	Authority
Section 2.	Scope and Purposes
Section 3.	Definitions
Section 4.	Licensing and Registration
Section 5.	Premium Tax
Section 6.	Travel Protection Plans
Section 7.	Sales Practices
Section 8.	Travel Administrators
Section 9.	Policy
Section 10.	Effective Date

Section 1. Authority

This Rule is issued pursuant to the authority granted the Arkansas Insurance Commissioner (“Commissioner”) under Arkansas Insurance Department. Code Ann. §§ 23-61-108 and 23-64-234.

Section 2. Scope and Purposes

- A. The purpose of this Rule is to implement Act 698 of 2019 and 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 Rule 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 state’s insurance laws shall continue to apply to Travel Insurance except that the specific provisions of ~~this Rule~~ Act 698 of 2019 shall supersede any general provisions of law that would otherwise be applicable to Travel Insurance.

Section 3. Definitions

As used in this Rule

- 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. "Commissioner" means the commissioner of insurance of this state.
- E. Solely for the purposes of Travel Insurance, "Eligible Group" means two (2) 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 Commissioner's permitting the use of a trust and the state's premium tax provisions in Section 5 herein or, of one or more associations meeting the above requirements of Paragraph (7) above;
 - (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 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 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,
 - (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” means an individual person who elects and purchases Travel Insurance under a Group Policy.
- K. “Primary Policyholder” means an individual person who elects and purchases individual Travel Insurance.
- L. “Travel Administrator” means a person who directly or indirectly underwrites, collects or 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:
- (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 Rule;
 - (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 Commissioner.

Travel Insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than six (6) months, including for example, 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.

Section 4. Licensing and Registration

- A. 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. 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 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 state insurance department upon reasonable request. The Limited Lines Travel Insurance Producer shall also certify that the Travel Retailer registered complies with 18 USC § 1033 & 1034 as they existed January 1, 2019. The grounds for the suspension, revocation, and the penalties applicable to resident insurance producers under Ark. Code Ann. § 23-64-512, 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 Commissioner, 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 in 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 Subsection B(2) above.
- F. Responsibility: 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 Rule.
- 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.

Section 5. Premium Tax

- A. A travel insurer shall pay premium tax, as provided in § 26-57-603 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 Section 5A; 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.

Section 6. Travel Protection Plans

- A. Travel Protection Plans may be offered for one price for the combined features that the Travel Protection Plan offers in this state if:
 - B. 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
 - C. 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.

Section 7. Sales Practices

- A. All persons offering Travel Insurance to residents of this state are subject to the Trade Practices Act, Ark. Code Ann. § 23-66-201, *et seq.* except as otherwise provided in this Section. In the event of a conflict between this Rule and other rules regarding the sale and marketing of Travel Insurance and Travel Protection Plans, the provisions of this Rule 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 the Trade Practices Act, Ark. Code Ann. § 23-66-201, *et seq.*
- 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.
 - (3) 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 Section 4(B)(1)(a)-(d) 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 (15) days after the date of delivery of the Travel Protection Plan's Fulfillment Materials by postal mail; or
 - (b) Ten (10) days after 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 primary policyholder or primary certificate holder or sending Fulfillment Materials by postal mail or electronic means to the primary policyholder or primary certificate holder.

- (4) The company 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.

Section 8. Travel Administrators

- A. Notwithstanding any other provisions of the insurance laws of this state, no person shall act or represent itself as 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 (MGA) license in this state.
- B. A Travel Administrator and its employees are exempt from the licensing requirements for adjusters under Ark. Code Ann. § 23-64-201 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 Commissioner upon request.

Section 9. Policy

- A. Notwithstanding any other provision of the insurance laws of this state, Travel Insurance shall be classified and filed for purposes of rates and forms under a 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 in conjunction with incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed by an authorized insurer under either an accident and health line of insurance or a marine line of insurance.
- B. 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 marine insurance.

Section 10. Effective Date

- A. This rule is effective _____, 2020, or ten days after is signed by the Commissioner, whichever is later.

ALAN MCCLAIN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

DATE

1 State of Arkansas *As Engrossed: S3/4/19 H3/14/19*

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 399

4

5 By: Senator Rapert

6 By: Representative Lowery

7

8

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A COMPREHENSIVE REGULATORY
10 FRAMEWORK FOR THE SALE OF TRAVEL INSURANCE; AND FOR
11 OTHER PURPOSES.

12

13

14

Subtitle

15

16 TO ESTABLISH A COMPREHENSIVE REGULATORY
17 FRAMEWORK FOR THE SALE OF TRAVEL
18 INSURANCE.

19

20

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21

22

SECTION 1. Arkansas Code § 23-62-107, concerning marine insurance, is
23 amended to add an additional subdivision to read as follows:

24

(3) Travel insurance, as defined in § 23-64-234.

25

26

SECTION 2. Arkansas Code § 23-64-202(e), concerning the sale of travel
27 insurance, is repealed.

28

~~(e)(1) As used in this section:~~

29

~~(A) "Limited lines travel insurance producer" means a
30 licensed insurance producer or agent designated as the travel insurance
31 supervising entity under subdivision (e)(8) of this section;~~

32

~~(B) "Offer and disseminate" means to:~~

33

~~(i) Provide general information, including without
34 limitation a description of the insurance coverage and the cost of the
35 insurance coverage;~~

36

~~(ii) Process an application for insurance coverage;~~



1 ~~(iii) Collect the premiums for insurance coverage;~~
2 and

3 ~~(iv) Perform other nonlicensed activities allowed by~~
4 ~~the insurance laws of this state;~~

5 ~~(C)(i) "Travel insurance" means insurance coverage for~~
6 ~~personal risks incident to planned travel, including without limitation:~~

7 ~~(a) Interruption or cancellation of a trip or~~
8 ~~event;~~

9 ~~(b) Loss of baggage or personal effects;~~

10 ~~(c) Damages to accommodations or rental~~
11 ~~vehicles; and~~

12 ~~(d) Sickness, accident, disability, or death~~
13 ~~occurring during travel.~~

14 ~~(ii) "Travel insurance" does not include major~~
15 ~~medical plans that provide comprehensive medical protection for travelers on~~
16 ~~trips of six (6) months or more, including without limitation working~~
17 ~~overseas and deployment of military personnel; and~~

18 ~~(D) "Travel retailer" means a business entity that makes,~~
19 ~~arranges, and offers travel services and offers travel insurance as a service~~
20 ~~to its customers on behalf of a limited lines travel insurance producer.~~

21 ~~(2) The commissioner may issue to a limited lines travel~~
22 ~~insurance producer in compliance with this section a limited license to offer~~
23 ~~or sell travel insurance.~~

24 ~~(3) A travel retailer may offer and disseminate travel insurance~~
25 ~~under a limited lines travel insurance producer license if the limited lines~~
26 ~~travel insurance producer:~~

27 ~~(A) Provides a purchaser with the material terms of the~~
28 ~~insurance coverage or a description of the material terms, a description of~~
29 ~~the process for filing a claim, the review or cancellation process for the~~
30 ~~travel insurance policy, and the identity of and contact information for the~~
31 ~~insurer and limited lines travel insurance producer;~~

32 ~~(B)(i) Establishes at the time of licensure and maintains~~
33 ~~a register on a form prescribed by the commissioner of each travel retailer~~
34 ~~that offers travel insurance on behalf of the limited lines travel insurance~~
35 ~~producer.~~

36 ~~(ii) The register shall include:~~

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

3 ~~(B) Evaluate or provide advice concerning a prospective~~
4 ~~purchaser's existing insurance coverage; or~~

5 ~~(C) Hold itself out as a licensed insurer, producer, or~~
6 ~~insurance expert.~~

7 ~~(6) A travel retailer and its employees that receive training~~
8 ~~under subdivision (e)(3)(F) of this section and whose insurance-related~~
9 ~~activities are limited to offering and disseminating travel insurance on~~
10 ~~behalf of a limited lines travel insurance producer that is licensed under~~
11 ~~this subchapter may receive compensation if listed on the registry maintained~~
12 ~~by the limited lines travel insurance producer under subdivision (e)(3)(B) of~~
13 ~~this section.~~

14 ~~(7) Travel insurance may be provided under an individual policy,~~
15 ~~a group policy, or a master policy.~~

16 ~~(8) As the insurer designee, the limited lines travel insurance~~
17 ~~producer is responsible for the acts of the travel retailer and shall use~~
18 ~~reasonable means to ensure compliance by the travel retailer with this~~
19 ~~section.~~

20 ~~(9) The limited lines travel insurance producer and a travel~~
21 ~~retailer offering and disseminating travel insurance under the limited lines~~
22 ~~travel insurance producer license are subject to the Trade Practices Act, §~~
23 ~~23-66-201 et seq., and the licensing requirements of the Producer Licensing~~
24 ~~Model Act, § 23-64-501 et seq.~~

25
26 SECTION 3. Arkansas Code Title 23, Chapter 64, Subchapter 2, is
27 amended to add an additional section to read as follows:

28 23-64-234. Travel insurance – Scope – Definitions – Licensing –
29 Premium tax.

30 (a)(1) This section applies to travel insurance that:

31 (A) Covers a resident of this state;

32 (B) Is sold, solicited, negotiated, or offered in this
33 state; and

34 (C) Has policies and certificates that are delivered or
35 issued for delivery in this state.

36 (2) This section does not apply to a cancellation fee waiver or

1 travel assistance services except as provided in this section.

2 (3) All other applicable provisions of this state's insurance
3 laws shall continue to apply to travel insurance except that this section
4 shall supersede any general provisions of law that would otherwise be
5 applicable to travel insurance.

6 (b) As used in this section:

7 (1)(A) "Aggregator site" means a website that provides access to
8 information regarding insurance products from more than one (1) insurer.

9 (B) "Aggregator site" includes a website that provides
10 product and insurer information for use in comparison shopping;

11 (2) "Blanket travel insurance" means a policy issued to an
12 eligible group providing coverage for specific classes of persons defined in
13 the policy with coverage provided to all members of the eligible group
14 without a separate charge to individual members of the eligible group;

15 (3)(A) "Cancellation fee waiver" means a contractual agreement
16 between a supplier of services for travel and its customer to waive some or
17 all of the nonrefundable cancellation fee provisions of the underlying travel
18 contract of the supplier with or without regard to the reason for the
19 cancellation or form of reimbursement.

20 (B) "Cancellation fee waiver" is not insurance under this
21 section;

22 (4) "Eligible group" means two (2) or more persons who are
23 engaged in a common enterprise, or have an economic, educational, or social
24 affinity or relationship, including without limitation any of the following:

25 (A)(i) An entity engaged in the business of providing
26 travel or services for travel, if in regard to any particular travel or type
27 of travel or travelers, all members or customers of the group have a common
28 exposure to risk attendant to the travel.

29 (ii) An entity as described in subdivision
30 (b)(4)(A)(i) of this section includes without limitation:

31 (a) A tour operator;

32 (b) A lodging provider;

33 (c) A vacation property owner;

34 (d) A hotel or resort;

35 (e) A travel club;

36 (f) A travel agency;

- 1 (g) A property manager;
2 (h) A cultural exchange program; or
3 (i) A common carrier or the operator, owner,
4 or lessor of a means of transportation of passengers including without
5 limitation:
- 6 (1) An airline;
7 (2) A cruise line;
8 (3) A railroad;
9 (4) A steamship company; or
10 (5) A public bus carrier;
- 11 (B) A college, school, or other institution of learning
12 covering students, teachers, employees, or volunteers;
- 13 (C) An employer covering a group of employees, volunteers,
14 contractors, members of a board of directors, dependents, or guests;
- 15 (D) A sports team, camp, or sponsor thereof covering
16 participants, members, campers, employees, officials, supervisors, or
17 volunteers;
- 18 (E) A religious, charitable, recreational, educational, or
19 civic organization or branch thereof covering any group of members,
20 participants, or volunteers;
- 21 (F) A financial institution or financial institution
22 vendor, parent holding company, trustee, or an agent of a financial
23 institution or financial institution vendor, parent holding company, trustee,
24 or a designee of one (1) or more financial institutions or financial
25 institution vendors, including without limitation an accountholder, credit
26 card holder, debtor, guarantor, or purchaser;
- 27 (G) An incorporated or unincorporated association,
28 including without limitation a labor union, that has a common interest,
29 constitution, and bylaws and is organized and maintained in good faith for
30 purposes other than obtaining insurance for members or participants of the
31 association covering its members;
- 32 (H) A trust or the trustees of a fund that is established,
33 created, or maintained for the benefit of and covering members, employees, or
34 customers, subject to the permission of the Insurance Commissioner to use a
35 trust and the state's premium tax provisions, as provided in subdivision
36 (d)(1) of this section, of one (1) or more associations meeting the

1 requirements of subdivision (b)(4)(G) of this section;

2 (I) An entertainment production company covering a group
3 of participants, volunteers, audience members, contestants, or workers;

4 (J) A volunteer fire department, ambulance, rescue,
5 police, court, or any first aid, civil defense, or other similar volunteer
6 group;

7 (K) A preschool, daycare institution for children or
8 adults, or senior citizen club;

9 (L)(i) An automobile or truck rental or leasing company
10 covering a group of individuals who may become renters, lessees, or
11 passengers as defined by their travel status on the rented or leased
12 vehicles.

13 (ii) A common carrier, owner, operator, or lessor of
14 a means of transportation, or an automobile or truck rental or leasing
15 company, is the policyholder under a policy to which this section applies; or

16 (M) Any other group if the commissioner has determined
17 that the members are engaged in a common enterprise, or have an economic,
18 educational, or social affinity or relationship, and that issuance of the
19 policy would not be contrary to the public interest;

20 (5) "Fulfillment materials" means documentation sent to the
21 purchaser of a travel protection plan confirming the purchase and providing
22 the travel protection plan's coverage and travel assistance services details;

23 (6) "Group travel insurance" means travel insurance issued to an
24 eligible group;

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

26 (A) A managing general agent;

27 (B) An insurance producer, including a limited lines
28 producer; or

29 (C) A travel administrator;

30 (8) "Offer and disseminate" means to:

31 (A) Provide general information, including without
32 limitation a description of the insurance coverage and the cost of the
33 insurance coverage;

34 (B) Process an application for insurance coverage;

35 (C) Collect the premiums for insurance coverage; and

36 (D) Perform other nonlicensed activities allowed by the

1 insurance laws of this state;

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

4 (10) "Primary policyholder" means an individual who elects and
5 purchases a policy for individual travel insurance;

6 (11)(A) "Travel administrator" means a person that, directly or
7 indirectly, underwrites, collects or charges collateral or premiums from, or
8 adjusts or settles claims on, residents of this state in connection with
9 travel insurance.

10 (B) "Travel administrator" does not include a person whose
11 only actions that would otherwise cause it to be considered a travel
12 administrator are among the following:

13 (i) The person works for a travel administrator to
14 the extent that the person's activities are subject to the supervision and
15 control of the travel administrator;

16 (ii) The person is an insurance producer selling
17 insurance or engaged in administrative and claims-related activities within
18 the scope of the license of the insurance producer;

19 (iii) The person is a travel retailer offering and
20 disseminating travel insurance and registered under the license of a limited
21 lines travel insurance producer according to this section;

22 (iv) The person is an individual adjusting or
23 settling claims in the normal course of that individual's practice or
24 employment as an attorney-at-law and does not collect charges or premiums in
25 connection with insurance coverage; or

26 (v) The person is a business entity that is
27 affiliated with a licensed insurer while acting as a travel administrator for
28 the direct and assumed insurance business of an affiliated insurer;

29 (12)(A) "Travel assistance service" means a noninsurance
30 service:

31 (i) For which the consumer is not indemnified based
32 on a fortuitous event; and

33 (ii) That does not result in the transfer or
34 shifting of risk that would constitute the business of insurance.

35 (B) "Travel assistance services" includes without
36 limitation:

1 (i) Security advisories;
2 (ii) Destination information;
3 (iii) Vaccination and immunization information
4 services;
5 (iv) Travel reservation services;
6 (v) Entertainment;
7 (vi) Activity and event planning;
8 (vii) Translation assistance;
9 (viii) Emergency messaging;
10 (ix) International legal and medical referrals;
11 (x) Medical case monitoring;
12 (xi) Coordination of transportation arrangements;
13 (xii) Emergency cash transfer assistance;
14 (xiii) Medical prescription replacement assistance;
15 (xiv) Passport and travel document replacement
16 assistance;
17 (xv) Lost luggage assistance;
18 (xvi) Concierge services; and
19 (xvii) Any other service that is furnished in
20 connection with planned travel.

21 (C) "Travel assistance services" is not considered
22 insurance and is not related to insurance;

23 (13)(A) "Travel insurance" means insurance coverage for personal
24 risks incident to planned travel, including without limitation:

25 (i) Interruption or cancellation of a trip or event;
26 (ii) Loss of baggage or personal effects;
27 (iii) Damages to accommodations or rental vehicles;
28 (iv) Sickness, accident, disability, or death
29 occurring during travel;
30 (v) Emergency evacuation;
31 (vi) Repatriation of remains; or
32 (vii) Any other contractual obligations to indemnify
33 or pay a specified amount to a traveler upon determinable contingencies
34 related to travel as approved by the commissioner.

35 (B) "Travel insurance" does not include major medical
36 plans that provide comprehensive medical protection for travelers on trips

1 lasting longer than six (6) months, including without limitation an
2 individual who is working or residing overseas as an expatriate, or any other
3 product that requires a specific insurance producer license;

4 (14) "Travel protection plan" means a plan that provides one (1)
5 or more of the following:

6 (A) Travel insurance;

7 (B) Travel assistance services; or

8 (C) Cancellation fee waivers; and

9 (15) "Travel retailer" means a business entity that makes,
10 arranges, or offers planned travel and offers and disseminates travel
11 insurance as a service to a customer of the business entity on behalf of and
12 under the direction of a limited lines travel insurance producer.

13 (c)(1)(A) The commissioner may issue a limited lines travel insurance
14 producer license to an individual or business entity that has filed with the
15 commissioner an application for a limited lines travel insurance producer
16 license in a form and manner prescribed by the commissioner.

17 (B) A limited lines travel insurance producer shall be
18 licensed to sell, solicit, and negotiate travel insurance through a licensed
19 insurer.

20 (C) A person shall not act as a limited lines travel
21 insurance producer or travel retailer unless properly licensed or registered
22 under the insurance laws of this state.

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

26 (A) A limited lines travel insurance producer or travel
27 retailer provides to purchasers of travel insurance:

28 (i) Actual material terms of the insurance coverage
29 or a description of the material terms;

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

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

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

36 (B)(i) A limited lines travel insurance producer

1 establishes at the time of licensure and maintains a register, on a form
2 prescribed by the commissioner, of each travel retailer that offers travel
3 insurance on behalf of the limited lines travel insurance producer in this
4 state.

5 (ii) A register described under subdivision
6 (c)(2)(B)(i) of this section shall be maintained and updated by the limited
7 lines travel insurance producer and include:

8 (a) The name, address, and contact information
9 for the travel retailer and an officer or other person who directs or
10 controls the travel retailer's operations; and

11 (b) The federal employer identification number
12 of the travel retailer.

13 (iii) The limited lines travel insurance producer
14 shall:

15 (a) Provide the register described under
16 subdivision (c)(2)(B)(i) of this section on application for and renewal of a
17 limited lines travel insurance producer license; and

18 (b) Certify that the travel retailer
19 registered is in compliance with 18 U.S.C. § 1033, as it existed on January
20 1, 2019.

21 (iv) The grounds for the suspension, revocation, and
22 any penalties that are applicable to resident insurance producers shall be
23 applicable to the limited lines travel insurance producers and travel
24 retailers;

25 (C) A limited lines travel insurance producer has
26 designated an employee who is a licensed individual producer who shall be
27 known as a designated responsible producer, to be responsible for compliance
28 with the travel insurance laws and regulations applicable to the limited
29 lines travel insurance producer and its registrants;

30 (D) A designated responsible producer, president,
31 secretary, treasurer, and any other officer or person who directs or controls
32 the limited lines travel insurance producer's insurance operations shall
33 comply with the fingerprinting requirements applicable to insurance producers
34 in the resident state of the limited lines travel insurance producer;

35 (E) A limited lines travel insurance producer pays the
36 applicable insurance producer licensing fees; and

1 (F)(i) A limited lines travel insurance producer requires
2 each employee and authorized representative of the travel retailer that
3 offers and disseminates travel insurance to receive instruction or training
4 that may be reviewed and approved by the commissioner.

5 (ii) At a minimum, the training material shall
6 contain instructions on the types of insurance offered, ethical sales
7 practices, and the required disclosures to provide to customers.

8 (3)(A) A travel retailer offering or disseminating travel
9 insurance shall make available to prospective purchasers brochures or other
10 written materials that have been approved by the insurer.

11 (B) A brochure or other written materials, at a minimum,
12 shall contain the following information:

13 (i) The identity of and contact information for the
14 insurer and limited lines travel insurance producer;

15 (ii) An explanation that the purchase of travel
16 insurance is not required to purchase any other product or service from the
17 travel retailer; and

18 (iii) An explanation that an unlicensed travel
19 retailer may provide general information about the insurance coverage offered
20 by the travel retailer, including a description of the insurance coverage and
21 the cost of the insurance coverage, but shall not answer technical questions
22 about the insurance terms and conditions offered by the travel retailer or
23 provide an evaluation of the adequacy of any existing insurance coverage.

24 (4) A travel retailer employee or authorized representative of
25 the travel retailer that is not licensed as an insurance producer shall not:

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

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

30 (C) Hold themselves or itself out as a licensed insurer,
31 producer, or insurance expert.

32 (5) Notwithstanding any other provision in law, a travel
33 retailer, its employees, and authorized representatives of the travel
34 retailer that receive training under subdivision (c)(2)(F)(i) of this section
35 and whose insurance-related activities are limited to offering and
36 disseminating travel insurance on behalf of and under the direction of a

1 limited lines travel insurance producer that is licensed under this
2 subchapter may receive compensation if listed on the registry maintained by
3 the limited lines travel insurance producer under subdivision (c)(2)(B)(i) of
4 this section.

5 (6) As an insurer designee, the limited lines travel insurance
6 producer is responsible for the acts of the travel retailer and shall use
7 reasonable means to ensure compliance by the travel retailer with this
8 section.

9 (7)(A) A person licensed in a major line of authority as an
10 insurance producer is authorized to sell, solicit, and negotiate travel
11 insurance.

12 (B) A property and casualty insurance producer is not
13 required to become appointed by an insurer in order to sell, solicit, or
14 negotiate travel insurance.

15 (d)(1) An insurer shall pay premium tax, as provided in § 26-57-603,
16 on travel insurance premiums paid by any of the following:

17 (A) An individual primary policyholder who is a resident
18 of this state;

19 (B) A primary certificate holder who is a resident of this
20 state and elects coverage under a group travel insurance policy; or

21 (C) A blanket travel insurance policyholder that is a
22 resident in, or has its principal place of business or the principal place of
23 business of an affiliate or subsidiary in this state if that affiliate or
24 subsidiary has purchased blanket travel insurance in this state for eligible
25 blanket group members, and subject to any apportionment rules which apply to
26 the insurer across multiple taxing jurisdictions or that permits the insurer
27 to allocate premium on an apportioned basis in a reasonable and equitable
28 manner in those jurisdictions.

29 (2) An insurer shall:

30 (A) Document the state of residence or principal place of
31 business of the primary policyholder or primary certificate holder, as
32 required in subdivision (d)(1) of this section; and

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

36 (e) A travel protection plan may be offered for one (1) price for the

1 combined features that the travel protection plan offers in this state if:

2 (1) A travel protection plan clearly discloses to the consumer
3 at or before the time of purchase that the travel protection plan includes
4 travel insurance, travel assistance services, and cancellation fee waivers,
5 as applicable, and provides information and an opportunity at or before the
6 time of purchase for the consumer to obtain additional information regarding
7 the features and pricing of each; and

8 (2) The fulfillment materials:

9 (A) Describe and delineate the travel insurance, travel
10 assistance services, and cancellation fee waivers in the travel protection
11 plan; and

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

15 (f)(1)(A) Except as provided in subdivision (f)(1)(B) of this section,
16 a person offering travel insurance to residents of this state is subject to
17 the Trade Practices Act, § 23-66-201 et seq.

18 (B) If a conflict exists between this section and any
19 other insurance law of this state regarding the sale and marketing of travel
20 insurance and travel protection plans, this section controls.

21 (2) Offering or selling a travel insurance policy that could
22 never result in payment of any claims for any insured under the policy is an
23 unfair trade practice under the Trade Practices Act, § 23-66-201 et seq.

24 (3)(A) All documents provided to consumers before the purchase
25 of travel insurance, including without limitation sales materials and
26 marketing materials, shall be consistent with the travel insurance policy
27 itself, including without limitation, forms, endorsements, policies, rate
28 filings, and certificates of insurance.

29 (B) For travel insurance policies or certificates that
30 contain pre-existing condition exclusions, information and an opportunity to
31 learn more about the pre-existing condition exclusions shall be provided any
32 time before the time of purchase and in the coverage's fulfillment materials.

33 (C)(i) The fulfillment materials and the information
34 described in subdivision (c)(2)(A) of this section shall be provided to a
35 primary policyholder or primary certificate holder as soon as practicable
36 following the purchase of a travel protection plan.

1 (ii)(a) Unless the insured has either started a
2 covered trip or filed a claim under the travel insurance coverage, a primary
3 policyholder or primary certificate holder may cancel a policy or certificate
4 for a full refund of the travel protection plan price from the date of
5 purchase of a travel protection plan until at least:

6 (1) Fifteen (15) days after the date of
7 delivery of the travel protection plan's fulfillment materials by postal
8 mail; or

9 (2) Ten (10) days after the date of
10 delivery of the travel protection plan's fulfillment materials by means other
11 than postal mail.

12 (b) For purposes of subdivision
13 (f)(3)(C)(ii)(a) of this section, "delivery" means handing fulfillment
14 materials to the primary policyholder or primary certificate holder or
15 sending fulfillment materials by postal mail or electronic means to the
16 primary policyholder or primary certificate holder.

17 (D) The policy documentation and fulfillment materials
18 shall disclose whether the travel insurance is primary or secondary to other
19 applicable coverage.

20 (E) If travel insurance is marketed directly to a consumer
21 through an insurer's website or by others through an aggregator site, it
22 shall not be an unfair trade practice or other violation of law when an
23 accurate summary or short description of coverage is provided on the
24 insurer's website or aggregator site, so long as the consumer has access to
25 the full provisions of the policy through electronic means.

26 (4) A person offering, soliciting, or negotiating travel
27 insurance or travel protection plans on an individual or group basis shall
28 not do so by using negative option or opt out, which would require a consumer
29 to take an affirmative action to deselect coverage such as unchecking a box
30 on an electronic form when the consumer purchases a trip.

31 (5) It is an unfair trade practice under the Trade Practices
32 Act, § 23-66-201 et seq., to market blanket travel insurance coverage as
33 free.

34 (6) If a consumer's destination jurisdiction requires insurance
35 coverage, it is not an unfair trade practice under the Trade Practices Act, §
36 23-66-201 et seq., to require that a consumer choose between the following

1 options as a condition of purchasing a trip or travel package:

2 (A) Purchasing the coverage required by the destination
3 jurisdiction through the travel retailer or limited lines travel insurance
4 producer supplying the trip or travel package; or

5 (B) Agreeing to obtain and provide proof of coverage that
6 meets the destination jurisdiction's requirements before departure.

7 (g)(1) Notwithstanding any other provision of insurance laws in this
8 state, a person shall not act or represent itself as a travel administrator
9 for travel insurance in this state unless that person:

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

13 (B) Holds a valid managing general agent license in this
14 state.

15 (2) A travel administrator and its employees are exempt from the
16 licensing requirements for adjusters under § 23-64-201 for travel insurance
17 it administers.

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

23 (h)(1) Notwithstanding any other provision of the insurance laws of
24 this state, travel insurance shall be classified and filed for purposes of
25 rates and forms as marine insurance, provided, however, that travel insurance
26 that provides coverage for sickness, accident, disability, or death occurring
27 during travel, either exclusively or in conjunction with related coverages of
28 emergency evacuation or repatriation of remains or in conjunction with
29 incidental limited property and casualty benefits such as baggage or trip
30 cancellation, may be filed by an authorized insurer under either an accident
31 and health line of insurance or a marine line of insurance.

32 (2) Travel insurance may be in the form of an individual, group,
33 or blanket policy.

34 (3) Eligibility and underwriting standards for travel insurance
35 may be developed and provided based on travel protection plans designed for
36 individual or identified marketing or distribution channels, provided those

1 standards also meet the state's underwriting standards for marine insurance.

2 (i)(1) The commissioner shall promulgate rules necessary to implement
3 this section.

4 (2)(A) When adopting the initial rules to implement this
5 section, the final rule shall be filed with the Secretary of State for
6 adoption under § 25-15-204(f):

7 (i) On or before January 1, 2020; or

8 (ii) If approval under § 10-3-309 has not occurred
9 by January 1, 2020, as soon as practicable after approval under § 10-3-309.

10 (B) The commissioner shall file the proposed rule with the
11 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
12 2020, so that the Legislative Council may consider the rule for approval
13 before January 1, 2020.

14
15 SECTION 4. EFFECTIVE DATE. This act is effective for travel insurance
16 sold on or after October 1, 2019.

17 */s/Rapert*

18
19
20 **APPROVED: 4/4/19**