CHAPTER 346

An Act to amend and reenact §§ 38.2-126, 38.2-1887, and 38.2-1888 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 38.2-1888.1 through 38.2-1888.5 and 58.1-2501.1, relating to travel insurance.

[H 2186]

Approved March 12, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-126, 38.2-1887, and 38.2-1888 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 38.2-1888.1 through 38.2-1888.5 and 58.1-2501.1 as follows:

§ 38.2-126. Marine.

A. "Marine insurance" means insurance against any kind of loss or damage to:

1. Vessels, craft, aircraft, vehicles of every kind, excluding vehicles operating under their own power or while in storage not incidental to transportation, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein in respect to any risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident to shipment, including marine builders' risks and all personal property floater risks;

2. Persons or property in connection with or appertaining to marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either arising out of or in connection with the construction, repair, operation, maintenance, or use of the subject matter of the insurance. This class of insurance shall not include life insurance, surety bonds or insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles;

3. Precious stones, jewels, jewelry, gold, silver and other precious metals used in business, trade, or otherwise and whether or not in transit. This class of insurance shall include jewelers' block insurance;

4. (i) Bridges, tunnels, and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot, and civil commotion are the only hazards to be covered; (ii) to piers, wharves, docks, and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and civil commotion; and (iii) to other aids to navigation and transportation, including dry docks and marine railways, against all risks.

B. Marine insurance shall also include "marine protection and indemnity insurance," meaning insurance against loss, damage, or expense or against legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

C. Any policy of "marine insurance" as defined in this section providing protection against bodily injury, sickness or death of another person may include appropriate provisions obligating the insurer to pay medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person, regardless of any legal liability of the insured.

D. Marine insurance shall also include "travel insurance" as defined in § 38.2-1887.

§ 38.2-1887. Application of article; definitions.

A. This article applies to travel insurance that covers any resident of the Commonwealth, any travel insurance sold, solicited, negotiated, or offered in the Commonwealth, and any travel insurance policies or certificates delivered or issued for delivery in the Commonwealth. This article shall not apply to cancellation fee waivers or travel assistance services except as expressly provided in this article. In the event of conflict between the provisions in this article and other provisions of this title, the provisions of this article shall control.

B. As used in this article, unless the context requires a different meaning:

"Aggregator site" means a website that provides access to information, including product and insurer information, regarding insurance products from more than one insurer for use in comparison shopping.

"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.

"Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable 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.

"Designated ~~Responsible Licensed Producer~~ *licensed producer*" or ~~"DRLP"~~ *"DLP"* means an employee*, officer, director, manager, member, or partner* of a limited lines travel insurance agent who (i) is a licensed *property and casualty insurance agent, a personal lines insurance* agent, ~~which may include~~ *or* an individual limited lines property and casualty insurance agent~~,~~ and (ii) has been designated by the limited lines travel insurance agent as the person responsible for the limited lines travel insurance agent's compliance with the travel insurance laws, rules, and regulations of the Commonwealth.

"Eligible group" means two or more persons who are engaged in a common enterprise or have an economic, educational, or social affinity or relationship, including:

1. Any entity engaged in the business of providing travel or travel services, including (i) tour operators, (ii) lodging providers, (iii) vacation property owners, (iv) hotels and resorts, (v) travel clubs, (vi) travel agencies, (vii) property managers, (viii) cultural exchange programs, and (ix) common carriers or the operator, owner, or lessor of a means of transportation of passengers, including cruise lines, railroads, steamship companies, and public bus carriers. All members or customers of any group must have a common exposure to risk attendant to such travel;

2. Any public or private school or institution of higher education covering students, teachers, employees, or volunteers;

3. Any employer covering any group of employees, volunteers, contractors, boards of directors, dependents, or guests;

4. Any sports team or camp, or sponsor of such team or camp, 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 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 Commission's permitting the use of a trust and the premium tax provisions in § 58.1-2501.1 of any incorporated or unincorporated association;

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

10. Any volunteer fire department, emergency medical services department, police department, or court or any first aid, civil defense, or similar volunteer group covering any group of members, participants, or volunteers;

11. Any preschools or daycare institutions covering 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 in 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 definition applies; or

13. Any other group where 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.

"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.

"Group travel insurance" means travel insurance issued to an eligible group.

"Limited lines travel insurance agent" means a licensed property and casualty insurance agent*, a personal lines insurance agent,* or a limited lines property and casualty agent~~, designated by an insurer as the travel insurance supervising entity~~.

"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 Commonwealth.

"Primary certificate holder" means a person who elects and purchases travel insurance under a group policy.

"Primary policyholder" means a person who elects and purchases individual travel insurance.

"Travel administrator" means a person who directly or indirectly underwrites, collects, charges collateral or premiums from, or adjusts or settles claims on residents of the Commonwealth, in connection with travel insurance. A person shall not be considered a travel administrator if his only

actions that would otherwise cause him to be considered a travel administrator are among the following:

1. A person working for a travel administrator to the extent that his activities are subject to the supervision and control of the travel administrator;

2. An insurance agent selling insurance or engaged in administrative and claims-related activities within the scope of the agent's license;

3. A travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance agent in accordance with this article; or

4. An individual adjusting or settling claims in the normal course of his practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage.

"Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in the transfer or shifting of risk that would constitute the business of insurance. "Travel assistance services" includes (i) security advisories; (ii) destination information; (iii) vaccination and immunization information services; (iv) travel reservation services; (v) entertainment; (vi) activity and event planning; (vii) translation assistance; (viii) emergency messaging; (ix) international legal and medical referrals; (x) medical case monitoring; (xi) coordination of transportation arrangements; (xii) emergency cash transfer assistance; (xiii) medical prescription replacement assistance; (xiv) passport and travel document replacement assistance; (xv) lost luggage assistance; (xvi) concierge services; and (xvii) any other service that is furnished in connection with planned travel. Travel assistance services are not insurance.

"Travel insurance" means insurance coverage for personal risks incident to planned travel, including (i) interruption or cancellation of trip or event; (ii) loss of baggage or personal effects; (iii) damages to accommodations or rental vehicles; ~~or~~ (iv) ~~sickness, accident, or death occurring during travel~~ *emergency evacuation; (v) repatriation of remains; or (vi) any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Commission. "Travel insurance" may include appropriate provisions obligating the insurer to pay medical, hospital, surgical, and funeral expenses arising out of the death, dismemberment, sickness, or injury of any person, and death and dismemberment benefits in the event of death or dismemberment, if the death, dismemberment, sickness, or injury is caused by or is incidental to a cause of loss insured under the policy.* "Travel insurance" does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting *longer than* six months ~~or longer~~, including those working *or residing* overseas as an expatriate ~~or deployed overseas as military personnel~~.

"Travel protection plan" means any plan that provides travel insurance, travel assistance services, or cancellation fee waivers.

"Travel retailer" means a business entity that offers and disseminates travel insurance on behalf of and under the direction and license of a travel insurance agent ~~or under its own agent license~~.

§ 38.2-1888. Licensing and registration.

A. *The Commission may issue a limited lines travel insurance agent license to an individual or business entity that has filed with the Commission an application for a limited lines travel insurance agent license in a form and manner prescribed by the Commission. The limited lines travel insurance agent shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.*

B. No person may act as a limited lines travel insurance agent or travel retailer unless properly licensed or registered, respectively.

C. The grounds for the suspension or revocation of the license of and the penalties applicable to resident insurance agents shall be applicable to limited lines travel insurance agents and travel retailers.

D. A travel retailer may offer and disseminate travel insurance under ~~its own or another's~~ *the license of a* limited lines travel insurance agent ~~license~~ only if the following conditions are met:

1. Any 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 agent;

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 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;

2. The limited lines travel insurance agent 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 agent;

3. At the time of licensure, the limited lines travel insurance agent shall establish and maintain a register on a form prescribed by the Commission of each travel retailer that offers travel insurance on the limited lines travel insurance agent's behalf. The register shall be maintained and updated by the limited lines travel insurance agent 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 agent shall submit such register to the Commission upon reasonable request. The limited lines travel insurance agent shall also certify that the travel retailer registered complies with 18 U.S.C. § 1033;

4. The limited lines travel insurance agent has designated a ~~DRLP~~ *DLP*;

5. The ~~DRLP~~ *DLP*, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance agent's insurance operations complies with a background check or fingerprinting requirements applicable to insurance agents;

6. The limited lines travel insurance agent has paid all applicable insurance agent licensing fees as set forth in this title; and

7. The limited lines travel insurance agent requires each employee or 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 Commission. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers;

~~B.~~ *E.* A travel retailer's employee or authorized representative who is not licensed as an insurance agent 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 agent, or insurance expert.

~~C. A~~ *F. Notwithstanding any other provision of law, a* travel retailer whose insurance-related activities, and those of its employees or authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction and license of a limited lines travel insurance agent meeting the conditions stated in this article is authorized to conduct such activities and receive related compensation, upon registration by the limited lines travel insurance agent as described in subdivision ~~A~~ *D* 3. No travel retailer employee or authorized representative may be compensated based primarily on the number of customers who purchase travel insurance coverage; however, nothing in this article shall prohibit payment of compensation to a travel retailer or its employees or authorized representatives for activities under the limited lines travel insurance agent's license that are incidental to the travel retailer's or its employee's or authorized representative's overall compensation.

~~D. Travel insurance may be provided under an individual policy or under a group or master policy.~~

~~E.~~ *G.* As the insurer designee, the limited lines travel insurance agent and the insurer (i) are responsible for the acts of a travel retailer who is not a limited lines travel insurance agent and (ii) shall use reasonable means to ensure compliance by the travel retailer with this article.

H. No person is authorized to sell, solicit, and negotiate travel insurance unless licensed and appointed as a limited lines travel insurance agent.

§ 38.2-1888.1. Suspension, revocation, or termination of license.

A. If a limited lines travel insurance agent or travel retailer or its employee or authorized representative violates any provision of this article, the Commission may do any of the following:

1. After notice and hearing, impose fines and penalties in accordance with § 38.2-218; and

2. After notice and hearing, impose such other penalties that the Commission deems necessary and reasonable to carry out the purpose of this article, including (i) suspending the privilege of transacting travel insurance pursuant to this article at specific business locations where violations have occurred, (ii) suspending or revoking the ability of individual employees or authorized representatives or travel retailers to act under the license, and (iii) imposing a penalty in accordance with § 38.2-218 on the licensed producer designated by the travel insurance agent pursuant to § 38.2-1820.

B. The license authority of any licensed limited lines property and casualty producer selling travel insurance may be terminated if the sole licensed producer designated for the limited lines travel insurance agent's compliance with the insurance laws, rules, and regulations of the Commonwealth is removed for any reason and a new designated licensed producer has not been appointed. The Commission shall be notified within 30 calendar days of such removal and of the newly designated licensed producer.

§ 38.2-1888.2. Travel protection plans.

Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in the Commonwealth if:

1. 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

2. The fulfillment 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.

§ 38.2-1888.3. Sales practices.

A. For the purposes of this section, "delivery" means handing fulfillment materials to the primary policyholder or primary certificate holder or sending fulfillment materials by United States Postal Service mail or by any other delivery service or electronic means to the policyholder or certificate holder.

B. Any person offering travel insurance to residents of the Commonwealth is subject to the unfair trade practice penalties contained in Chapter 5 (§ 38.2-500 et seq.), except as otherwise provided in this section. In the event of a conflict between this article and other provisions of this title regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this article shall control.

C. 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.

D. All documents provided to consumers prior to the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, shall be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

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.

The fulfillment materials and the information described in subdivision 2 of § 38.2-1888.2 shall be provided to a primary policyholder or primary 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 (i) at least 15 days following the date of delivery of the travel protection plan's fulfillment materials sent by United States Postal Service mail or (ii) at least 10 days following the date of delivery of the travel protection plan's fulfillment materials sent by means other than United States Postal Service mail.

E. The company shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

F. 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.

G. 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 that 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.

H. It shall be an unfair trade practice to market blanket travel insurance coverage as free.

I. 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 agent 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.

§ 38.2-1888.4. Travel administrators.

A. Notwithstanding any other provision of this title, no person shall act or represent itself as a travel administrator for travel insurance in the Commonwealth unless that person:

1. Is a licensed property and casualty insurance agent in the Commonwealth for activities permitted under that agent license; or

2. Holds a valid managing general agent (MGA) license in the Commonwealth.

B. 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.

§ 38.2-1888.5. Classification of travel insurance.

A. Notwithstanding any other provision of this title, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance as set forth in § 38.2-126.

B. Travel insurance may be in the form of an individual, group, or blanket policy.

§ 58.1-2501.1. Premium tax; travel insurance.

A. As used in this section:

"Blanket travel insurance" has the same meaning ascribed thereto in § 38.2-1887.

"Primary certificate holder" has the same meaning ascribed thereto in § 38.2-1887.

"Primary policyholder" has the same meaning ascribed thereto in § 38.2-1887.

"Travel assistance services" has the same meaning ascribed thereto in § 38.2-1887.

"Travel insurance" has the same meaning ascribed thereto in § 38.2-1887.

B. A travel insurer shall pay premium tax as provided in § 58.1-2501 on travel insurance premiums paid by any of the following:

1. A primary policyholder who is a resident of the Commonwealth;

2. A primary certificate holder that is a resident of the Commonwealth; or

3. A blanket travel insurance policyholder that is a resident of the Commonwealth or that has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in the Commonwealth for eligible blanket group members, subject to apportionment rules that apply to the insurer across multiple taxing jurisdictions or that permits the insurer to allocate premiums on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

C. A travel insurer shall (i) document the state of residence or principal place of business of the primary policyholder or primary certificate holder and (ii) report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

2. That the provisions of this act shall apply to policies of travel insurance purchased on or after July 1, 2019.