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SENATE BILL NO. 1565

Offered January 9, 2019

Prefiled January 9, 2019

A BILL to amend and reenact §§ 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 38.2-1888.4 and 58.1-2501.1, relating to travel insurance.

Patron—Dunnivant

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 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 38.2-1888.4 and 58.1-2501.1 as follows:

§ 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 responsible licensed producer" or "DRLP" means an employee of a limited lines travel insurance agent who (i) is a licensed agent, which may include 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;

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59 8. Any trust or the trustees of a fund established, created, or maintained for the benefit of and
60 covering members, employees, or customers, subject to the Commissioner's permitting the use of a trust
61 and the premium tax provisions in § 58.1-2501.1 of any incorporated or unincorporated association;

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

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

67 11. Any preschools or daycare institutions covering children or adults;

68 12. Any automobile or truck rental or leasing company covering a group of individuals who may
69 become renters, lessees, or passengers defined by their travel status in the rented or leased vehicles. The
70 common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck
71 rental or leasing company is the policyholder under a policy to which this definition applies; or

72 13. Any other group where the Commissioner has determined that the members are engaged in a
73 common enterprise, or have an economic, educational, or social affinity or relationship, and that
74 issuance of the policy would not be contrary to the public interest.

75 "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan
76 confirming the purchase and providing the travel protection plan's coverage and assistance details.

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

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

81 "Offer and disseminate" means providing general information, including a description of the coverage
82 and price, as well as processing the application, collecting premiums, and performing other
83 non-licensable activities permitted by the Commonwealth.

84 "Travel administrator" means a person who directly or indirectly underwrites, collects, charges
85 collateral or premiums from, or adjusts or settles claims on residents of the Commonwealth, in
86 connection with travel insurance. A person shall not be considered a travel administrator if his only
87 actions that would otherwise cause him to be considered a travel administrator are among the
88 following:

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

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

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

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

98 5. A business entity that is affiliated with a licensed insurer while acting as a travel administrator
99 for the direct and assumed insurance business of an affiliated insurer.

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

110 "Travel insurance" means insurance coverage for personal risks incident to planned travel, including
111 (i) interruption or cancellation of trip or event; (ii) loss of baggage or personal effects; (iii) damages to
112 accommodations or rental vehicles; ~~or~~ (iv) sickness, accident, disability, or death occurring during travel;
113 (v) emergency evacuation; (vi) repatriation of remains; or (vii) any other contractual obligations to
114 indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as
115 approved by the Commissioner. "Travel insurance" does not include major medical plans that provide
116 comprehensive medical protection for travelers with trips lasting longer than six months ~~or longer~~,
117 including those working or residing overseas as an expatriate, or ~~deployed overseas as military personnel~~
118 any other product that requires a specific insurance agent license.

119 "Travel protection plan" means any plan that provides travel insurance, travel assistance services, or
120 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. No person may act as a limited lines travel insurance agent or travel retailer unless properly licensed or registered.*

B. A travel retailer may offer and disseminate travel insurance under its own or another's 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. *The grounds for the suspension or revocation and the penalties applicable to resident insurance agents shall be applicable to the limited lines travel insurance agents and travel retailers;*

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

5. The DRLP, 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.~~ C. 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.~~ D. *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 as described in subdivision A B 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*

182 representatives for activities under the limited lines travel insurance agent's license that are incidental to
183 the travel retailer's or its employee's or authorized representative's overall compensation.

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

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

189 ~~G.~~ Any person licensed in a major line of authority as an insurance agent is authorized to sell,
190 solicit, and negotiate travel insurance. A property and casualty insurance agent is not required to
191 become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

192 **§ 38.2-1888.1. Travel protection plans.**

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

195 1. The travel protection plan clearly discloses to the consumer at or prior to the time of purchase
196 that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable,
197 and provides information and an opportunity at or prior to the time of purchase for the consumer to
198 obtain additional information regarding the features and pricing of each; and

199 2. The fulfillment materials (i) describe and delineate the travel insurance, travel assistance services,
200 and cancellation fee waivers in the travel protection plan and (ii) include the travel insurance
201 disclosures and the contact information for persons providing travel assistance services and cancellation
202 fee waivers, as applicable.

203 **§ 38.2-1888.2. Sales practices.**

204 A. For the purposes of this section, "delivery" means handing fulfillment materials to the
205 policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to
206 the policyholder or certificate holder.

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

212 C. Offering or selling a travel insurance policy that could never result in payment of any claims for
213 any insured under the policy is an unfair trade practice pursuant to Chapter 5 (§ 38.2-500 et seq.).

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

217 For travel insurance policies or certificates that contain pre-existing condition exclusions,
218 information and an opportunity to learn more about the pre-existing condition exclusions shall be
219 provided any time prior to the time of purchase and in the coverage's fulfillment materials.

220 The fulfillment materials and the information described in subdivision 2 of § 38.2-1888.1 shall be
221 provided to a policyholder or certificate holder as soon as practicable following the purchase of a
222 travel protection plan. Unless the insured has either started a covered trip or filed a claim under the
223 travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate for a
224 full refund of the travel protection plan price from the date of purchase of a travel protection plan until
225 (i) at least 15 days following the date of delivery of the travel protection plan's fulfillment materials sent
226 by mail or (ii) at least 10 days following the date of delivery of the travel protection plan's fulfillment
227 materials sent by means other than mail.

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

230 F. Where travel insurance is marketed directly to a consumer through an insurer's website or by
231 others through an aggregator site, it shall not be an unfair trade practice or other violation of law
232 where an accurate summary or short description of coverage is provided on the web page, so long as
233 the consumer has access to the full provisions of the policy through electronic means.

234 G. No person offering, soliciting, or negotiating travel insurance or travel protection plans on an
235 individual or group basis may do so by using negative option or opt out that would require a consumer
236 to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form when
237 the consumer purchases a trip.

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

239 I. Where a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair
240 trade practice to require that a consumer choose between the following options as a condition of
241 purchasing a trip or travel package:

242 1. Purchasing the coverage required by the destination jurisdiction through the travel retailer or
243 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.

§ 38.2-1888.3. 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. A travel administrator and its employees are exempt from the licensing requirements of Article 4.1 (§ 38.2-1845.1 et. seq.) 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.

§ 38.2-1888.4. 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 an inland marine line of insurance; however, 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, repatriation of remains, or 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 an inland 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 underwriting standards for inland marine lines of insurance.

§ 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" 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 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 become effective on October 1, 2019.