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Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2173

Introduced by

Senators Klein, Burckhard, Larsen

Representatives Kasper, Louser

A BILL for an Act to create and enact chapter 26.1-58 of the North Dakota Century Code, relating to the sale and regulation of travel insurance; and to amend and reenact section 26.1-26-54 of the North Dakota Century Code, relating to the licensing of limited lines travel insurance producers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-54 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-54. Insurance licenses for limited lines travel insurance producers.

1. Travel insurance, as that term is defined in this section, is a limited line of insurance.
2. As used in this section:
   a. "Limited lines travel insurance producer" means a:
      (1) Licensed ~~managing general agent or~~ third-party administrator; ~~or~~
      (2) Licensed insurance producer, including a limited lines producer~~, designated by an insurer as the travel insurance supervising entity as set forth under subsection 9~~; or
      (3) Travel administrator, as defined in section 26.1-58-02.
   b. "Offer and disseminate" means to provide general information, including a description of the coverage and price, as well as to process the application, collect premiums, and perform other nonlicensable activities permitted by the state.
   c. "Travel insurance" means insurance coverage for personal risks incident to planned travel, including interruption or cancellation of a trip or event~~,~~; loss of baggage or personal effects~~,~~; damages to accommodations or rental vehicles~~, or~~; sickness, accident, disability, or death occurring during travel; emergency

evacuation; repatriation of remains; or 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. The term does not include a major medical plan that provides comprehensive medical protection for an individual on a trip lasting at least six months, including an individual working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license.

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

3. Notwithstanding any other provision of law:

a. The commissioner may issue a limited lines travel insurance producer license to an individual or business entity that files an application with the commissioner in a form and manner prescribed by the commissioner. A licensed limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed insurer. A person may not act as a limited lines travel insurance producer or travel insurance retailer unless properly licensed or registered.

b. A travel retailer may offer and disseminate travel insurance~~, if~~ 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 ~~provide~~provides to purchasers of travel insurance:

(a) ~~The~~A description of the material terms or the actual material terms of the insurance coverage;

(b) A description of the claim filing process;

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

(d) The identity and contact information of the insurer and limited lines producer.

(2) At the time of licensure, the limited lines travel insurance producer establishes and maintains a register of each travel retailer that offers insurance on the behalf of the producer. The register must be on a form prescribed by the commissioner. Annually, the register must be updated by the limited lines travel insurance producer. The register must include the name, address, and contact information of the travel retailer and a person that controls the travel retailer's operations. The register must include the travel retailer's federal tax identification number. Upon request, the limited lines travel insurance producer shall submit the register to the insurance department. The limited lines producer shall certify that the travel retailer registered complies with the Violent Crime and Law Enforcement Act of 1994 [Pub. L. 103-322; 108 Stat. 1796; 18 U.S.C. 1033 et seq.]. The grounds for the suspension, revocation, and penalties applicable to resident insurance producers under this chapter, must be applicable to limited lines travel insurance producers and travel retailers.

(3) The limited lines travel insurance producer designates one of the producer's licensed insurance employees as the individual responsible for the compliance with the state's travel insurance laws, rules, and regulations.

(4) The designated employee, president, secretary, treasurer, or any other individual who controls the 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 pays all applicable licensing fees as set forth in state law.

(6) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer, who offer and disseminate travel insurance, to receive training~~. The commissioner may review the training procedures~~, which is subject, at the discretion of the commissioner, to review and approval. The training material must contain instructions on the type of insurance offered, ethical sales practices, and required

disclosures to prospective customers~~, and upon request must be provided to the commissioner for inspection~~.

4. ~~The limited lines travel insurance producer and any travel retailer and the travel retailer's employees offering and disseminating travel insurance under the limited lines travel insurance producer license shall be subject to the provisions of chapters 26.1-04 and 26.1-26.~~

~~5.~~ ~~The travel retailer and its employees act on behalf of the limited lines producer and the producer is responsible for any representations made by the employees of the travel retailer relating to insurance products offered or disseminated through the travel retailer.~~

~~6.~~ If the insurance commissioner determines that a travel retailer, or a travel retailer's employee has violated any provision of this chapter or any other provision of this title, the commissioner may:

a. Direct the limited lines travel insurance producer to implement a corrective action plan with the travel retailer; or

b. Revoke the authorization of the travel retailer to transact travel insurance on behalf of the limited lines travel insurance producer under its license and direct the limited lines travel insurance producer to remove the travel retailer's name from its register.

~~7.~~5. If the insurance commissioner determines that a travel retailer, or a travel retailer's employee, has violated any provision in this chapter or any other provision of this title, the commissioner may:

a. Suspend or revoke the license of the limited lines travel insurance producer;

b. Issue a cease and desist order against the license of the limited lines travel insurance producer; and

c. Impose a monetary fine on the limited lines travel insurance producer.

~~8.~~6. Limited lines travel insurance producers, and those registered under the producer's license, are exempt from continuing education requirements.

~~9.~~7. A travel retailer shall make brochures or other written materials that have been approved by the travel insurer available to prospective purchasers ~~which~~. The materials must include information that, at a minimum:

a. ~~Provide~~Provides the identity and contact information of the insurer and the limited lines travel insurance producer;

b. ~~Explain~~Explains the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

c. ~~Explain~~Explains an unlicensed travel retailer may provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price. An unlicensed travel retailer ~~may not~~is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or evaluate the adequacy of existing insurance coverage.

~~10.~~8. An unlicensed employee or authorized representative of a travel retailer may not:

a. Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

b. Evaluate or advise a prospective purchaser regarding existing insurance coverage;

c. Be held out as a licensed insurer, licensed producer, or insurance expert; or

d. Be directly paid a commission or any other compensation by an insurer for the sale of insurance, except in accordance with this chapter and chapter 26.1-58.

~~11.~~9. Notwithstanding any other provision of law, a travel retailer ~~who is in compliance with all requirements of this section may receive fair compensation for offering and disseminating travel insurance~~whose insurance-related activities, and those of the travel retailer's 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 in this section, is authorized to receive related compensation, upon registration by the limited lines travel insurance producer as described in paragraph 2 of subdivision b of subsection 3.

~~12.~~10. Travel insurance may be provided under an individual policy or under a group or ~~master~~blanket policy.

~~13.~~11. The limited lines travel insurance producer is responsible for the acts of the travel retailer. The limited lines travel insurance producer shall ensure the travel retailer complies with this chapter and chapter 26.1-58.

12. A 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 2. Chapter 26.1-58 of the North Dakota Century Code is created and enacted as follows:

26.1-58-01. Scope.

1. This chapter applies to travel insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates delivered or issued for delivery in this state. This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.
2. All other applicable provisions of this state's insurance laws continue to apply to travel insurance, except the specific provisions of this chapter supersede any general provisions of law that otherwise would be applicable to travel insurance.

26.1-58-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.
2. "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group.
3. "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and the supplier's 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.

4. "Eligible group", solely for purposes of travel insurance, means two or more persons that are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including any of the following:

a. An entity engaged in the business of providing travel or travel services, including 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 airlines, cruise lines, railroads, steamship companies, and public bus carriers, under which 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 the travel;

b. A college, school, or other institution of learning, covering students, teachers, employees, or volunteers;

c. An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

d. A sports team, camp, or sponsor of a sports team or camp, covering participants, members, campers, employees, officials, supervisors, or volunteers;

e. A religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;

f. A financial institution or financial institution vendor; parent holding company, trustee, or agent of the financial institution or vendor; or parent holding company, trustee, or agent designated by one or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers;

g. An 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 the association covering the association's members;

h. A 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

permitting the use of a trust and the state premium tax in section 26.1-58-03 of one or more associations meeting the requirements of subdivision g;

i. An entertainment production company covering a group of participants, volunteers, audience members, contestants, or workers;

j. A volunteer fire department, ambulance, rescue, police, court, or first aid, civil defense, or other such volunteer group;

k. Preschools, day care institutions for children or adults, and senior citizen clubs;

l. An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by the individuals' 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

m. Any other group for which the commissioner has determined the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and issuance of the policy would not be contrary to the public interest.

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

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

7. "Limited lines travel insurance producer" has the same meaning as provided in section 26.1-26-54.

8. "Offer and disseminate" has the same meaning as provided in section 26.1-26-54.

9. "Primary certificate holder", specific to section 26.1-58-03, means an individual who elects and purchases travel insurance under a group policy.

10. "Primary policyholder", specific to section 26.1-58-03, means an individual who elects and purchases individual travel insurance.

11. "Travel administrator" means a person that directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on residents of this state, in connection with travel insurance, except a person is not considered a travel

administrator if that person's only actions that would otherwise cause the person to be considered a travel administrator are among the following:

a. A person working for a travel administrator to the extent the person's activities are subject to the supervision and control of the travel administrator;

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

c. A travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this chapter;

d. An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage; or

e. A business entity affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.

12. "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and for which providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. The term includes 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 furnished in connection with planned travel. Travel assistance services are not insurance.

13. "Travel insurance" has the same definition as provided in section 26.1-26-54.

14. "Travel protection plan" means a plan that provides one or more of the following:

a. Travel insurance.

b. Travel assistance services.

c. Cancellation fee waivers.

15. "Travel retailer" has the same definition as provided in section 26.1-26-54.

26.1-58-03. Premium tax.

1. A travel insurer shall pay premium tax, as provided in section 26.1-03-17 on travel insurance premiums paid by any of the following:
   a. An individual primary policyholder who is a resident of this state;
   b. A primary certificate holder who is a resident of this state who elects coverage under a group travel insurance policy; or
   c. 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 that apply to the insurer across multiple taxing jurisdictions or which permit the insurer to allocate premiums on an apportioned basis in a reasonable and equitable manner in those jurisdictions.
2. A travel insurer shall:
   a. Document the state of residence or principal place of business of the policyholder or certificate holder, as required in subsection 1; and
   b. Report as premiums only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

26.1-58-04. Travel protection plans.

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

1. The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that the plan includes travel insurance, travel assistance services, and cancellation fee waivers as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and
2. The fulfillment materials:
   a. Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and
   b. Include the travel insurance disclosures and the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

26.1-58-05. Sales practices.

1. A person offering travel insurance to residents of this state is subject to chapter 26.1-04, except as otherwise provided in this section. In the event of a conflict between this chapter and other provisions of title 26.1 regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter control.
2. 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 chapter 26.1-04.
3. a. All documents provided to consumers before the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.
   b. 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 must be provided any time before the time of purchase, and in the coverage's fulfillment materials.
   c. The fulfillment materials and the information described in paragraph 1 of subdivision b of subsection 3 of section 26.1-26-54 must 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 fifteen days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or ten days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail. For purposes of this section, "delivery" means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

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

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

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

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

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

a. Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

b. Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

26.1-58-06. Travel administrators.

1. Notwithstanding any other provisions of title 26.1, a person may not act or represent itself as a travel administrator for travel insurance in this state unless that person:

a. Is a licensed property and casualty insurance producer in this state for activities permitted under that producer license; or

b. Holds a valid third-party administrator license in this state.

2. An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer, and is responsible for ensuring 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.

26.1-58-07. Policy.

1. Notwithstanding any other provision of title 26.1, travel insurance must be classified and filed for purposes of rates and forms under an inland marine line of insurance.
2. 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 inland marine.

26.1-58-08. Rules.

The commissioner may adopt rules to implement this chapter.