

Amendment - 1st Reading/2nd House-blue - Requested by: Edward Buttrey - (S) Business, Labor, and Economic Affairs

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

HB0591.002.001

1 HOUSE BILL NO. 591
2 INTRODUCED BY E. BUTTREY, A. BUCKLEY, K. SEEKINS-CROWE, R. MARSHALL, D. HARVEY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO TRAVEL INSURANCE;
5 PROVIDING DEFINITIONS; PROVIDING FOR A LIMITED LINES LICENSE; PROVIDING FOR TRAVEL
6 PROTECTION PLANS; PROVIDING FOR SALES PRACTICES; PROVIDING FOR TRAVEL
7 ADMINISTRATORS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 33-17-1401, 33-
8 17-1402, AND 33-17-1404, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

12 **Section 1.** Section 33-17-1401, MCA, is amended to read:

13 **"33-17-1401. Definitions.** As used in this part, the following definitions apply:

14 ~~(1) "Administrator" means an administrator as defined in 33-17-102.~~

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

18 (2) "Blanket travel insurance" means a policy of travel insurance issued to any eligible group
19 providing coverage for specific classes of persons defined in the policy with coverage provided to all members
20 of the eligible group without a separate charge to individual members of the eligible group.

21 (3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services
22 and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's
23 underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A
24 cancellation fee waiver is not insurance.

25 (4) "Commissioner" means the commissioner of insurance of the state of Montana.

26 (5) "Eligible group" means, for the purpose of travel insurance, two or more persons who are
27 engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including

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1 but not limited to any of the following:

2 (a) any entity engaged in the business of providing travel or travel services, including but not
3 limited to tour operators, lodging providers, vacation property owners, hotels and resorts, travel clubs, travel
4 agencies, property managers, cultural exchange programs, and common carriers or the operator, owner, or
5 lessor of a means of transportation of passengers, including but not limited to airlines, cruise lines, railroads,
6 steamship companies, and public bus carriers, wherein with regard to any particular travel or type of travel or
7 travelers, all members or customers of the group must have a common exposure to risk attendant to the travel:

8 (b) any college, school, or other institution of learning, covering students, teachers, employees, or
9 volunteers;

10 (c) any employer covering any group of employees, volunteers, contractors, board of directors,
11 dependents, or guests;

12 (d) any sports team, camp, or sponsor thereof, covering participants, members, campers,
13 employees, officials, supervisors, or volunteers;

14 (e) any religious, charitable, recreational, educational, or civic organization, or branch thereof,
15 covering any group of members, participants, or volunteers;

16 (f) any financial institutions or financial institution vendor, or parent holding company, trustee, or
17 agent of or designated by one or more financial institutions or financial institution vendors, including
18 accontholders, credit card holders, debtors, guarantors, or purchasers;

19 (g) any incorporated or unincorporated association, including labor unions, having a common
20 interest, constitution, and bylaws, and organized and maintained in good faith for purposes other than obtaining
21 insurance for members or participants of the association covering its members;

22 (h) any trust or the trustees of a fund established, created, or maintained for the benefit of and
23 covering members, employees, or customers, subject to the commissioner's permitting the use of a trust and
24 the state's premium tax provisions in 33-2-705 of one or more associations meeting the requirements in
25 subsection (5)(g);

26 (i) any entertainment production company covering any group of participants, volunteers,
27 audience members, contestants, or workers;

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1 (j) any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense,
2 or other volunteer group;

3 (k) preschools, daycare institutions for children or adults, and senior citizen clubs;

4 (l) any automobile or truck rental or leasing company covering a group of individuals who may
5 become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The
6 common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or
7 leasing company, is the policyholder under a policy to which this section applies.

8 (m) any other group where the commissioner has determined that the members are engaged in a
9 common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the
10 policy would not be contrary to the public interest.

11 ~~(5)(6)~~ "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan
12 confirming the purchase and providing the travel protection plan's coverage and assistance details.

13 ~~(2)(6)(7)~~ "Limited lines travel insurance producer" means a:

14 (a) managing general agent or third-party administrator; ~~or~~

15 (b) licensed insurance producer, including a limited lines producer, designated by an insurer as the
16 travel insurance supervising entity as set forth in 33-17-1404-; ~~or~~

17 (c) travel administrator.

18 ~~(3)(7)(8)~~ "Offer and disseminate" means providing general information, including a description of
19 coverage and price, as well as processing applications, collecting premiums, and performing other activities not
20 requiring licensure by the state.

21 ~~(8)(9)~~ "Travel administrator" means a person who directly or indirectly underwrites, collects charges,
22 collateral, or premiums from, or adjusts or settles claims on residents of this state in connection with travel
23 insurance, except that a person may not be considered a travel administrator if that person's only actions that
24 would otherwise cause it to be considered a travel administrator are among the following:

25 (a) a person working for a travel administrator to the extent that the person's activities are subject
26 to the supervision and control of the travel administrator;

27 (b) an insurance producer selling insurance or engaged in administrative and facilitation of claims-

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1 related activities within the scope of the producer's license;

2 (c) a travel retailer offering and disseminating travel insurance and registered under the license of
3 a limited lines travel insurance producer in accordance with this part;

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

7 (e) a business entity that is affiliated with a licensed insurer while acting as a travel administrator
8 for the direct and assumed insurance business of an affiliated insurer.

9 ~~(9)~~(10) "Travel assistance services" means noninsurance services for which the consumer is not
10 indemnified based on a fortuitous event and that do not result in the transfer or shifting of risk that would
11 constitute the business of insurance. Travel assistance services include, but are not limited to security
12 advisories; destination information; vaccination and immunization information services; travel reservation
13 services; entertainment; activity and event planning; translation assistance; emergency messaging;
14 international legal and medical referrals; medical case monitoring; coordination of transportation arrangements;
15 emergency cash transfer assistance; medical prescription replacement assistance; passport and travel
16 document replacement assistance; lost luggage assistance; concierge services; and any other service that is
17 furnished in connection with planned travel. Travel assistance services are not insurance and are not related to
18 insurance.

19 ~~(4)~~~~(10)~~(11) (a) "Travel insurance" means insurance coverage for personal risks incident to planned
20 travel, including but not limited to:

21 (i) interruption or cancellation of a trip or event;

22 (ii) loss of baggage or personal effects;

23 (iii) damages to accommodations or rental vehicles; and

24 (iv) sickness, accident, disability, or death occurring during travel;

25 (v) emergency evacuation;

26 (vi) repatriation of remains; or

27 (vii) any other contractual obligations to indemnify or pay a specified amount to the traveler upon

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1 determinable contingencies related to travel as approved by the commissioner.

2 (b) The term does not include major medical plans that provide comprehensive medical protection
3 for travelers on trips lasting 6 months or longer, including those working overseas and military personnel being
4 deployed.

5 (c) Travel insurance must be classified and filed for purposes of rates and forms under an inland
6 marine line of insurance, provided, however, that travel insurance that provides coverage for sickness,
7 accident, disability, or death occurring during travel, either exclusively, or in conjunction with related coverages
8 of emergency evacuation or repatriation of remains, may be filed under either an accident and health line of
9 insurance or an inland marine line of insurance so long as the insurer is authorized to transact business in the
10 line of insurance under which the rates and forms are filed.

11 (d) Eligibility and underwriting standards for travel insurance may be developed and provided
12 based on travel protection plans designed for individual or identified marketing or distribution channels,
13 provided those standards also meet the state's underwriting standards for inland marine.

14 (11)(12) "Travel protection plans" means plans that provide one or more of the following:

15 (a) travel insurance;

16 (b) travel assistance services; or

17 (c) cancellation fee waivers.

18 (5)(12)(13) "Travel retailer" means a business entity that makes, arranges, or offers travel services
19 and that may offer and disseminate travel insurance as a service to its customers on behalf of and under the
20 direction of a limited lines travel insurance producer."

21

22 **Section 2.** Section 33-17-1402, MCA, is amended to read:

23 **"33-17-1402. Requirements to offer and disseminate travel insurance -- fees -- types of policies**

24 **-- rulemaking.** (1) The commissioner may issue a limited lines travel insurance producer license to an

25 individual or business entity that has filed with the commissioner an application for a limited lines travel

26 insurance producer license in a form and manner prescribed by the commissioner. The limited lines travel

27 insurance producer must be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer. A

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1 person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed.

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

4 (a) the limited lines travel insurance producer or travel retailer provides purchasers of travel
5 insurance with:

6 (i) a description of the material terms or the actual material terms of the insurance coverage;

7 (ii) a description of the process for filing a claim;

8 (iii) a description of the review or cancellation process for the travel insurance policy; and

9 (iv) the identity and contact information of the insurer and the limited lines travel insurance
10 producer;

11 ~~(b) at the time of licensure, the limited lines travel insurance producer establishes and maintains a~~
12 ~~registry on a form prescribed by the commissioner of each travel retailer that offers travel insurance on the~~
13 ~~limited lines travel insurance producer's behalf. The registry must be maintained and updated annually by the~~
14 ~~limited lines travel insurance producer and must include the name, address, and contact information of each~~
15 ~~travel retailer and of an officer or person who directs or controls each travel retailer's operations, the travel~~
16 ~~retailer's federal tax identification number, and a statement that the travel retailer has not been convicted of a~~
17 ~~violation of 18 U.S.C. 1033. The limited lines travel insurance producer shall submit its registry to the~~
18 ~~commissioner within 10 business days of the commissioner's request. The commissioner shall require a fee for~~
19 ~~filing the registry that is commensurate with the cost of maintaining a file for all registries filed with the~~
20 ~~commissioner.~~

21 (e)(b) the limited lines travel insurance producer designates an employee who is an individual
22 licensed producer as the designated responsible producer responsible for the limited lines travel insurance
23 producer's compliance with the applicable insurance laws and rules of this state;

24 (d)(c) the designated responsible producer, president, secretary, treasurer, and any other officer or
25 person who directs or controls the limited lines travel insurance producer's insurance operations have complied
26 with the fingerprinting requirements in the resident state of the limited lines travel insurance producer;

27 (e)(d) the limited lines travel insurance producer has paid all applicable insurance producer licensing

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1 fees required pursuant to 33-2-708 or other applicable state law; and

2 ~~(f)~~(e) the limited lines travel insurance producer requires each employee and authorized
3 representative of the travel retailer whose duties include offering and disseminating travel insurance to receive
4 a program of instruction or training, which may be subject to review by the commissioner. The training material
5 must, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required
6 disclosures to prospective customers.

7 ~~(2)~~(3) A travel retailer offering or disseminating travel insurance shall make available to prospective
8 purchasers brochures or other written materials that:

9 (a) provide the identity and contact information of the insurer and the limited lines travel insurance
10 producer;

11 (b) explain that the purchase of travel insurance is not required in order to purchase any other
12 product or service from the travel retailer; and

13 (c) explain that a travel retailer employee or authorized representative who is not licensed as an
14 insurance producer is permitted to provide general information about the insurance offered by the travel retailer,
15 including a description of the coverage and price, but is not qualified or authorized to answer technical
16 questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the
17 adequacy of the customer's existing insurance coverage.

18 ~~(3)~~(4) A travel retailer's employees or authorized representatives who are not licensed as insurance
19 producers may not:

20 (a) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance
21 coverage;

22 (b) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage;

23 or

24 (c) hold themselves out as licensed insurers, licensed producers, or insurance experts.

25 ~~(4)~~(5) Travel insurance may be provided under an individual policy or under a group or master policy.

26 ~~(5) The commissioner may adopt rules to implement the provisions of this part.~~

27 (6) A person licensed in property and casualty as an insurance producer is authorized to sell,

1 solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become
2 appointed by an insurer in order to sell, solicit, or negotiate travel insurance."

3

4 **Section 3.** Section 33-17-1404, MCA, is amended to read:

5 **"33-17-1404. Responsibility -- enforcement -- penalties -- scope.** (1) The limited lines travel
6 insurance producer is the supervising entity responsible for the acts of the travel retailer and shall use
7 reasonable means to ensure compliance by the travel retailer with the provisions of this part.

8 (2) A limited lines travel insurance producer and any travel retailer offering and disseminating
9 travel insurance under the limited lines travel insurance producer's license are subject to the ~~applicable unfair~~
10 ~~trade practices provisions of Title 33, chapter 18, including penalty provisions, and to other enforcement~~
11 provisions applicable to insurance producers generally.

12 (3) All other applicable provisions of the insurance code continue to apply to travel insurance,
13 except that the specific provisions of this part supersede any general provisions of law that would otherwise be
14 applicable to travel insurance."

15

16 **NEW SECTION. Section 4. Travel protection plans.** (1) Travel protection plans may be offered for
17 one price for the combined features that the travel protection plan offers in this state if:

18 (a) the travel protection plan clearly discloses to the consumer, at or prior to the time of purchase,
19 that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and
20 provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain
21 additional information regarding the features and pricing of each; and

22 (b) the fulfilment materials:

23 (i) describe and delineate the travel insurance, travel assistance services, and cancellation fee
24 waivers in the travel protection plan; and

25 (ii) include the travel insurance disclosures and the contact information for persons providing travel
26 assistance services and cancellation fee waivers, as applicable.

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1 NEW SECTION. **Section 5. Sales practices.** (1) All persons offering travel insurance to residents of
2 this state are subject to the provisions of the unfair trade practice provisions of Title 33, chapter 18, except as
3 otherwise provided in this section. In the event of a conflict between this part and other provisions of Title 33
4 regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this part
5 control.

6 (2) Offering or selling a travel insurance policy that could never result in payment of any claims for
7 any insured under the policy is an unfair trade practice under Title 33, chapter 18.

8 (3) The marketing of a travel insurance policy must meet the following requirements:

9 (a) All documents provided to consumers prior to the purchase of travel insurance, including but
10 not limited to sales materials, advertising materials, and marketing materials, must be consistent with the travel
11 insurance policy itself, including but not limited to forms, endorsements, policies, rate filings, and certificates of
12 insurance.

13 (b) For travel insurance policies or certificates that contain pre-existing condition exclusions,
14 information and an opportunity to learn more about the pre-existing condition exclusions must be provided any
15 time prior to the time of purchase and included in the coverage's fulfillment materials.

16 (c) (i) The fulfillment materials and the information described in ~~this subsection (3) 33-17-~~
17 1402(2)(A)(I) THROUGH (2)(A)(IV) must be provided to a policyholder or certificate holder as soon as practicable
18 following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a
19 claim under the travel insurance coverage, a policyholder or certificate holder may cancel a policy or certificate
20 for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at
21 least:

22 (A) 15 days following the date of delivery of the travel protection plan's fulfillment materials by
23 postal mail; or

24 (B) 10 days following the date of delivery of the travel protection plan's fulfillment materials by
25 means other than postal mail.

26 (ii) For the purposes of subsection (3)(c)(i), "delivery" means handing fulfillment materials to the
27 policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the

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1 policyholder or certificate holder.

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

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

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

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

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

16 (a) purchasing the coverage required by the destination jurisdiction through the travel retailer or
17 limited lines travel insurance producer supplying the trip or travel package; or

18 (b) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's
19 requirements prior to departure.

20
21 **NEW SECTION. Section 6. Travel administrators.** (1) A person may not act or represent itself as a
22 travel administrator for travel insurance in this state unless the person:

23 (a) is a licensed property and casualty insurance producer in this state for activities permitted
24 under the producer's license; or

25 (b) holds a valid third-party administrator certificate in this state.

26 (2) A travel administrator and its employees are exempt from the licensing requirements of Title
27 33, chapter 17, part 3, for travel insurance it administers.

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1 (3) An insurer is responsible for the acts of a travel administrator administering travel insurance
2 underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and
3 records relevant to the insurer to be made available by the travel administrator to the commissioner on request.
4

5 NEW SECTION. Section 7. Rulemaking. The commissioner may adopt rules necessary to
6 implement the provisions of this part.
7

8 NEW SECTION. Section 8. Codification instruction. [Sections 4 through 7] are intended to be
9 codified as an integral part of Title 33, chapter 17, part 14, and the provisions of Title 33, chapter 17, part 14,
10 apply to [sections 4 through 7].
11

- END -