

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2540

By Delegates Westfall, Hott, Espinosa and Rowe

[Introduced January 13, 2023; Referred to the
Committee on Banking and Insurance then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §33-62-1, §33-62-2, §33-62-3, §33-62-4, §33-62-5, §33-62-6, §33-62-7, §33-
 3 62-8, §33-62-9, §33-62-10, §33-62-11, §33-62-12, §33-62-13, §33-62-14, §33-62-15,
 4 relating to adopting the Travel Insurance Model Act; giving this act a short title; listing the
 5 scope and purposes; providing definitions; providing licensing and registration
 6 requirements; establishing a premium tax; setting a competitive market; establishing forms
 7 and rates; setting methods enabling the Commissioner to set pricing structure;
 8 establishing acceptable sales practices; establishing requirements for travel
 9 administrators; setting registration requirements; allowing for both individual and group
 10 policies; granting the Commissioner enforcement powers; granting rulemaking for the
 11 Commissioner; and setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 62. TRAVEL INSURANCE MODEL ACT.

§33-62-1. Short Title.

1 This Act shall be known as the "Travel Insurance Model Act."

§33-62-2. Scope and Purposes.

1 (a) The purpose of this Act is to promote the public welfare by creating a comprehensive
 2 legal framework within which Travel Insurance may be sold in this state through the establishment
 3 of clear regulatory obligations for those involved in the development and distribution of Travel
 4 Insurance, preserving the unique aspects of Travel Protection Plans, and protecting and benefiting
 5 consumers by encouraging fair and effective competition within the market.

6 (b) The requirements of this Act shall apply to Travel Insurance, whether or not provided
 7 as part of a Travel Protection Plan, where policies and certificates are delivered or issued for
 8 delivery in this state. It shall not be applicable to Cancellation Fee Waivers and Travel Assistance
 9 Services, except as expressly provided herein.

§33-62-3. Definitions.

1 As used in this Article:

2 (1) "Aggregator Site" means a website that provides access to information regarding
3 insurance products from more than one insurer, including product and insurer information, for use
4 in comparison shopping.

5 (2) "Blanket Travel Insurance" means Travel Insurance issued to any Eligible Group
6 providing coverage for specified circumstances and specific classes of persons defined in the
7 policy and issued to a policyholder and not by specifically naming the persons covered, by
8 certificate or otherwise, although a statement of the coverage provided may be given, or required
9 by policy to be given, to eligible persons.

10 (3) "Cancellation Fee Waiver" means a contractual agreement between a supplier of travel
11 arrangements or travel services and its customer to waive some or all of the non-refundable
12 cancellation fee or penalty provisions of the underlying travel contract between the supplier and
13 customer. A Cancellation Fee Waiver is not insurance.

14 (4) "Commissioner" means the commissioner of insurance of this state.

15 (5) "Eligible Group" means any of the following:

16 (A) Any entity engaged in the business of providing travel or travel services, including but
17 not limited to: tour operators, lodging providers, vacation property owners, hotels and resorts,
18 travel clubs, property managers, cultural exchange programs, and common carriers of
19 passengers, including but not limited to airlines, cruise lines, railroads, steamship companies, and
20 public bus carriers;

21 (B) Any college, school, or other institution of learning covering students, teachers, or
22 employees defined by reference to specified hazards incident to activities or operations of the
23 institution of learning;

24 (C) Any employer covering any group of employees, contractors, dependents, or guests,
25 defined by reference to specified hazards incident to activities or operations of the employer;

26 (D) Any sports team, camp, or sponsor thereof covering participants, members, campers,

27 employees, officials, supervisors, or volunteers;

28 (E) Any religious, charitable, recreational, educational, or civic organization or branch
29 thereof covering any group of members, participants, or volunteers defined by reference to
30 specified hazards incident to any activity or activities or operations sponsored or supervised by or
31 on the premises of such organization or branch;

32 (F) Any financial institution or financial institution vendor, or parent holding company,
33 trustee, or agent of or designated by one or more financial institution or financial institution vendor,
34 under which accountholders, credit card holders, debtors, guarantors, or purchasers are insured;

35 (G) Any incorporated or unincorporated association, including labor unions, having a
36 common interest, constitution and bylaws, and organized and maintained in good faith for
37 purposes other than obtaining insurance for members or participants of such association;

38 (H) Any trust or the trustees of a fund established, created, or maintained for the benefit of
39 members or customers of one or more associations meeting the above requirements;

40 (I) Any entertainment production company covering any group of participants, volunteers,
41 audience members, contestants, or workers;

42 (J) Any newspaper or other publisher covering its journalists and carriers;

43 (K) Any volunteer fire department or any first aid, civil defense or other such volunteer
44 group, or agency having jurisdiction thereof, covering all or any group of the members,
45 participants or volunteers of such fire department or first aid, civil defense, or other group; or

46 (L) Any other group where the Commissioner has determined that the members are
47 engaged in a common enterprise, or have an economic, educational, or social affinity or
48 relationship, and that issuance of the policy would not be contrary to the best interests of the
49 public.

50 (6) "Group Travel Insurance" means Travel Insurance issued to any Eligible Group.

51 (7) "Limited Lines Travel Insurance Producer" means a:

52 (A) Licensed managing general agent or third party administrator;

53 (B) Licensed insurance producer, including a limited lines producer; or

54 (C) Travel Administrator.

55 (8) "Offer and disseminate" means providing general information, including a description of
56 the coverage and price, as well as processing the application, collecting premiums, and
57 performing other non-licensable activities permitted by the state.

58 (9) "Travel Administrator" means a person who directly or indirectly underwrites, collects
59 charges, collateral or premiums from, or adjusts or settles claims on residents of this state, in
60 connection with Travel Insurance, except that a person shall not be considered a Travel
61 Administrator if that person's only actions that would otherwise cause it to be considered a Travel
62 Administrator are among the following:

63 (A) A person working for a Travel Administrator to the extent that the person's activities are
64 subject to the supervision and control of the Travel Administrator;

65 (B) An insurance producer selling insurance or engaged in administrative and claims
66 related activities within the scope of the producer's license;

67 (C) A Travel Retailer offering and disseminating Travel Insurance and registered under the
68 license of a Limited Lines Travel Insurance Producer in accordance with this Act;

69 (D) An individual adjusting or settling claims in the normal course of that individual's
70 practice or employment as an attorney at law and who does not collect charges or premiums in
71 connection with insurance coverage; or

72 (E) A business entity that is affiliated with a licensed insurer while acting as a Travel
73 Administrator for the direct and assumed insurance business of an affiliated insurer.

74 (10) "Travel Assistance Services" means non-insurance services that may be distributed
75 by Limited Lines Travel Insurance Producers or other entities, and for which there is no
76 indemnification for the Travel Protection Plan customer based on a fortuitous event, nor any
77 transfer or shifting of risk that would constitute the business of insurance. Travel Assistance
78 Services include, but are not limited to: security advisories; destination information; vaccination

79 and immunization information services; travel reservation services; entertainment; activity and
80 event planning; translation assistance; emergency messaging; international legal and medical
81 referrals; medical case monitoring; coordination of transportation arrangements; emergency cash
82 transfer assistance; medical prescription replacement assistance; passport and travel document
83 replacement assistance; lost luggage assistance; concierge services; and any other service that is
84 furnished in connection with planned travel that is not related to the adjudication of a Travel
85 Insurance claim, unless otherwise approved by the Commissioner in a Travel Insurance filing.
86 Travel Assistance Services are not insurance and not related to insurance.

87 (11) "Travel Insurance" means insurance coverage for personal risks incident to planned
88 travel, including but not limited to:

89 (A) Interruption or cancellation of trip or event;

90 (B) Loss of baggage or personal effects;

91 (C) Damages to accommodations or rental vehicles; or

92 (D) Sickness, accident, disability or death occurring during travel.

93 (12) Travel insurance does not include major medical plans, which provide comprehensive
94 medical protection for travelers with trips lasting six (6) months or longer, including for example,
95 those working overseas as an ex-patriot or military personnel being deployed, or any other product
96 that requires a specific insurance producer license.

97 (13) "Travel Protection Plans" means plans that provide one or more of the following:
98 Travel Insurance, Travel Assistance Services, and Cancellation Fee Waivers.

99 (14) "Travel Retailer" means a business entity that makes, arranges or offers travel
100 services and may offer and disseminate travel insurance as a service to its customers on behalf of
101 and under the direction of a Limited Lines Travel Insurance Producer.

§33-62-4. Licensing and registration.

1 (a) The Commissioner may issue to an individual or business entity that has filed with the
2 Commissioner an application for such limited license in a form and manner prescribed by the

3 Commissioner, a Limited Lines Travel Insurance Producer License, which authorizes the Limited
4 Lines Travel Insurance Producer to sell, solicit, or negotiate Travel Insurance through a licensed
5 insurer.

6 (b) A Travel Retailer may offer and disseminate Travel Insurance under a Limited Lines
7 Travel Insurance Producer business entity ("licensed business entity") license only if the following
8 conditions are met:

9 (1) The Limited Lines Travel Insurance Producer or Travel Retailer provides to purchasers
10 of travel insurance:

11 (A) A description of the material terms or the actual material terms of the insurance
12 coverage;

13 (B) A description of the process for filing a claim;

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

15 (D) The identity and contact information of the insurer and Limited Lines Travel Insurance
16 Producer.

17 (2) At the time of licensure, the Limited Lines Travel Insurance Producer shall establish
18 and maintain a register on a form prescribed by the commissioner of each Travel Retailer that
19 offers Travel Insurance on the Limited Lines Travel Insurance Producer's behalf. The register shall
20 be maintained and updated by the limited lines travel insurance producer and shall include the
21 name, address, and contact information of the Travel Retailer and an officer or person who directs
22 or controls the Travel Retailer's operations, and the Travel Retailer's Federal Tax Identification
23 Number. The Limited Lines Travel Insurance Producer shall submit such register to the state
24 insurance department upon reasonable request. The Limited Lines Travel Insurance Producer
25 shall also certify that the Travel Retailer registered complies with 18 USC 1033.

26 (3) The Limited Lines Travel Insurance Producer has designated one of its employees who
27 is a licensed individual producer as the person (a "Designated Responsible Producer" or "DRP")
28 responsible for the Limited Lines Travel Insurance Producer's compliance with the travel

29 insurance laws, rules, and regulations of the state.

30 (4) The DRP, president, secretary, treasurer, and any other officer or person who directs or
31 controls the Limited Lines Travel Insurance Producer's insurance operations comply with the
32 fingerprinting requirements applicable to insurance producers in the resident state of the Limited
33 Lines Travel Insurance Producer.

34 (5) The Limited Lines Travel Insurance Producer has paid all applicable insurance
35 producer licensing fees as set forth in applicable state law.

36 (6) The Limited Lines Travel Insurance Producer requires each employee and authorized
37 representative of the Travel Retailer whose duties include offering and disseminating Travel
38 Insurance to receive a program of instruction or training, which may be subject to review by the
39 commissioner. The training material shall, at a minimum, contain instructions on the types of
40 insurance offered, ethical sales practices, and required disclosures to prospective customers.

41 (7) Limited Lines Travel Insurance Producers, and those registered under their licenses,
42 are exempt from the examination requirements under §33-12-9 of this code and the pre-licensing
43 and continuing education requirements of §33-12-8 of this code.

44 (c) Any Travel Retailer offering or disseminating travel insurance shall make available to
45 prospective purchasers brochures or other written materials that:

46 (1) Provide the identity and contact information of the insurer and the Limited Lines Travel
47 Insurance Producer;

48 (2) Explain that the purchase of travel insurance is not required in order to purchase any
49 other product or service from the Travel Retailer; and

50 (3) Explain that an unlicensed Travel Retailer is permitted to provide general information
51 about the insurance offered by the Travel Retailer, including a description of the coverage and
52 price, but is not qualified or authorized to answer technical questions about the terms and
53 conditions of the insurance offered by the Travel Retailer or to evaluate the adequacy of the
54 customer's existing insurance coverage;

55 (4) A Travel Retailer’s employee or authorized representative, who is not licensed as an
56 insurance producer may not:

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

59 (B) Evaluate or provide advice concerning a prospective purchaser’s existing insurance
60 coverage; or

61 (C) Hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

62 (5) Notwithstanding any other provision in law, a Travel Retailer whose insurance-related
63 activities, and those of its employees and authorized representatives, are limited to offering and
64 disseminating Travel Insurance on behalf of and under the direction of a Limited Lines Travel
65 Insurance Producer meeting the conditions stated in this Act, is authorized to do so and receive
66 related compensation, upon registration by the Limited Lines Travel Insurance Producer as
67 described in Sub-section (B)(2) above.

68 (6) Responsibility: As the insurer designee, the Limited Lines Travel Insurance Producer is
69 responsible for the acts of the Travel Retailer and shall use reasonable means to ensure
70 compliance by the Travel Retailer with this Act.

§33-62-5. Premium tax.

1 (a) A travel insurer shall pay premium tax, as provided in §33-31-14 on Travel Insurance
2 Premiums paid by any of the following:

3 (1) An individual policyholder who is a resident of this state;

4 (2) A certificate-holder who is a resident of this state who elects coverage under a Group
5 Travel Insurance policy; or

6 (3) An Eligible Group policyholder that is resident in, or has its principal place of business
7 in, this state that purchases a Blanket Travel Insurance policy.

8 (b) An insurer shall obtain and maintain documentation necessary to determine the state to
9 which premium tax should be reported based on information provided by the policyholder or

10 certificate-holder, as applicable.

§33-62-6. Competitive market.

1 (a) A competitive market is presumed to exist for Travel Insurance unless the
2 commissioner, after hearing, determines that a reasonable degree of competition does not exist in
3 the market and the commissioner issues a ruling to that effect. Such ruling shall expire no later
4 than one year after issue unless the commissioner renews the ruling after hearing and a finding as
5 to the continued lack of a reasonable degree of competition.

6 (b) In determining whether a reasonable degree of competition exists, the commissioner
7 shall consider relevant tests of workable competition pertaining to market structure, market
8 performance, and market conduct, and the practical opportunities available to consumers in the
9 market to acquire pricing and other consumer information and to compare and obtain insurance
10 from competing insurers. The tests for determining whether a competitive market exists shall
11 include one or all of the following:

- 12 (1) The size and number of firms actively engaged in the market;
- 13 (2) Market shares and changes in market shares of firms;
- 14 (3) Ease of entry and exit from a given market;
- 15 (4) Underwriting restrictions;
- 16 (5) Whether profitability for companies generally in the market segment is unreasonably
17 high;

18 (6) The availability of consumer information concerning the product and sales outlets or
19 other sales mechanisms; and

20 (7) Efforts of insurers to provide consumer information.

21 (c) The determination of competition involves the interaction of the various tests and the
22 weight given to specific tests depends upon the particular situation and pattern of test results.

§33-62-7. Forms and rates.

1 (a) Notwithstanding any other provision of Chapter 33 of this code, Travel Insurance shall

2 be classified and filed for purposes of rates and forms under an inland marine line of insurance.

3 (b) All Travel Insurance policies, certificates of insurance, endorsements, riders and rates
4 delivered, issued for delivery, or charged in this state shall be filed with the commissioner before
5 being used. No policy, certificate of insurance, or endorsement shall be issued until the expiration
6 of 30 days after it has been filed, unless the commissioner shall have given prior written approval.

7 (c) Eligibility and underwriting standards for Travel Insurance may be developed and
8 provided based on Travel Protection Plans designed for individual or identified marketing or
9 distribution channels, and the Travel Insurance offered as part of the Travel Protection Plan may
10 be offered as individual Travel Insurance, Group Travel Insurance, or Blanket Travel Insurance.

11 (d) Rates filed subject to this section shall be made in accordance with the following
12 provisions:

13 (1) Rates shall not be excessive, inadequate, or unfairly discriminatory.

14 (A) Excessive rates.

15 (i) A rate in a competitive market is not excessive.

16 (ii) A rate in a noncompetitive market is excessive if it is likely to produce a profit that is
17 unreasonably high for the insurance provided or if expenses are unreasonably high in relation to
18 services rendered.

19 (B) Inadequate Rates. A rate is not inadequate unless such rate is clearly insufficient to
20 sustain projected losses, expenses, and special assessments in the class of business to which it
21 applies and the use of such rate has or, if continued, will have the effect of substantially lessening
22 competition or the tendency to create monopoly in any market.

23 (C) Unfairly Discriminatory Rates. Unfair discrimination exists if, after allowing for practical
24 limitations, price differentials fail to reflect equitably the differences in expected losses and
25 expenses. A rate is not unfairly discriminatory if it is averaged broadly among persons insured
26 under single insurance plans, whether offered on an individual, Group, or Blanket Travel
27 Insurance policy.

28 (2) In determining whether rates comply with the excessiveness standard upon a finding of
 29 a noncompetitive market under subparagraph 1(a)(ii), the inadequacy standards under
 30 subparagraph 1(b), or the unfair discrimination standard under subparagraph 1(c), the following
 31 criteria shall apply:

32 (A) Due consideration shall be given to past and prospective loss experience within and
 33 outside this state; to the conflagration and catastrophe hazards; to a reasonable margin for profit
 34 and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by
 35 insurers to their policyholders, members or subscribers; to past and prospective expenses both
 36 countrywide and those specifically applicable to this state; and to provisions for special
 37 assessments and to all other relevant factors within and outside the state.

38 (B) Risks may be grouped by classifications for the establishment of rates and minimum
 39 premiums. Classification rates may be modified to produce rates for risks in accordance with rating
 40 plans that establish standards for measuring variations in hazards or expense provisions, or both.
 41 Such standards may measure any differences among risks that can be demonstrated to have a
 42 probable effect upon losses or expenses. No risk classification, however, may be based upon
 43 race, creed, national origin, or the religion of the insured.

44 (C) The expense provisions included in the rates to be used by an insurer shall reflect the
 45 operating methods of the insurer and its anticipated expenses.

46 (D) The rates may contain provision for contingencies and an allowance permitting a
 47 reasonable profit. In determining the reasonableness of the profit, consideration shall be given to
 48 all investment income attributable to the line of insurance.

§33-62-8. Travel protection plans.

1 Travel Protection Plans may be offered for one price in this state if:

2 (a) There is no finding by the commissioner, pursuant to this Chapter that the Travel
 3 Insurance market in the state is non-competitive or that the Travel Protection Plan restricts
 4 competition by either significantly decreasing output or efficiency in the market or that a travel

5 insurer or Travel Retailer is exerting sufficient market power in providing Travel Insurance or
6 Travel Protection Plans such that competition is adversely impacted or that the Travel Protection
7 Plan would exact burdensome terms that would not exist in a competitive market;

8 (b) The Travel Insurance, Travel Assistance Services and Cancellation Fee Waivers are
9 clearly delineated in the Travel Protection Plan's fulfillment materials. The fulfillment materials
10 shall include the Travel Insurance disclosures required under state law and the contact information
11 for persons providing Travel Assistance Services and Cancellation Fee Waivers, as applicable;
12 and

13 (c) The Travel Protection Plan clearly discloses to the consumer at or prior to the time of
14 purchase and fulfillment that it includes Travel Insurance, Travel Assistance Services, and
15 Cancellation Fee Waivers, as applicable, and provides an opportunity for the consumer to obtain
16 additional information regarding the features and pricing of each.

§33-62-9. Sales practices.

1 (a) All persons offering Travel Insurance to residents of this state are subject to the Unfair
2 Trade Practices Act at §47-11A-2, et seq. of this code, except as otherwise provided in this
3 section. In the event of a conflict between this article and other provisions of Chapter 33 of this
4 code regarding the sale and marketing of Travel Insurance and Travel Protection Plans, the
5 provisions of this Act shall control.

6 (b) Illusory Travel Insurance. Offering or selling a Travel Insurance policy that could never
7 result in payment of any claims for any insured under the policy is an unfair trade practice under
8 §47-11A-2, et seq. of this code

9 (c) Marketing.

10 (1) All documents provided to consumers prior to the purchase of Travel Insurance,
11 including but not limited to sales materials, advertising materials, and marketing materials, shall be
12 consistent with all Travel Insurance policy documents, including but not limited to, forms,
13 endorsements, policies, rate filings and certificates of insurance.

14 (2) Travel Insurance policies or certificates that contain pre-existing condition exclusions
15 must clearly disclose the exclusion in the coverage's fulfillment materials.

16 (3) Policyholders or certificate holders shall have a minimum of ten (10) days from the later
17 of the date of purchase of a Travel Protection Plan or the delivery of the Travel Protection Plan's
18 fulfillment materials to review and cancel the policy or certificate for a full refund of the Travel
19 Protection Plan price, unless the insured has either started the covered trip or has filed a claim
20 under the Travel Insurance coverage. For the purposes of this section, sending documentation
21 confirming the purchase and providing the Travel Protection Plan's coverage and assistance
22 details, as applicable, to

23 (4) The company shall disclose in the policy fulfillment and documentation whether the
24 Travel Insurance is primary or secondary to other applicable coverage.

25 (5) Where Travel Insurance is marketed directly to a consumer through an insurer's
26 website or by others through an Aggregator Site, it shall not be an unfair trade practice or other
27 violation of law where an accurate summary or short description of coverage is provided on the
28 web page, so long as the consumer has access to the full provisions of the policy through
29 electronic means.

30 (d) Opt out. Unless otherwise permitted by state or federal law, no person offering Travel
31 Insurance or Travel Protection Plans on an individual or Group basis may do so using negative
32 option or opt-out, which would require a consumer to take an affirmative action to deselect
33 coverage such as unchecking a box on an electronic form when they purchase a trip.

34 (e) It shall not be an unfair trade practice to include Blanket Travel Insurance coverage with
35 the purchase of a trip, provided the coverage is not marketed as free.

§33-62-10. Travel administrators.

1 (a) Notwithstanding any other provisions of Chapter 33 of this code, no person shall act or
2 represent itself as a Travel Administrator in this state unless that person:

3 (1) Is a licensed producer for property insurance in this state with an inland marine line of

4 authority:

5 (2) Holds a valid managing general agent (MGA) license in this state; or

6 (3) Holds a valid third-party administrator (TPA) license in this state.

7 (b) A Travel Administrator and its employees are exempt from the licensing requirements
8 of §33-12B-10 and §33-12B-12 of this code.

§33-62-11. Registration.

1 A Travel Retailer whose insurance-related activities, and those of its employees, are
2 limited to offering and disseminating Travel Insurance on behalf of and under the direction of a
3 Limited Lines Travel Insurance Producer meeting the conditions stated in this Act, is authorized to
4 do so and receive related compensation, upon registration by the Limited Lines Travel Insurance
5 Producer as described in Section (B)(2) above.

§33-62-12. Policy.

1 Travel insurance may be provided under an individual policy or under a group or master
2 policy.

§33-62-13. Enforcement.

1 (a) The commissioner may conduct investigations or examinations of travel insurers,
2 Limited Lines Travel Insurance Producers, Travel Retailers, and Travel Administrators to enforce
3 the provisions of this Act to protect resident Travel Insurance consumers.

4 (b) The commissioner may take action, following notice and a hearing, necessary or
5 appropriate to enforce the provisions of this Act, commissioner's orders, and state statutes to
6 protect consumers of Travel Insurance in this state, pursuant to §33-2-13 of this code.

§33-62-14. Rulemaking.

1 The commissioner may promulgate rules to implement the provisions of this Act.

§33-62-15. Effective Date.

2 This Act shall take effect 90 days after enactment.

NOTE: The purpose of this bill is to establish the "Travel Insurance Model Act," set requirements for policies, allow rulemaking and enforcement for the Commissioner, setting standards for policies and pricing.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.