

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2536**

4
5 (By Delegates Westfall, Walters, B. White, Ashley, Frich and Kurcaba)

6 (Originating in the House Committee on Judiciary)

7 [February 23, 2015]

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §33-12-32b, relating to travel insurance limited lines producers; defining terms;
12 authorizing the Commissioner of Insurance to issue travel insurance entity producer license;
13 establishing fees, fines, and penalties; requiring licensee to maintain register of travel
14 retailers offering insurance on its behalf and designate a responsible individual producer;
15 authorizing travel retailer to offer travel insurance and receive compensation under certain
16 conditions; requiring training of travel retailer employees offering travel insurance;
17 exempting travel insurance entity producers and travel retailers and employees from
18 examination and continuing education requirements; requiring travel retailer employees
19 offering travel insurance to provide certain information; providing for enforcement; and
20 permitting the Commissioner of Insurance to propose rules for legislative approval.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

1 section, designated §33-12-32b, to read as follows:

2 **ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.**

3 **§33-12-32b. Travel Insurance Entity Producer Limited License Act.**

4 (a) Definitions. – For purposes of this section:

5 (1) A “group policy” means a policy issued to:

6 (A) A railroad company, steamship company, carrier by air, public bus carrier, or other
7 common carrier of passengers, which is deemed the policyholder, where the policy insures its
8 passengers; or

9 (B) Any other group if the commissioner has determined by rule that the members are
10 engaged in a common enterprise or have an economic or social affinity or relationship, and that
11 issuance of the policy would not be contrary to the best interests of the public.

12 (2) “Offer and disseminate” means providing general information, including descriptions of
13 coverage and price, processing applications, collecting premiums, and performing other activities
14 permitted in this state without a license issued by the commissioner.

15 (3) “Travel insurance” means:

16 (A) An individual or group policy of insurance that provides coverage for personal risks
17 incident to planned travel, including, but not limited to:

18 (i) Interruption or cancellation of a trip or event;

19 (ii) Loss of baggage or personal effects;

20 (iii) Damages to accommodations or rental vehicles; or

21 (iv) Sickness, accident, disability or death occurring during travel.

22 (B) “Travel insurance” does not include major medical plans that provide comprehensive

1 medical protection for travelers with trips lasting six months or longer, including, but not limited to,
2 those working overseas as expatriates or military personnel deployed overseas.

3 (4) “Travel insurance entity producer” means an entity which is licensed under this section,
4 is appointed by an insurer, and has the duties set forth in subsection (d) of this section.

5 (5) “Travel retailer” means an entity that makes, arranges or offers travel services, which may
6 offer and disseminate travel insurance on behalf of and under the direction of a travel insurance
7 entity producer.

8 (b) License requirements. – Notwithstanding any other provision of law:

9 (1) The commissioner may issue a travel insurance entity producer license, which authorizes
10 the sale, solicitation or negotiation of travel insurance issued by a licensed insurer, to a person
11 meeting the requirements of this section.

12 (2) An entity seeking a license under this section shall apply on a form and in a manner
13 prescribed by the commissioner.

14 (3) The annual fee for a travel insurance entity producer license is \$200.

15 (c) Conditions for travel retailers. – A travel retailer may offer and disseminate travel
16 insurance policies under a license issued to a travel insurance entity producer only if all of the
17 following conditions are met:

18 (1) The travel retailer agrees that it is bound by all applicable provisions of this section and
19 that no employee or authorized representative, who is not licensed as an individual insurance
20 producer, may:

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

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

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

4 (2) The travel retailer makes available to prospective purchasers brochures or other written
5 materials that:

6 (A) State the identity and contact information of the insurer and the travel insurance entity
7 producer;

8 (B) Describe the material terms, or contain the actual material terms, of the travel insurance
9 coverage;

10 (C) Describe the process for filing a claim under the travel insurance policy;

11 (D) Describe the review and cancellation processes for the travel insurance policy;

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

14 (F) Explain that a travel retailer not licensed by the commissioner may provide general
15 information about the travel insurance offered, including a description of the coverage and price, but
16 is not qualified or authorized to answer technical questions about the travel insurance or to evaluate
17 the adequacy of a prospective purchaser’s existing insurance coverage.

18 (3) The travel retailer ensures that each employee and authorized representative of the travel
19 retailer whose duties include offering and disseminating travel insurance successfully completed the
20 training required by this section.

21 (d) Conditions for travel insurance entity producers. – A travel insurance entity producer
22 may offer and disseminate travel insurance policies through a travel retailer only if all of the

1 following conditions are met:

2 (1) On a form prescribed by the commissioner, the travel insurance entity producer
3 establishes, maintains and updates annually a register of all travel retailers that offer travel insurance
4 on behalf of the travel insurance entity producer:

5 (A) The register shall include the name, address, and contact information of each travel
6 retailer and of the person who directs or controls the travel retailer's operations, and the travel
7 retailer's federal tax identification number;

8 (B) The travel insurance entity producer shall certify that the register complies with 18 U.S.C.
9 §1033; and

10 (C) The travel insurance entity producer shall submit the register to the commissioner within
11 thirty days upon request.

12 (2) The travel insurance entity producer designates one of its employees who is a licensed
13 individual producer as the responsible producer for the travel insurance entity producer's compliance
14 with this section and any rules promulgated hereunder.

15 (3) The designated responsible producer, and the president, secretary, treasurer and any other
16 person who directs or controls the travel insurance entity producer's insurance operations, comply
17 with the fingerprinting requirements applicable to insurance producers in the resident state of the
18 travel insurance entity producer.

19 (4) The travel insurance entity producer pays all applicable insurance producer licensing fees
20 set forth in this chapter or rules promulgated hereunder.

21 (5) The travel insurance entity producer requires each employee and authorized representative
22 of the travel retailer whose duties include offering and disseminating travel insurance to receive a

1 program of instruction or training, which the commissioner may review and approve or disapprove.
2 The training program shall, at a minimum, contain instructions on the types of insurance offered,
3 ethical sales practices, and required disclosures to prospective customers.

4 (e) A licensee under this section, and those registered under its license pursuant to
5 subdivision one, subsection (d) of this section, are exempt from examination under section five of
6 this article and from continuing education requirements under section eight of this article.

7 (f) A licensee under this section is subject to the provisions of section six-b of this article as
8 if it were an insurance agency.

9 (g) License renewal. – The commissioner shall annually renew, on the expiration date as
10 provided in this subsection, the license of a licensee who qualifies and applies for renewal on a form
11 prescribed by the commissioner and pays the fee set forth in subdivision three, subsection (b) of this
12 section: *Provided*, That the commissioner may fix the dates of expiration of travel insurance entity
13 producer licenses as he or she deems advisable for efficient distribution of the workload of his or her
14 office:

15 (1) If the expiration date so fixed would upon first occurrence shorten the period for which
16 a license fee has been paid, no refund of unearned fee shall be made;

17 (2) If the expiration date so fixed would upon first occurrence lengthen the period for which
18 a license fee has been paid, the commissioner shall charge no additional fee for the lengthened
19 period;

20 (3) If no date is so fixed by the commissioner, each license shall, unless continued as
21 provided in this subsection, expire at midnight on June 30 following issuance; and

22 (4) A licensee that fails to timely renew its license may reinstate its license, retroactive to the

1 expiration date, upon submission of the renewal application within twelve months after the
2 expiration date and payment of a penalty in the amount of \$50.

3 (h) Appointment. – A travel insurance entity producer may not act as an agent of an insurer
4 unless the insurer appoints the travel insurance entity producer as its agent, as follows:

5 (1) The insurer shall file, in a format approved by the commissioner, a notice of appointment
6 within fifteen days from the date the agency contract is executed and shall pay a nonrefundable
7 appointment processing fee in the amount of \$25: Provided, That an insurer may elect to appoint a
8 travel insurance entity producer to all or some insurers within the insurer’s holding company system
9 or group by filing a single notice of appointment;

10 (2) Upon receipt of a notice of appointment, the commissioner shall verify within a
11 reasonable time, not to exceed thirty days, that the travel insurance entity producer is eligible for
12 appointment: Provided, That the commissioner shall notify the insurer within five days of a
13 determination that the travel insurance entity producer is ineligible for appointment; and

14 (3) The insurer shall remit, no later than midnight on May 31 annually and in a manner
15 prescribed by the commissioner, a renewal appointment fee for each appointed travel insurance entity
16 producer in the amount of \$25; and

17 (4) The insurer shall maintain a current list of travel insurance entity producers appointed to
18 accept applications on behalf of the insurer, and shall make the list available to the commissioner
19 upon reasonable request for purposes of conducting investigations and enforcing the provisions of
20 this chapter.

21 (i) Effect of registration. – Notwithstanding any other provision of law, if a travel retailer’s
22 insurance-related activities, and those of its employees and authorized representatives, are limited

1 to offering and disseminating travel insurance on behalf of and under the direction of a licensed
2 travel insurance entity producer, the travel retailer may perform those activities and receive related
3 compensation, upon registration by the travel insurance entity producer pursuant to subdivision one,
4 subsection (d) of this section.

5 (j) *Liability.* – As the insurer’s appointed agent, the travel insurance entity producer is liable
6 for the acts or omissions of the travel retailer in offering and disseminating travel insurance under
7 the travel insurance entity producer’s license and shall use reasonable means to ensure compliance
8 by the travel retailer with this section.

9 (k) *Enforcement.* – In enforcing the provisions of this section, the commissioner may utilize
10 any enforcement mechanisms in this chapter.

11 (1) If the commissioner determines that a travel retailer or its employee has violated this
12 section, the commissioner may after notice and hearing:

13 (A) Impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for the conduct;
14 and

15 (B) Impose other or additional penalties that the commissioner deems necessary and
16 reasonable to carry out the purpose of this section, including but not limited to:

17 (i) Suspending or revoking the privilege of offering and disseminating travel insurance
18 pursuant to this section by specific business retailers or at specific business retail locations where
19 violations have occurred;

20 (ii) Suspending or revoking the privilege of individual employees of a travel retailer to act
21 under this section; and

22 (iii) Placing the travel retailer or its employees on probation under terms and conditions

1 prescribed by the commissioner.

2 (2) If the commissioner determines that a travel insurance entity producer has failed to
3 perform its duties under this section or has otherwise violated this section, the travel insurance entity
4 producer is subject to the provisions of section twenty-four of this article.

5 (1) The commissioner may propose rules for legislative approval in accordance with the
6 provisions of article three, chapter twenty-nine-a of this code to implement this section.