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COMMITTEE REPORT

March 24, 2021

**S. 435**

Introduced by Senator Cromer

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Read the first time January 12, 2021.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 435) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑43‑25 so as to authorize the Director of the Department of Insurance to issue, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

RONNIE W. CROMER for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑43‑25 SO AS TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO ISSUE A LIMITED LINES TRAVEL INSURANCE PRODUCER LICENSE; TO AMEND SECTION 38‑1‑20, AS AMENDED, RELATING TO DEFINITIONS APPLICABLE TO TITLE 38, SO AS TO DELETE THE DEFINITION OF “TRAVEL INSURANCE” AND TO ADD TRAVEL INSURANCE TO THE DEFINITION OF “MARINE INSURANCE”; AND TO AMEND ARTICLE 6 OF CHAPTER 43, TITLE 38, RELATING TO LIMITED LINES TRAVEL INSURANCE, SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE THAT TRAVEL INSURANCE MUST BE CLASSIFIED AND FILED AS MARINE INSURANCE SUBJECT TO CERTAIN EXCEPTIONS, TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO ESTABLISH A TRAVEL INSURANCE PRODUCER LICENSE AND ESTABLISH CERTAIN REQUIREMENTS FOR AN APPLICANT, TO ASSESS A PREMIUM TAX ON TRAVEL INSURANCE PREMIUMS AND ESTABLISH CERTAIN REPORTING REQUIREMENTS, TO ESTABLISH CERTAIN REQUIREMENTS FOR TRAVEL PROTECTION PLANS, TO PROVIDE CERTAIN SALES PRACTICES FOR TRAVEL INSURERS, TO ESTABLISH CERTAIN LICENSING REQUIREMENTS FOR TRAVEL ADMINISTRATORS FOR TRAVEL INSURANCE, AND TO AUTHORIZE THE DIRECTOR TO PROMULGATE REGULATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 43, Title 38 of the 1976 Code is amended by adding:

“Section 38‑43‑25. (A) The director may issue a limited lines travel insurance producer license to an individual or business entity that has filed with the director an application for a limited lines travel insurance producer license in a form and manner prescribed by the director. A limited lines travel insurance producer must be licensed to 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, respectively.

(B) A person licensed in a major line of authority as an insurance producer or insurance broker is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer or insurance broker is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.”

SECTION 2. Section 38‑1‑20(40) and (60) of the 1976 Code is amended to read:

“(40) ‘Marine insurance’ means each insurance against loss or destruction of or damage to aircraft, vessels, or watercraft and their cargoes; insurance covering the risks or perils of navigation, transit, or transportation of all forms of property, including the liability of a carrier for hire for the loss of property of shippers delivered for transporting; marine builder’s risks; bridges, tunnels, piers, wharves, docks and slips, dry docks, marine railways, and other aids to navigation and transportation, precious stones, precious metals, and jewelry, whether in the course of transportation or otherwise; coverage of personal property by all risk forms known as the ‘Personal Property Floater’; and coverage of mobile machinery and equipment. Marine insurance includes ‘travel insurance’ as defined in Section 38‑43‑720(14).

(60) ~~‘Travel insurance’ includes insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.~~ Reserved.”

SECTION 3. Article 6, Chapter 43, Title 38 of the 1976 Code is amended to read:

“Article 6

Limited Lines Travel Insurance Act

Section 38‑43‑710. This article must be known and may be cited as the ‘Limited Lines Travel Insurance Act’.

Section 38‑43‑715. (A) This article applies to travel insurance sold, solicited, negotiated, or offered in this State that covers a resident in this State and is delivered or issued for delivery in this State. It does not apply to cancellation fee waivers and travel assistance services except as expressly provided herein.

(B) All other applicable provisions of this title continue to apply to travel insurance. In the event of a conflict between a provision of this article and any other applicable provisions of this title, the provision of this article controls.

Section 38‑43‑720. For the purposes of this article:

(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 purchasing an insurance product.

(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 each individual member of the eligible group.

(3) ‘Cancellation fee waiver’ means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier’s underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) ‘Director’ means the Director of the Department of Insurance or his designee.

(5) ‘Eligible group’ means two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship including, but not limited to:

(a) an entity engaged in the business of providing travel or travel services including, but not limited to, 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 such as airlines, cruise lines, railroads, steamship companies, and public bus carriers, wherein 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 such travel;

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

(c) an employer covering a group of employees, volunteers, contractors, board of directors, dependents, or guests;

(d) a sports team, camp, or sponsor covering participants, members, campers, employees, officials, supervisors, or volunteers;

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

(f) a financial institution or financial institution vendor, parent holding company, trustee, or agent of or designated by one or more financial institution or vendors, including accountholders, 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 such association covering its 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 director’s permitting the use of a trust and this state’s premium tax provisions in Section 38‑7‑20 of one or more associations meeting the requirements of subitem (g);

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

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

(k) a preschool, daycare institution for children or adults, and senior citizen club;

(l) an automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, 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 where the director has determined that the members are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, and that issuance of the policy would not be contrary to the public interest.

(6) ‘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 travel assistance service details.

(7) ‘Group travel insurance’ means travel insurance issued to any eligible group.

(8) ‘Limited lines travel insurance producer’ means one of the following when designated by an insurer as the travel insurance supervising entity:

(a) a licensed managing general underwriter;

(b) a licensed managing general agent or third party administrator; or

(c) a licensed insurance producer.

~~(2)~~(9) ‘Offer and disseminate’ means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the State.

(10) ‘Primary certificate holder’ means, concerning premium taxes, an individual who elects and purchases travel insurance under a group policy.

(11) ‘Primary policyholder’ means, concerning premium taxes, an individual who elects and purchases individual travel insurance.

(12) ‘Travel administrator’ means a person who, 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 that a person may not be considered a travel administrator if that person’s only actions that would otherwise cause it to be considered a travel administrator are:

(a) a person working for a travel administrator to the extent that 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;

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

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

(13) ‘Travel assistance services’ means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in the transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include, but are not limited to, 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 that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

~~(3)~~(14) ‘Travel insurance’ means insurance coverage for personal risks incident to planned travel including, but not limited to:

(a) interruption or cancellation of trip or event;

(b) loss of baggage or personal effects;

(c) damages to accommodations or rental vehicles; ~~and~~

(d) sickness, accident, disability, or death occurring during travel~~. However, travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, such as those working overseas as an expatriate or military personnel being deployed~~;

(e) emergency evacuation;

(f) repatriation of remains; or

(g) any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the director.

Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than six months, including those working or residing overseas as an expatriate, or any other insurance that requires a specific insurance producer license.

(15) ‘Travel protection plan’ means a plan that provides one or more of the following:

(a) travel insurance;

(b) travel assistance services; and

(c) cancellation fee waivers.

~~(4)~~(16) ‘Travel retailer’ means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Section 38‑43‑725. (A) Notwithstanding any other provision of this title, travel insurance must be classified and filed for purposes of rates and forms as marine insurance, provided, however, that travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed by an authorized insurer under either an accident and health line of insurance or a marine line of insurance.

(B) Travel insurance may be in the form of an individual, group, or blanket policy.

(C) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet this state’s underwriting standards for marine insurance.

Section 38‑43‑730. (A) A travel retailer only may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license if:

(1) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance the following information on a form prescribed by the director:

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

(b) a description of the process for filing a claim;

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

(d) the identity and contact information of the insurer and limited lines travel insurance producer;

(2) the limited lines travel insurance producer, at the time of licensure, establishes and subsequently maintains and updates a register of each travel retailer that offers insurance on its behalf, including the name, address, and contact information of the travel retailer and an officer or person who directs or controls the operations of the travel retailer, and the federal employment identification number of the travel retailer;

(3) the limited lines travel insurance producer submits the register to the department upon reasonable request;

(4) the limited lines travel insurance producer certifies that the travel retailers registered comply with 18 U.S.C. Section 1033;

(5) the limited lines travel insurance producer designates one of its employees, who is a licensed individual producer, as the ‘Designated Responsible Producer’ or ‘DRP’ who is responsible for compliance of the limited lines travel insurance producer with the travel insurance laws, rules, and regulations of the State;

(6) the DRP, president, secretary, treasurer, and another officer or person who directs or controls the insurance operations of the limited lines travel insurance producer each comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer;

(7) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees; and

(8) the limited lines travel insurance producer requires each employee of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, subject to review by the director, and which shall contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers, among other things.

(B) A travel retailer who offers or disseminates travel insurance shall make brochures or other written materials available to prospective purchasers, and these brochures or other written materials must:

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

(2) explain that the purchase of travel insurance is not required in order to purchase another product or service from the travel retailer; and

(3) explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer’s existing insurance coverage.

(C) A travel retailer who is not licensed as an insurance producer may not:

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

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

(3) hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

Section 38‑43‑740. A travel retailer, whose insurance‑related activities are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer, may receive compensation for these activities upon registration by the limited lines travel insurance producer as provided in Section 38‑43‑730(A)(2).

Section 38‑43‑750. ~~Travel insurance may be provided under an individual policy or under a group or master policy.~~ Reserved.

Section 38‑43‑760. As the insurer designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this article.

Section 38‑43‑770. The director may, after notice and opportunity for a hearing, respond to a violation of a provision of this article by a limited lines travel insurance producer or by the travel retailer offering and disseminating travel insurance under the provisions of Section 38‑2‑10 by:

(1) revoking or suspending the license of the limited lines travel insurance producer; or

(2) imposing other penalties, including directing the suspension or termination of authority of the involved travel retailer to offer and disseminate travel insurance, as the director considers necessary or convenient to carry out the purposes of this article.

Section 38‑43‑780. (A) A travel insurer shall pay premium tax pursuant to Section 38‑7‑20 on travel insurance premiums paid by: (1) an individual primary policyholder who is a resident of this State;

(2) a primary certificate holder who is a resident of this State who elects coverage under a group travel insurance policy; or

(3) 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 which apply to the insurer across multiple taxing jurisdictions or that permits the insurer to allocate premiums on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(B) A travel insurer shall:

(1) document the state of residence or principal place of business of the policyholder or certificate holder, as required in subsection (A); and

(2) report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 38‑43‑790. Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this State if:

(1) the travel protection plan clearly discloses to the consumer at or prior to the time of purchase that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity at or prior to 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.

Section 38‑43‑800. (A) A person offering travel insurance to residents of this State is subject to the provisions of Chapter 57 of this title, except as otherwise provided in this article. In the event of a conflict between this article and other provisions of this title regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this article control.

(B) Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is deemed an unfair trade practice.

(C)(1) All documents provided to consumers prior to the purchase of travel insurance including, but not limited to, sales materials, advertising materials, and marketing materials must be consistent with the travel insurance policy itself including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(2) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time prior to the time of purchase and in the coverage’s fulfillment materials.

(3) The fulfillment materials and the information described in Section 38‑43‑730(A)(1) 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:

(a) fifteen days following the date of delivery of the travel protection plan’s fulfillment materials by postal mail; or

(b) ten days following the date of delivery of the travel protection plan’s fulfillment materials by means other than postal mail.

For the 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.

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

(5) Where travel insurance is marketed directly to a consumer through an insurer’s website or by others through an aggregator site, it shall not be an unfair trade practice or other violation of law where 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.

(D) No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may 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.

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

(F) Where a consumer’s destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(1) 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

(2) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction’s requirements prior to departure.

Section 38‑43‑810. (A) Notwithstanding any other provisions of this title, no person may act or represent himself as a travel administrator for travel insurance in this State unless that person:

(1) is a licensed property and casualty insurance producer or insurance broker in this State for activities permitted under that producer or broker license;

(2) holds a valid managing general agent license in this State;

(3) holds a valid third‑party administrator license in this State; or

(4) holds a valid managing general underwriter license in this State.

(B) A travel administrator and its employees are exempt from the licensing requirements of Section 38‑47‑10 for the travel insurance it administers.

(C) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the director upon request.

Section 38‑43‑820. The department may promulgate regulations to implement the provisions of this article.”

SECTION 4. This act takes effect upon approval by the Governor.

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