



2022 South Dakota Legislature
House Bill 1130
ENROLLED

AN ACT

ENTITLED An Act to specify taxation, authorization, and standards of practice for the sale of travel insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 58-30-209 be AMENDED:

58-30-209. Terms used in §§ 58-30-209 to 58-30-217, inclusive, mean:

- (1) "Aggregator site," a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping;
- (2) "Blanket travel insurance," a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy, with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group;
- (3) "Cancellation fee waiver," a contractual agreement between a supplier of travel services and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement;
- (4) "Eligible group," for the purposes of this Act only, 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, including but not limited to 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 in the travel;

- (b) A college, school, or other institution of learning, covering students, teachers, employees, or volunteers;
- (c) An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;
- (d) A sports team, camp, or sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers;
- (e) A religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;
- (f) A financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution 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 the state's premium tax provisions in § 10-44-2, of one or more associations meeting the above requirements of (g) of this section;
- (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, the operator, owner or lessor of a means of transportation, or the

- automobile or truck rental or leasing company, is the policyholder for group coverage under this subdivision; or
- (m) Another 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;
- (5) "Fulfillment materials," documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details;
 - (6) "Group travel insurance," travel insurance issued to any eligible group;
 - (7) "Limited lines travel insurance producer," a:
 - (a) Licensed managing general underwriter;
 - (b) Licensed managing general agent or third party administrator;
 - (c) Licensed insurance producer, including a limited lines producer; or
 - (d) Travel administrator;
 - (8) "Offer and disseminate," providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other activities permitted by the state;
 - (9) "Primary certificate holder," an individual person who elects and purchases travel insurance under a group travel insurance policy;
 - (10) "Primary policyholder," an individual person who elects and purchases individual travel insurance;
 - (11) "Travel administrator," 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 is not a travel administrator if that person's only actions that would otherwise cause the person to be considered a travel administrator are the following:
 - (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 in accordance with § 58-30-211;

- (d) An individual adjusting or settling claims in the normal course of the individual's practice or employment as an attorney-at-law and who does not collect charges or premiums in connection with insurance coverage; or
 - (e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer;
- (12) "Travel assistance services," non-insurance services unrelated to insurance for which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. Travel assistance services include but are not limited to:
- (a) Security advisories;
 - (b) Destination information;
 - (c) Vaccination and immunization information services;
 - (d) Travel reservation services;
 - (e) Entertainment;
 - (f) Activity and event planning;
 - (g) Translation assistance;
 - (h) Emergency messaging;
 - (i) International legal and medical referrals;
 - (j) Medical case monitoring;
 - (k) Coordination of transportation arrangements;
 - (l) Emergency cash transfer assistance;
 - (m) Medical prescription replacement assistance;
 - (n) Passport and travel document replacement assistance;
 - (o) Lost luggage assistance;
 - (p) Concierge services; and
 - (q) Any other service that is furnished in connection with planned travel;
- (13) "Travel insurance," insurance coverage for personal risks incident to planned travel, including:
- (a) Interruption or cancellation of a trip or event;
 - (b) Loss of baggage or personal effects;
 - (c) Damages to accommodations or rental vehicles;
 - (d) Sickness, accident, disability, or death occurring during travel;
 - (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 providing comprehensive medical protection for persons with trips or overseas residence or deployment lasting six months or longer, or any other product that requires a specific insurance producer license;

- (14) "Travel protection plan," a plan that provides travel insurance, travel assistance services, or cancellation fee waivers, or any combination thereof;
- (15) "Travel retailer," a business entity that makes, arranges, or offers planned travel 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 2. That chapter 58-30 be amended with a NEW SECTION:

The requirements of §§ 58-30-209 to 58-30-217.1, inclusive, apply to travel insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates that are delivered or issued for delivery in this state. The requirements do not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter. All other applicable provisions of this state's insurance laws shall continue to apply to travel insurance except that the specific provisions of §§ 58-30-209 to 58-30-217.1, inclusive, and this Act shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 3. That chapter 58-30 be amended with a NEW SECTION:

Any person licensed as an insurance producer in a line of authority as specified in subdivisions 58-30-152(1), (2), (3), (4), (5), and (6), is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

Section 4. That chapter 58-30 be amended with a NEW SECTION:

Notwithstanding any other provisions of chapter 58-30, no person may act or represent oneself as a travel administrator for travel insurance in this state unless that person:

- (1) Is a licensed property and casualty insurance producer in this state for activities permitted under that producer license;
- (2) Holds a valid managing general agent license in this state; or
- (3) Holds a valid third-party administrator license in this state.

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 5. That chapter 58-30 be amended with a NEW SECTION:

The following standards apply to the sale, solicitation, and negotiation of travel insurance:

- (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 pre-existing condition exclusions, information and an opportunity to learn more about the pre-existing condition exclusions must be provided any time prior to the time of purchase, and in the coverage's fulfillment materials;
- (3) The person shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage;
- (4) 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; and
- (5) The fulfillment materials and the information described in subdivision 58-30-211(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 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, the term 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.

Section 6. That § 58-30-215 be AMENDED:

58-30-215. Travel insurance may be provided under an individual policy or under a group, blanket, or master policy. Travel assistance services and cancellation fee waivers are not insurance and not related to insurance.

Section 7. That chapter 58-30 be amended with a NEW SECTION:

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 8. That chapter 58-30 be amended with a NEW SECTION:

Notwithstanding any other provision of this title, travel insurance must be classified and filed for purposes of rates and forms under an inland marine line of insurance, provided that travel insurance coverages 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 under either an accident and health line of insurance or an inland marine line of insurance.

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, if those standards also meet the state's underwriting standards for inland marine.

Section 9. That § 58-30-217 be AMENDED:

58-30-217. The limited lines travel insurance producer and any travel retailer offering and disseminating travel insurance under the limited lines travel insurance producer license shall comply with chapter 58-30 and chapter 58-33. In the event of a conflict between chapters 58-30 and 58-33 and the provisions of §§ 58-30-209 to 58-30-217.1, inclusive, regarding the sale and marketing of travel insurance and travel protection plans, the provisions of §§ 58-30-209 to 58-30-217.1, inclusive, shall control. The following acts constitute unfair trade practices under chapter 58-33:

- (1) Offering or selling illusory travel insurance, meaning a travel insurance policy that could never result in payment of any claims for any insured under the policy; and
- (2) Marketing blanket travel insurance coverage as free.

Section 10. That chapter 58-30 be amended with a NEW SECTION:

The following acts are not unfair trade practices under this chapter or chapter 58-33:

- (1) If 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 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; and
- (2) If a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose one of the following options as a condition of purchasing a trip or travel package:
 - (a) Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or
 - (b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

Section 11. That chapter 10-44 be amended with a NEW SECTION:

An insurer shall pay premium tax as provided in § 10-44-2 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 that apply to the insurer across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

A travel insurer shall document the state of residence or principal place of business of the policyholder or certificate holder and report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

An Act to specify taxation, authorization, and standards of practice for the sale of travel insurance.

I certify that the attached Act originated in the:
House as Bill No. 1130

Received at this Executive Office this ____ day of _____, 2022 at _____ M.

Chief Clerk

By _____ for the Governor

Speaker of the House

The attached Act is hereby approved this _____ day of _____, A.D., 2022

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2022 at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1130
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State