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AN ACT

RELATING TO TRAVEL INSURANCE; RECOMPILING A SECTION OF THE
NMSA 1978; ENACTING THE TRAVEL INSURANCE ACT; PROHIBITING
CERTAIN TRAVEL INSURANCE PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance
Code is enacted to read:

"SHORT TITLE.--Sections 1 through 9 of this act may be
cited as the "Travel Insurance Act"."

SECTION 2. A new section of the New Mexico Insurance
Code is enacted to read:

"DEFINITIONS.--As used in the Travel Insurance Act:

A. "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 comparison shopping;

B. "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 individual members of the
eligible group;

C. "cancellation fee waiver" means a contractual
agreement between a supplier of travel services and the

1 supplier's customer to waive some or all of the
2 non-refundable cancellation fee provisions of the supplier's
3 underlying travel contract with or without regard to the
4 reason for the cancellation or form of reimbursement. A
5 "cancellation fee waiver" is not insurance;

6 D. "eligible group" means two or more persons that
7 are engaged in a common enterprise or have an economic,
8 educational or social affinity or relationship, including:

9 (1) any entity engaged in the business of
10 providing travel or travel services, including a:

11 (a) tour operator;

12 (b) lodging provider, vacation property
13 owner, hotel or resort;

14 (c) travel club or travel agency;

15 (d) property manager;

16 (e) cultural exchange program; or

17 (f) common carrier or operator, owner
18 or lessor of a means of transportation of passengers,
19 including an airline, a cruise line, a railroad, a steamship
20 company or a public bus carrier, when all members or
21 customers of the group have a common exposure to risk
22 attendant to their travel;

23 (2) any college, school or other institution
24 of learning covering students, teachers, employees or
25 volunteers;

1 (3) any employer covering a group of
2 employees, volunteers, contractors, board of directors,
3 dependents or guests;

4 (4) any sports team, camp or sponsor thereof
5 covering participants, members, campers, employees,
6 officials, supervisors or volunteers;

7 (5) any religious, charitable, recreational,
8 educational or civic organization or branch thereof covering
9 a group of members, participants or volunteers;

10 (6) any financial institution or financial
11 institution vendor or parent holding company, trustee or
12 agent of or designated by a financial institution or
13 financial institution vendor, including account holders,
14 credit card holders, debtors, guarantors or purchasers;

15 (7) any incorporated or unincorporated
16 association, including a labor union, having a common
17 interest, constitution and bylaws and organized and
18 maintained in good faith for purposes other than obtaining
19 insurance for members or participants of such association
20 covering the association's members;

21 (8) any trust or the trustees of a fund
22 established, created or maintained for the benefit of and
23 covering members, employees or customers, subject to the
24 superintendent's permitting the use of a trust;

25 (9) any entertainment production company

1 covering a group of participants, volunteers, audience
2 members, contestants or workers;

3 (10) any volunteer fire department,
4 ambulance, rescue, police or court or any first aid, civil
5 defense or other such volunteer group;

6 (11) a preschool, a daycare institution for
7 children or adults or a senior citizen club;

8 (12) any automobile or truck rental or
9 leasing company covering a group of individuals who may
10 become renters, lessees or passengers defined by their travel
11 status regarding the rented or leased vehicles where the
12 truck rental or leasing company is the policyholder under a
13 policy to which this section applies; or

14 (13) any other group of which the
15 superintendent has determined that the members are engaged in
16 a common enterprise and have an economic, educational or
17 social affinity or relationship and that issuance of the
18 policy would not be contrary to the public interest;

19 E. "fulfillment materials" means documentation
20 sent to the purchaser of a travel protection plan confirming
21 the purchase and providing the travel protection plan's
22 coverage and assistance details;

23 F. "limited lines travel insurance producer" means
24 a licensed managing general agent or third-party
25 administrator or licensed insurance producer, including a

1 limited lines producer or travel administrator;

2 G. "travel administrator" means a person that
3 directly or indirectly underwrites or collects charges,
4 collateral or premiums from or adjusts or settles claims on
5 residents of this state in connection with travel insurance;
6 provided that a person shall not be considered a travel
7 administrator if that person's only actions that would
8 otherwise cause the person to be considered a travel
9 administrator include:

10 (1) a person working for a travel
11 administrator to the extent that the person's activities are
12 subject to the supervision and control of the travel
13 administrator;

14 (2) an insurance producer selling insurance
15 or engaged in administrative and claims-related activities
16 within the scope of the producer's license;

17 (3) a travel retailer offering and
18 disseminating travel insurance and registered under the
19 license of a limited lines travel insurance producer in
20 accordance with the Travel Insurance Act;

21 (4) a person adjusting or settling claims in
22 the normal course of that person's practice or employment as
23 an attorney-at-law and who does not collect charges or
24 premiums in connection with insurance coverage; or

25 (5) a business entity that is affiliated

1 with a licensed insurer while acting as a travel
2 administrator for the direct and assumed insurance business
3 of an affiliated insurer;

4 H. "travel assistance service" means a service for
5 which the consumer is not indemnified based on a fortuitous
6 event and that does not result in the transfer or shifting of
7 risk that would constitute the business of insurance,
8 including:

9 (1) security advisories;
10 (2) destination information;
11 (3) vaccination and immunization information
12 services;

13 (4) travel reservation services;
14 (5) entertainment;
15 (6) activity and event planning;
16 (7) translation assistance;
17 (8) emergency messaging;
18 (9) international legal and medical
19 referrals;

20 (10) medical case monitoring;
21 (11) coordination of transportation
22 arrangements;

23 (12) emergency cash transfer assistance;
24 (13) medical prescription replacement
25 assistance;

1 (14) passport and travel document

2 replacement assistance;

3 (15) lost luggage assistance;

4 (16) concierge services; or

5 (17) any other service that is furnished in
6 connection with planned travel. "Travel assistance service"
7 is not insurance and is not related to insurance;

8 I. "travel insurance" means insurance coverage for
9 personal risks incident to planned travel, including:

10 (1) interruption or cancellation of a trip
11 or an event;

12 (2) loss of baggage or personal effects;

13 (3) damages to accommodations or rental
14 vehicles;

15 (4) sickness, accident, disability or death
16 occurring during travel;

17 (5) emergency evacuation;

18 (6) repatriation of remains; or

19 (7) any other contractual obligations to
20 indemnify or pay a specified amount to the traveler upon
21 determinable contingencies related to travel as approved by
22 the superintendent. "Travel insurance" does not include a
23 major medical plan that provides comprehensive medical
24 protection for travelers with trips lasting longer than six
25 months, including expatriates living or working abroad, or

1 any other product that requires a specific insurance producer
2 license;

3 J. "travel protection plan" means a plan that
4 provides one or more of the following:

- 5 (1) travel insurance;
- 6 (2) travel assistance services; or
- 7 (3) cancellation fee waivers; and

8 K. "travel retailer" means an entity that makes,
9 arranges or offers planned travel services."

10 SECTION 3. Section 59A-12-18.1 NMSA 1978 (being Laws
11 2013, Chapter 140, Section 3, as amended) is recompiled in
12 the Travel Insurance Act and is amended to read:

13 "LIMITED LINES TRAVEL INSURANCE PRODUCER LICENSE.--

14 A. The superintendent may issue a limited lines
15 travel insurance producer license to an applicant who is
16 qualified to solicit or sell travel insurance.

17 B. A travel retailer may offer travel insurance
18 under the license of a limited lines travel insurance
19 producer only if:

20 (1) the limited lines travel insurance
21 producer or travel retailer provides to purchasers of travel
22 insurance:

23 (a) a description of the material terms
24 of the insurance coverage;

25 (b) a description of the process for

1 filing a claim;

2 (c) a description of the travel
3 insurance policy's cancellation process; and

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

7 (2) the limited lines travel insurance
8 producer:

9 (a) establishes at the time of
10 licensure on a form prescribed by the superintendent a
11 register of each travel retailer that offers travel insurance
12 on behalf of the limited lines travel insurance producer;

13 (b) includes in the register each
14 travel retailer's federal tax identification number and the
15 name, address and contact information of each travel retailer
16 and an officer or person who directs or controls the travel
17 retailer's operations;

18 (c) maintains the register and updates
19 it at least once a year;

20 (d) submits the register to the
21 superintendent upon reasonable request; and

22 (e) certifies that each travel retailer
23 on the register complies with federal laws;

24 (3) the limited lines travel insurance
25 producer has selected a designated responsible agent who is

1 one of its licensed individual insurance producer employees
2 and who is responsible for the limited lines travel insurance
3 producer's compliance with the travel insurance laws and
4 rules of this state;

5 (4) the designated responsible agent,
6 president, secretary, treasurer and all other officers or
7 persons who direct or control the limited lines travel
8 insurance producer's insurance operations comply with the
9 fingerprinting requirements for insurance producers of the
10 resident state of the limited lines travel insurance
11 producer;

12 (5) the limited lines travel insurance
13 producer has paid all applicable insurance producer licensing
14 fees pursuant to state law; and

15 (6) the limited lines travel insurance
16 producer requires each employee and authorized representative
17 of the travel retailer whose duties include offering and
18 disseminating travel insurance to receive a program of
19 instruction or training that the superintendent may review
20 and that, at a minimum, contains instructions on the types of
21 insurance offered, ethical sales practices and required
22 disclosures to prospective customers.

23 C. A travel retailer that offers and disseminates
24 travel insurance shall make available to prospective
25 purchasers brochures or other written materials that:

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

4 (2) explain that the purchase of travel
5 insurance is not a prerequisite to the purchase of any other
6 product or service of the travel retailer; and

7 (3) explain that an unlicensed travel
8 retailer may provide general information about the insurance
9 offered by the travel retailer, including a description of
10 the coverage and price, but is not qualified or authorized to
11 answer technical questions about the terms and conditions of
12 the insurance offered by the travel retailer or to evaluate
13 the adequacy of the customer's existing insurance coverage.

14 D. A travel retailer's employee or authorized
15 representative who is not licensed as an insurance producer
16 shall not:

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

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

22 (3) make representation as being a licensed
23 insurer, licensed insurance producer or insurance expert.

24 E. A travel retailer and its employees and
25 authorized representatives whose insurance-related activities

1 are limited to the offering and disseminating of travel
2 insurance on behalf of and under the direction of a limited
3 lines travel insurance producer that complies with this
4 section may conduct and receive compensation for those
5 activities.

6 F. A travel retailer may place insurance under an
7 individual policy or under a group or master policy.

8 G. As the insurer designee, a limited lines travel
9 insurance producer shall be responsible for the acts of the
10 travel retailer and shall use reasonable means to ensure that
11 the travel retailer complies with the provisions of the
12 Travel Insurance Act."

13 SECTION 4. A new section of the New Mexico Insurance
14 Code is enacted to read:

15 "POLICY.--

16 A. Travel insurance shall be classified and filed
17 for purposes of rates and forms under an inland marine line
18 of insurance.

19 B. Travel insurance may be in the form of an
20 individual, a group or a blanket policy.

21 C. Eligibility and underwriting standards for
22 travel insurance may be developed and provided based on
23 travel protection plans designed for individual or identified
24 marketing or distribution channels; provided that those
25 standards also meet the state's underwriting standards for

1 inland marine insurance."

2 SECTION 5. A new section of the New Mexico Insurance
3 Code is enacted to read:

4 "TRAVEL PROTECTION PLANS.--A travel protection plan may
5 be offered for one price for the combined features that the
6 travel protection plan offers in this state if:

7 A. the travel protection plan:

8 (1) clearly discloses to the consumer, at or
9 prior to the time of purchase, whether the travel protection
10 plan includes travel insurance, travel assistance services or
11 cancellation fee waivers, as applicable; and

12 (2) provides information and an opportunity,
13 at or prior to the time of purchase, for the consumer to
14 obtain additional information regarding the features and
15 pricing of each; and

16 B. the fulfillment materials:

17 (1) describe and delineate the travel
18 insurance, travel assistance services and cancellation fee
19 waivers in the travel protection plan; and

20 (2) include the travel insurance disclosures
21 and contact information for persons providing travel
22 assistance services and cancellation fee waivers, as
23 applicable."

24 SECTION 6. A new section of the New Mexico Insurance
25 Code is enacted to read:

1 "SALES PRACTICES.--

2 A. All documents provided to consumers prior to
3 the purchase of travel insurance, including sales materials,
4 advertising materials and marketing materials, shall be
5 consistent with the travel insurance policy itself, including
6 forms, endorsements, policies, rate filings and certificates
7 of insurance.

8 B. For a travel insurance policy or certificate
9 that contains a preexisting condition exclusion, information
10 and an opportunity to learn more about the preexisting
11 condition exclusion shall be provided any time prior to the
12 time of purchase and in the coverage's fulfillment materials.

13 C. The fulfillment materials and information
14 described in this section shall be provided to a policyholder
15 or certificate holder as soon as practicable following the
16 purchase of a travel protection plan.

17 D. Fulfillment materials shall disclose whether
18 the travel insurance is primary or secondary to other
19 applicable coverage.

20 E. A policyholder or certificate holder may cancel
21 a policy or certificate in accordance with the provisions of
22 Section 59A-45-11 NMSA 1978."

23 SECTION 7. A new section of the New Mexico Insurance
24 Code is enacted to read:

25 "PERMISSIBLE PRACTICES.--

1 A. An insurer may market travel insurance directly
2 to a consumer through the insurer's website or through an
3 aggregator website so long as an accurate summary or short
4 description of coverage is provided and the consumer has
5 access to the full policy through electronic means.

6 B. When a consumer's destination jurisdiction
7 requires insurance, an insurer may require a consumer to
8 choose between the following options as a condition of
9 purchasing a trip or travel package:

10 (1) purchasing the coverage required by the
11 destination jurisdiction through the travel retailer or
12 limited lines travel insurance producer supplying the trip or
13 travel package; or

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

17 C. Permissible practices described in this section
18 shall not constitute an unfair claims practice pursuant to
19 the provisions of Section 59A-16-20 NMSA 1978."

20 SECTION 8. A new section of the New Mexico Insurance
21 Code is enacted to read:

22 "TRAVEL ADMINISTRATION.--

23 A. A person shall not act or represent the
24 person's self as a travel administrator for travel insurance
25 in this state unless that person:

1 (1) is a licensed property and casualty
2 insurance producer in this state for activities permitted
3 under that producer license;

4 (2) holds a valid managing general agent
5 license in this state; or

6 (3) holds a valid third-party administrator
7 license in this state.

8 B. An insurer shall be responsible for the acts of
9 a travel administrator administering travel insurance
10 underwritten by the insurer and shall ensure that the travel
11 administrator maintains all books and records relevant to the
12 insurer to be made available by the travel administrator to
13 the superintendent upon request."

14 SECTION 9. A new section of the New Mexico Insurance
15 Code is enacted to read:

16 "RULES.--The superintendent may promulgate rules to
17 implement the provisions of the Travel Insurance Act."

18 SECTION 10. Section 59A-16-20 NMSA 1978 (being Laws
19 1984, Chapter 127, Section 286, as amended) is amended to
20 read:

21 "59A-16-20. UNFAIR CLAIMS PRACTICES DEFINED AND
22 PROHIBITED.--Any of the following practices with respect to
23 claims, by an insurer or other person, knowingly committed or
24 performed with such frequency as to indicate a general
25 business practice are defined as unfair and deceptive

1 practices and are prohibited:

2 A. misrepresenting to insureds pertinent facts or
3 policy provisions relating to coverages at issue;

4 B. failing to acknowledge and act reasonably
5 promptly upon communications with respect to claims from
6 insureds arising under policies;

7 C. failing to adopt and implement reasonable
8 standards for the prompt investigation and processing of
9 insureds' claims arising under policies;

10 D. failing to affirm or deny coverage of claims of
11 insureds within a reasonable time after proof of loss
12 requirements under the policy have been completed and
13 submitted by the insured;

14 E. not attempting in good faith to effectuate
15 prompt, fair and equitable settlements of an insured's claims
16 in which liability has become reasonably clear;

17 F. failing to settle all catastrophic claims
18 within a ninety-day period after the assignment of a
19 catastrophic claim number when a catastrophic loss has been
20 declared;

21 G. compelling insureds to institute litigation to
22 recover amounts due under policy by offering substantially
23 less than the amounts ultimately recovered in actions brought
24 by such insureds when such insureds have made claims for
25 amounts reasonably similar to amounts ultimately recovered;

1 H. attempting to settle a claim by an insured for
2 less than the amount to which a reasonable person would have
3 believed the insured was entitled by reference to written or
4 printed advertising material accompanying or made part of an
5 application;

6 I. attempting to settle claims on the basis of an
7 application that was altered without notice to, or knowledge
8 or consent of, the insured, the insured's representative,
9 agent or broker;

10 J. failing, after payment of a claim, to inform
11 insureds or beneficiaries, upon request by them, of the
12 coverage under which payment has been made;

13 K. making known to insureds or claimants a
14 practice of insurer of appealing from arbitration awards in
15 favor of insureds or claimants for the purpose of compelling
16 them to accept settlements or compromises less than the
17 amount awarded in arbitration;

18 L. delaying the investigation or payment of claims
19 by requiring an insured, claimant or the physician of either
20 to submit a preliminary claim report and then requiring the
21 subsequent submission of formal proof of loss forms, both of
22 which submissions contain substantially the same information;

23 M. failing to settle an insured's claims promptly
24 where liability has become apparent under one portion of the
25 policy coverage in order to influence settlement under other

1 portions of the policy coverage;

2 N. failing to promptly provide an insured a
3 reasonable explanation of the basis relied on in the policy
4 in relation to the facts or applicable law for denial of a
5 claim or for the offer of a compromise settlement;

6 O. violating a provision of the Domestic Abuse
7 Insurance Protection Act;

8 P. marketing blanket travel insurance as free; or

9 Q. offering, soliciting or negotiating travel
10 insurance or a travel protection plan by using a negative
11 option or opt out that requires the consumer to take an
12 affirmative action to deselect coverage." _____

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