

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 85

As Amended by House Committee on Insurance

Brief*

SB 85, as amended, would enact the Kansas Travel Insurance Act (Act) as part of the Kansas Insurance Act. The bill would address the licensure and registration of limited lines travel insurance producers (travel insurance producers) and travel retailers, establish a premium tax for travel insurers, regulate the sale and marketing of travel insurance and travel protection plans, provide for travel administrators, and establish standards for travel insurance policies.

The bill would also make technical amendments and remove outdated statutory language.

The bill would be effective on and after January 1, 2024, and its publication in the *Kansas Register*.

Purpose and Application (New Section 2)

The purpose of the Act would be to promote the public welfare by establishing a comprehensive legal framework within which travel insurance may be sold.

The requirements of the Act would apply to travel insurance that covers Kansas residents that is sold, solicited, negotiated, or offered in the state and to policies and certificates delivered or issued for delivery in the state. The Act would not apply to cancellation fee waivers or travel assistance services, except as expressly provided in the Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

All applicable provisions of the insurance laws of the state would apply to travel insurance, but specific provisions of the Act would supersede any general provisions of law that would be applicable to travel insurance.

Definitions (New Section 3)

The bill would define terms used in the Act, including:

- “Aggregator site” would mean a website that provides access to information regarding insurance products for more than one insurer, including product and insurer information, for use in comparison shopping;
- “Blanket travel insurance” would mean a policy of travel insurance issued by 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;
- “Cancellation fee waiver” would mean 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 form of reimbursement. “Cancellation fee waiver” would not be considered insurance;
- “Commissioner” would mean the Commissioner of Insurance;
- “Delivery” would mean handing fulfillment materials to the policyholder or certificate holder or sending such fulfillment materials to the policyholder or certificate holder using United States mail or electronic means;

- “Eligible group” would mean two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship. An eligible group would include 13 various groups of similarly situated entities itemized in the bill;
- “Fulfillment materials” would mean documentation sent to the purchaser of a travel protection plan that confirms the purchase and provides details of the coverage and assistance of the travel protection plan;
- “Group travel insurance” would mean travel insurance issued to any eligible group;
- “Limited lines travel insurance producer” would mean a licensed managing general agent or third party administrator; a licensed insurance producer, including a limited lines producer; or a travel administrator;
- “Offer and disseminate” means providing general information including a description of the coverage and price, as well as processing of the application and collecting premiums;
- “Primary certificate holder” would mean an individual person who elects and purchases travel insurance under a group policy;
- “Primary policy holder” would mean an individual person who elects and purchases individual travel insurance;
- “Travel administrator” would mean a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on, Kansas residents in connection with travel insurance. Entities not considered to be

travel administrators would be as identified in the bill;

- “Travel assistance services” would mean non-insurance services for which the customer 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. The bill would list non-exclusive examples of travel assistance services;
- “Travel insurance” would mean insurance coverage for personal risks incidental to planned travel as outlined in the bill. The bill would also clarify that travel insurance would 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 product that would require a specific insurance producer license;
- “Travel protection plans” would mean plans that provide one or more of the following: travel insurance, travel assistance services, or cancellation fee waivers; and
- “Travel retailer” would mean 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.

Licensure Requirements (New Section 4)

The bill would provide for the licensure of limited lines travel insurance producers and the registration of travel retailers that may sell travel insurance under the license of a travel insurance producer. The Commissioner of Insurance

(Commissioner) would be authorized to issue a limited lines travel insurance producer license to an individual or entity that files with the Commissioner an application for such licensure in a form and manner prescribed by the Commissioner. Such travel insurance producer would be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer. The bill would require travel insurance producers or travel insurance retailers to be properly licensed or registered, respectively.

The bill would establish the conditions under which a travel retailer would be allowed to offer and disseminate travel insurance under a travel insurance producer business entity license. The conditions would include:

- The travel insurance producer or travel retailer provides certain information to purchasers of travel insurance;
- The travel insurance producer establishes a register of each travel retailer that offers travel insurance on the travel insurance producer's behalf and maintains and updates such register, submits the register to the Department upon reasonable request, and certifies the travel retailer complies with federal law pertaining to crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce;
- The travel insurance producer designates one of its employees, who is a licensed individual producer, as a designated responsible producer responsible for compliance with travel insurance laws and regulations applicable to the travel insurance producer and its registrants;
- The designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the travel insurance producer's insurance operations complies with the

fingerprinting requirements applicable to insurance producers in such producer's resident state;

- The travel insurance producer has paid all applicable licensing fees required by state law; and
- The travel insurance producer requires each employee and authorized representative of the travel insurance retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which is subject to review and approval at the discretion of the Commissioner. The content of such training material would be as provided for in the bill.

Any travel retailer offering or disseminating travel insurance would be required to make available to the prospective purchaser brochures or written materials containing specific information outlined in the bill.

The bill would prohibit a travel retailer employee or authorized representative, who is not a licensed insurance producer, from performing certain acts.

Despite any other provision in law, a travel retailer whose insurance-related activities and the activities of the employees and authorized representatives of such travel retailer would be limited to offering and disseminating travel insurance on behalf of and under the direction of a travel insurance producer that meets the conditions stated in the Act would be authorized to receive related compensation, upon registration by the travel insurance producer.

As the insurer's designee, the travel insurance producer would be responsible for the acts of the travel retailer and would be authorized to use reasonable means to ensure the travel retailer's compliance with this act.

Premium Tax (New Section 5)

The travel insurer would be required to pay premium tax on travel insurance premiums paid by entities identified in the bill. The travel insurer would also be required to document the state of residence or principal place of business of each policy holder or certificate holder and report as premium only the amount allowable to travel insurance.

Travel Protection Plan Requirements (New Section 6)

The bill would provide that travel protection plans may combine the features such plans offer in the state for one price if:

- Clear disclosure is provided to the consumer at or prior to the time of purchase regarding the content of such plan, and an opportunity is provided to the consumer at or prior to the time of purchase regarding the features and pricing of each plan; and
- The fulfillment materials meet the requirements outlined in the bill.

Sales and Marketing Requirements (Section 7)

Each person offering travel insurance to Kansas residents would be subject to the Unfair Trade Practices Law, except as otherwise provided in this section of the bill. If a conflict arose between the Act and the Kansas Insurance Act regarding the sale and marketing of travel insurance and travel protections plans, the provisions of the Act would control. The bill would establish that offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy would be an unfair practice under the Unfair Trade Practices Law.

The bill would require each person who offers travel insurance policies or travel protection plans to comply with the following:

- All documents provided to a consumer prior to the purchase of travel insurance must be consistent with the travel insurance policy itself;
- For each travel insurance policy or certificate containing pre-existing condition exclusions, information and an opportunity to learn more about such exclusions must be provided to the consumer prior to the time of purchase and in the coverage's fulfillment materials;
- Fulfillment information and the information required to be provided to purchasers of travel insurance by a travel insurance producer or travel retailer in Section 4(b)(1) of the bill must be provided to a policy holder or certificate holder as soon as practicable following the purchase of a travel insurance protection plan. Unless the policy holder or certificate holder has started a covered trip or filed a claim under the travel insurance coverage, such policyholder or certificate holder would be allowed to cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase until at least:
 - 15 days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or
 - 10 days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail;
- The company must disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage; and

- Where travel insurance is marketed directly to the consumer through the insurer's website or by others through an aggregator site, it would not be an unfair trade practice or other violation of law when an accurate summary or short description of coverage was provided if the consumer has access to the full provisions of the policy through electronic means.

No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may do so by using a negative option, or opt out, that would require a consumer to take an affirmative action to deselect coverage. Marketing blanket travel insurance coverage as free would be an unfair trade practice.

If the jurisdiction of a consumer's destination requires insurance coverage, it would not be an unfair trade practice to require such consumer, as a condition of purchasing a trip or travel package, to choose between purchasing the required coverage through the travel retailer or travel insurance producer supplying the trip or travel package, or the consumer agreeing to obtain and provide proof of coverage that meets the jurisdiction's requirements prior to departure.

Travel Administrator Conditions (Section 8)

The bill would prohibit a person from acting or representing themselves as a travel administrator for travel insurance in Kansas unless he or she is a licensed property and casualty insurance producer in Kansas for activities permitted under that producer license or holds a valid managing general agent license or a valid third-party administrator license in Kansas.

The bill would require that an insurer be responsible for the acts of a travel administrator that administers travel insurance underwritten by the insurer and ensure the travel administrator maintains all books and records relevant to the

insurer and makes such books and records available to the Commissioner upon request.

Travel Insurance Classification and Filing (New Section 9)

Despite any other Kansas Insurance Act provision, the bill would require travel insurance to be classified and filed for purposes of rates and forms under an inland marine line of insurance [*Note: Inland marine insurance covers products being transported over land or temporarily housed by a third party*]. Travel insurance could be in the form of an individual, group, or blanket policy. Eligibility and underwriting standards for travel insurance could be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, provided those standards also meet Kansas underwriting standards for inland marine insurance.

Rules and Regulations Authority (New Section 10)

The bill would authorize the Commissioner to adopt rules and regulations to implement and enforce the provisions of this act.

Categorization of Travel Insurance (Section 11)

The bill would amend the definition of travel insurance, as one of the lines of authority for which an insurance agent may qualify for licensure, to add the following personal risks incidental to planned travel that would be covered: emergency evacuations, repatriation of remains, or any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Commissioner.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the United States Travel Insurance Association (UStiA).

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing on February 7, 2023, a representative of UStiA testified as a **proponent** of the bill, stating the bill creates a framework specifically for the regulation of travel insurance. The representative noted Kansas statutes specifically address the limited line licensing of travel insurance agents. The bill codifies requirements for the sale of travel insurance, consistent with established industry practice and nearly identical model acts adopted by the National Council of Insurance Legislators and the National Association of Insurance Commissioners.

No other testimony was provided.

House Committee on Insurance

In the House Committee hearing, the UStiA representative, in **proponent** testimony, addressed the regulatory framework created by the bill and provided historical context to the growth and interest in travel insurance.

The House Committee amended the bill to modify its effective date to include upon publication in the *Kansas Register* (the bill, as amended, would also take effect on January 1, 2024).

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department states any additional expenditures created by enactment of the bill would be absorbed within existing resources because the agency already reviews travel insurance. The Office of the State Bank Commissioner states the bill would have no fiscal effect because currently no state banks operate as a financial subsidiary travel agency. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Insurance; Kansas Travel Insurance Act; licensure and registration; limited lines travel insurance; travel protection plans; limited lines travel insurance producers; travel retailers; travel administrators