
OLR Bill Analysis

HB 5411

AN ACT CONCERNING TRAVEL INSURANCE.

SUMMARY

This bill adds new requirements for travel insurers, travel insurance producers, and travel retailers (i.e., individuals and businesses who underwrite, sell, offer, or market travel insurance). Generally, travel insurance provides coverage for certain travel related losses, such as trip cancellation or lost baggage. Among other things, the bill:

1. establishes several new consumer protections and disclosure requirements, such as prohibiting selling travel insurance in an “opt-out” manner, providing a mandatory cancellation period, and requiring “travel administrators” (i.e., people or businesses underwriting travel insurance, collecting premiums, or settling claims) to be licensed in Connecticut;
2. explicitly requires insurers to pay the state’s premium tax on travel insurance premiums they collect, conforming to current practice, and describes how insurers should allocate this tax if they are subject to multiple taxing jurisdictions;
3. authorizes selling travel protection plans (i.e., a plan that includes travel insurance, travel assistance services, or cancellation waivers); and
4. increases the insurance commissioner’s enforcement powers, including for non-travel insurance related violations, and specifies certain actions that violate the Connecticut Unfair Insurance Practice Act (CUIPA, see BACKGROUND) or the Connecticut Unfair Trade Practices Act (CUTPA, see BACKGROUND).

The bill also (1) exempts travel administrators and their employees

from a provision in existing law that prohibits unlicensed individuals from adjusting claims; and (2) requires the commissioner to adopt implementing regulations for the bill's provisions.

EFFECTIVE DATE: October 1, 2022

§§ 1, 2, 4 & 12 — TRAVEL INSURANCE REGULATORY STRUCTURE

The bill expands the definition of “travel insurance” to include coverage for event or travel cancellations or interruptions, the repatriation of remains, emergency evacuation, and any other travel related obligation that the commissioner determines by regulations. Under current law and the bill, travel insurance also includes coverage for a trip cancellation or interruption; lost baggage or personal property; damaged rental vehicles or accommodations; or if the insured suffers a sickness, accident, disability, or death during travel.

The bill also specifies that the following products are not travel insurance:

1. major medical plans providing comprehensive protection for travelers with trips lasting more than six months, including plans covering expatriate travelers working or living outside the U.S.;
2. any products requiring a specific insurance producer license; and
3. a cancellation fee waiver.

A “cancellation fee waiver” is a contractual agreement between a travel services supplier and a consumer to waive some or all of a nonrefundable cancellation fee associated with a travel contract.

The bill retains almost all the existing regulatory structure for travel insurance. As under current law, the bill:

1. requires individuals or businesses to apply to the insurance commissioner for permission to act as a limited lines travel insurance producer (the bill terms this “authorization,” while current law describes it as a “license,” but the application, renewal, and regulatory structure is the same);

2. imposes certain restrictions on travel retailers (i.e., businesses making, arranging, or offering travel services), including that they be designated by a licensed (or, under the bill, authorized) producer if they do not employ one or are not licensed to sell insurance in Connecticut;
3. establishes nearly identical criteria for the insurance commissioner to approve or deny applications;
4. establishes identical registration requirements for limited lines travel producers that are businesses, including the same employee education and consumer disclosure requirements; and
5. allows, under identical circumstances as current law, unlicensed individuals or businesses to offer travel insurance.

However, the bill (1) deems any insurance producer licensed for a major line (e.g., life, health, or property and casualty insurance) as also authorized to sell, solicit, and negotiate travel insurance in Connecticut and (2) specifies that any insurance producer licensed in Connecticut for property and casualty insurance lines is not required to obtain authorization to sell, solicit, or negotiate travel insurance through a licensed insurer.

Under the bill, authorizations to act as a limited lines travel insurance producer to sell or offer travel insurance must be renewed annually. Existing law requires licenses to be renewed biannually (CGS § 38a-784). The bill maintains the existing \$650 authorization renewal fee that current law imposes on license renewals. However, it requires this fee annually.

§ 3 — FILING TRAVEL INSURANCE POLICIES WITH THE DEPARTMENT

Generally, state law requires all types of insurance policies to be filed with the insurance department before use. The bill requires travel insurance policies to be filed as a type of inland marine insurance, conforming to current practice. But it allows these policies to be filed as accident and health insurance if they cover sickness, accident, disability,

or death occurring during a trip or travel, either exclusively or in conjunction with related coverages for evacuation, repatriation of remains, or incidental limited property and casualty benefits (e.g., lost luggage).

The bill allows the commissioner to prescribe eligibility and underwriting standards for travel insurance that (1) are based on travel protection plans designed for individual or identified marketing or distribution channels and (2) meet Connecticut's inland marine underwriting standards.

A "travel protection plan" is a plan that includes travel insurance, travel assistance services, or a cancellation fee waiver. "Travel assistance services" are noninsurance services including:

1. security advisories, destination information, and vaccine and immunization information services;
2. travel reservation services and entertainment, activity, and event planning;
3. translation assistance and emergency messaging;
4. international legal and medical referrals and medical case monitoring;
5. transportation arrangement coordination;
6. emergency cash transfer and medical prescription replacement assistance;
7. passport, lost luggage, and other travel assistance; and
8. concierge services and any other service furnished in connection with the trip or travel.

§ 5 — CONSUMER PROTECTIONS AND DISCLOSURES

Consistent with Insurance Policy

The bill requires that all documents provided to a consumer before

purchasing a travel insurance policy, including sales, advertising, and marketing materials, be consistent with the travel insurance policy including its forms, endorsements, rate filings, and certificates of insurance.

Additionally, the fulfillment materials for a travel protection plan, and the documents about any included travel insurance coverage, must disclose whether the travel protection plan is primary or secondary to other coverage.

Preexisting Conditions

The bill establishes additional disclosures for travel insurance policies or certificates that contain preexisting condition exclusions. In these cases, information about the exclusion must be provided to the consumer along with an opportunity to learn more. Additionally, the exclusion must be included in the fulfillment materials for any travel protection plan that includes travel insurance.

Specific Disclosure Documents

The bill requires that the following be provided to a consumer purchasing a travel protection plan as soon as practicable after the purchase:

1. the travel protection plan fulfillment materials;
2. a description or copy of the material terms of any included travel insurance coverage, including how to file a claim or review or cancel the coverage; and
3. the insurer issuing the travel insurance policy's identity and contact information.

Right to Cancel

The bill allows a consumer to cancel travel insurance coverage for a full refund, as long as they have not departed on their trip or filed a claim, until at least (1) 15 days after the fulfillment materials are delivered by mail or (2) 10 days after they are delivered any other way.

Opt-Out Selling Prohibited

The bill prohibits offering, soliciting, or negotiating travel insurance or travel protection plans in an “opt-out” manner (i.e., in which someone would need to deselect or take other affirmative action to not purchase insurance.)

§ 6 — TRAVEL ADMINISTRATORS

Under the bill, an insurer is responsible for the conduct of any travel administrators that sell policies it underwrites, and must ensure that they make the insurer’s books and records available to the commissioner on request. A “travel administrator” is a person who, directly or indirectly (1) underwrites travel insurance; (2) collects travel insurance charges, collateral, or premiums; or (3) settles travel insurance claims for Connecticut residents. The bill prohibits any person from acting or holding themselves out to be a travel administrator in Connecticut unless they are a:

1. Connecticut-licensed property and casualty insurance producer,
2. managing general agent that is a licensed insurance producer and holds an appointment by a Connecticut insurer, or
3. licensed third-party administrator (TPA).

However, under the bill, travel administrators do not include the following:

1. anyone working for a travel administrator, to the extent the administrator supervises and controls their activities;
2. licensed insurance producers selling insurance or engaged in claims-related activities within the scope of their license;
3. designated travel retailers;
4. public adjusters or a lawyer settling a client’s claim; or
5. business entities affiliated with a licensed insurer and administering their direct and assumed travel insurance

business.

It is unclear to whom the travel administrator provisions apply. As described above, the bill requires travel administrators to be licensed casualty and property producers, managing general agents who are licensed producers, or TPAs. But the bill also excludes from the definition of “travel administrator” licensed insurance producers selling insurance or engaged in claims-related activities within the scope of their license.

§ 7 — TRAVEL PROTECTION PLANS

The bill authorizes selling “travel protection plans,” which are travel plans that include travel insurance, travel assistance services (e.g., travel reservations, entertainment, translation assistance, medical prescription replacement, and destination vaccination information) or cancellation fee waivers.

Under the bill, a travel protection plan may be offered to a Connecticut consumer at a single price reflecting its combined features if it discloses to the consumer, at or before purchase, that:

1. it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and
2. they may obtain additional information and individual pricing and features for these services.

It must also provide an opportunity, at or before purchase, to obtain this additional information.

Fulfillment Materials

Additionally, travel protection plan fulfillment materials must, if applicable:

1. describe and delineate the travel insurance, travel assistance services and cancellation fee waivers, and provide the contact information of anyone providing the assistance or waiver and
2. include any travel insurance coverage disclosures the bill

requires.

§ 8 — PREMIUMS TAX

The bill explicitly subjects insurers writing travel insurance to the applicable premium tax under state law, conforming with current practice. It requires domestic, foreign, and alien insurers to pay the same 1.5% premium tax on travel insurance premiums that existing law requires they pay on certain other policies protecting Connecticut risks. The bill specifies that the travel insurance premiums are subject to the tax when they are paid by:

1. an individual travel insurance policy's primary policyholder, if he or she lives in Connecticut;
2. a group travel insurance policy's primary certificate holder, if he or she lives in Connecticut; or
3. a blanket travel insurance policyholder (i.e., group travel insurance policy issued to eligible groups), if they are a Connecticut resident and maintain their principal place of business (or that of their affiliate or subsidiary) in Connecticut.

Under the bill, an "eligible group" is any two or more people engaged in common enterprise, or that have an economic, educational, or social affinity or relationship. These include vacation property owners, schools, employers, sports teams, camps, religious groups, and any other group the commissioner determines is in the public interest to be able to secure a blanket travel insurance policy.

Under the bill, a domestic, alien, or foreign insurer writing a blanket travel insurance policy that operates under rules across multiple taxing jurisdictions that allow it to allocate premiums across jurisdictions on an apportioned basis and in a reasonable and equitable manner may subject its tax liability to the same premium allocation.

The bill requires insurers subject to the tax to:

1. document the state in which each primary policy or certificate

holder, policy holder, affiliate, or subsidiary maintain their primary residence or principal place of business (or that of their affiliate or subsidiary), as applicable, and

2. report (presumably to the insurance commissioner) as premium only the amount allocable to travel insurance.

§§ 9, 10 & 14 — TRAVEL INSURANCE ENFORCEMENT

The bill allows the commissioner to suspend, revoke, or refuse to issue or renew an authorization, or to prohibit a travel retailer from acting as a designated travel retailer. He may also impose a civil penalty in accordance with existing insurance statutes. (By law, the penalty for violating an insurance law for which no other penalty is prescribed is a fine of up to \$15,000 (CGS § 38a-2).)

The bill allows him to take these actions against a limited lines travel insurance producer that:

1. provides incorrect, misleading, incomplete, or materially untrue information on an authorization application;
2. obtains or attempts to obtain authorization through misrepresentation or fraud; or
3. has their authorization denied, suspended, or revoked in another jurisdiction.

The commissioner may also take this enforcement action against limited lines travel insurance producers and travel retailers that:

1. violate any insurance law or any of the commissioner's regulations, subpoenas, or orders, or those of another state's insurance commissioner;
2. improperly withhold, misappropriate, or convert money or property received in the course of business;
3. intentionally misrepresent travel insurance coverage terms, including in applications;

4. have been convicted of a felony;
5. admit to or are found to have committed an insurance unfair trade practice or fraud;
6. use fraudulent, coercive, or dishonest practices, or demonstrate incompetence, untrustworthiness, or financial irresponsibility when conducting business in Connecticut or elsewhere;
7. forge another's name to a travel insurance coverage application or a related document;
8. fail to comply with an administrative or court ordered child-support order; or
9. fail to pay state income tax or comply with an administrative or court order to do so.

Authorization Denials

The commissioner must notify an applicant or producer about why he denies an application or renewal. The applicant or producer may demand a hearing in writing within 30 days of the notice, which the commissioner must hold within 20 days after receiving the request. He must do so under existing law prescribing hearings and appeals to the commissioner. (Existing law requires the commissioner to hold the hearing within 30 days of a request. Presumably, the bill's 20-day limit applies with regard to travel insurance decisions and existing law governing insurance hearings applies with regard to other requirements not otherwise established under the bill (CGS § 38a-19).)

Enforcement Specific to Business Entities

The bill allows the commissioner to suspend, revoke, or refuse a business entity's authority to act as a limited lines travel insurance producer or designated travel retailer in Connecticut if the entity fails to act on knowledge that its employees or authorized representatives are violating the bill's provisions. Specifically, the commissioner may act if he finds, after a hearing, that an individual employee's or authorized representative's violation was known or should have been known by

one of the business' partners, officers or managers and (1) the violation was not reported to the commissioner and (2) corrective action was not taken.

CUIPA and CUTPA Violations

Under current law, limited lines travel insurance producers who violate licensure and disclosure provisions are subject to penalties under CUIPA and travel retailers who violate them are subject to penalties under CUTPA. The bill instead makes the following violations enforceable under CUIPA:

1. any applicable violation of the bill's provisions relating to authorization, disclosures, travel protection plans, or enforcement by a limited lines travel insurance producer;
2. any applicable violation of the bill's travel administrator and premium tax provisions by an insurer;
3. offering or selling a travel insurance policy in Connecticut that is never required to pay a claim; or
4. representing to a consumer that coverage under a blanket travel insurance policy is free of charge.

The bill also makes the following actions CUTPA violations:

1. any applicable violation of the bill's provisions relating to authorization, disclosures, travel protection plans, or enforcement by a travel retailer or designated travel retailer; and
2. any applicable violation of the bill's travel administrator provisions, by a travel administrator.

Exemptions

The bill exempts certain actions from the CUIPA and CUTPA provisions described above. Specifically, if a consumer's travel destination requires insurance coverage, a travel insurance producer or retailer may require the consumer to choose one of the following options as a precondition to purchasing a trip or travel package:

1. purchasing the coverage the destination requires through the designated travel retailer or limited lines insurance producer offering the trip or travel package; or
2. agreeing to obtain and provide proof of necessary coverage before traveling.

It also exempts offering travel insurance directly marketed to a consumer through an insurer's website or aggregator website (i.e., a website providing information on insurance products from multiple insurers), as long as the consumer can access all the applicable provisions and an accurate summary of the coverage on the website.

§ 9 — BROAD INSURANCE ENFORCEMENT

Under the bill, the commissioner retains his authority to enforce the provisions of, and impose any penalty or remedy authorized by, existing insurance law. Specifically, the bill allows him to do so against any person under investigation for, or charged with, an insurance law violation even if their authorization, designation, or registration has been surrendered or lapsed by law.

BACKGROUND

Connecticut Unfair Insurance Practices Act (CUIPA)

The law prohibits engaging in unfair or deceptive acts or practices in the business of insurance. It authorizes the insurance commissioner to conduct investigations and hearings, issue cease and desist orders, impose fines, revoke or suspend licenses, and order restitution for per se violations (i.e., violations specifically listed in statute). The law also allows the commissioner to ask the attorney general to seek injunctive relief in Superior Court if he believes someone is engaging in other unfair or deceptive acts not specifically defined in statute.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if the violation was knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in lieu of a license suspension or revocation, for violating a cease-and-desist order.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease-and-desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 17 Nay 0 (03/22/2022)