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Bill Analysis

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Primary Sponsor: Sen. Wilson

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SUMMARY

- Requires travel insurers to pay tax on travel insurance premiums.
- Makes all persons authorized to sell travel insurance subject to the Unfair and Deceptive Practices Insurance Law.
- Imposes new requirements on the materials that must be provided to consumers when purchasing travel insurance.
- Specifies when a policy of travel insurance may be cancelled without penalty, allowing 15 days for cancellation if fulfillment materials are delivered by postal mail and ten days for all other methods of delivery.
- Adds oversight of travel administrators to the Limited Lines Travel Insurance Agents Law.
- Designates travel insurance as inland marine insurance for purposes of rates and forms.

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DETAILED ANALYSIS

Overview

The bill amends the Limited Lines Travel Insurance Agents Law (LLTIAL). Note that though the bill appears to repeal a substantial portion of existing law and enact almost entirely new law, the majority of the provisions contained in the bill are simply moved from existing sections. This reorganization was done to better accommodate the changes made by the bill. This analysis details exactly which provisions are removed and newly created. It does not indicate which provisions were reorganized.

Travel retailers

Currently, the LLTIAL allows nonlicensed travel retailers to sell travel insurance in conjunction with a licensed agent if certain requirements are met. One of those requirements is that a licensed agent must create a register of the travel retailers selling insurance on the agent's behalf. The bill requires the travel insurance agent to update the register as often as necessary to maintain its accuracy. Furthermore, it requires the register to include the name, address, and contact information of the travel retailer and of an officer or person who directs or controls the travel retailer's operations and the federal tax ID number of the travel retailer.

The bill explicitly authorizes the Superintendent of Insurance to apply the grounds for license suspension, license revocation, and the imposition of penalties that pertain to resident insurance agents to limited lines travel insurance agents and travel retailers.¹

Current law requires a travel retailer to sell travel insurance only in conjunction with the making, arranging, or offering of travel services. The bill removes this requirement.²

Current law requires that travel retailers offering or selling travel insurance provide materials to consumers containing the material terms of the policy, a description of how to file a claim or cancel the policy, and the contact information of the insurer and licensed agent issuing the policy. The bill specifies that these materials are to be approved by the licensed agent under which the travel retailer is selling travel insurance and must be provided to a policyholder or certificate holder as soon as practicable after the purchase of a travel protection plan.³

¹ R.C. 3905.065(C).

² R.C. 3905.064(E)(5) and (G)(2)(d).

³ R.C. 3905.065(H)(3) and 3905.066(A)(1) and (B).

Single price for multiple features

The bill allows individuals authorized to sell travel insurance to offer and sell a travel protection plan that includes several features for one price if all of the following are met:

- At or prior to the time of purchase, the travel protection plan does both of the following:
 - Clearly discloses to the consumer that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable;
 - Provides information and an opportunity for the consumer to obtain additional information regarding the features and pricing of each of the combined features.
- The fulfillment materials provided to the consumer include all of the following, as applicable:
 - A description and delineation of the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan;
 - The travel insurance disclosures;
 - The contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.⁴

Accordingly, the current law requirement that all costs paid or charged to a customer for the purchase of insurance be separately itemized on the customer's bill is repealed.⁵

Materials

The bill requires all documents provided to consumers prior to the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, to be consistent with the travel insurance policy itself, including forms, endorsements, policies, rate filings, and certificates of insurance.

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 to consumers any time prior to the time of purchase and also in the coverage's fulfillment materials.

Finally, a travel insurer is required to disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.⁶

⁴ R.C. 3905.065(F).

⁵ R.C. 3905.064(G)(3)(b).

⁶ R.C. 3905.065(H).

Cancellation

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 travel insurance policy or certificate for a full refund of the travel protection plan price in accordance with the following:

- If the travel protection plan's fulfillment materials are delivered by postal mail, the policyholder or certificate holder may cancel within 15 days following the date of delivery.
- If the travel protection plan's fulfillment materials are delivered by means other than postal mail, the policyholder or certificate holder may cancel within ten days following the date of delivery.

For purposes of this provision, "delivery" includes 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.⁷

Unfair and deceptive practices

The bill specifies that all persons offering or selling travel insurance are subject to the Unfair and Deceptive Practices Insurance Law. Possible sanctions for violating these provisions include suspending or revoking the insurer's license (or, for travel retailers, the authorization to sell travel insurance), being required to make restitution, or a civil penalty.⁸

Two practices are explicitly designated as being unfair and deceptive practices:

- Offering or selling a travel insurance policy that could never result in payment of any claims;
- Marketing blanket travel insurance as free.

Beyond the penalties for engaging in an unfair or deceptive practice, violations of these prohibitions are subject to the penalties imposed on individual insurance agents, which includes: suspension, revocation, or refusal to issue or renew a license, a civil fine, or the imposition of any other sanction or sanctions authorized under the Insurance Producers Licensing Act.⁹

The bill explicitly designates certain actions as *not* being an unfair or deceptive practice. The act of marketing travel insurance directly to a consumer through a travel insurer's website or through an aggregator site is not an unfair and deceptive act or practice if both of the following conditions are met:

- An accurate summary or short description of coverage is provided on the website;

⁷ R.C. 3905.065(I).

⁸ R.C. 3901.21 and 3901.22, not in the bill.

⁹ R.C. 3905.067(A) and (C); R.C. 3905.14, not in the bill.

- The consumer has access to the full provisions of the policy through electronic means.

Furthermore, where a consumer's destination jurisdiction requires insurance coverage, it is not a deceptive practice to require the consumer to choose between the following options as a condition of purchasing a trip or travel package:

- Purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance agent supplying the trip or travel package;
- Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.¹⁰

Premium tax

The bill requires travel insurers to pay taxes on premiums it collects from any of the following:

- An individual primary policyholder who is an Ohio resident;
- A primary certificate holder who is an Ohio resident who elects coverage under a group travel insurance policy;
- A blanket travel insurance policyholder, when the policy covers eligible blanket group members, that is a resident of, or has its principal place of business in, this state, including when the policy covers an affiliate or subsidiary, regardless of the location of the affiliate or subsidiary.

Such payments are to be 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.

In order to accommodate the collection of taxes, a travel insurer is required to do all of the following:

- Document the state of residence or principal place of business of the policyholder or certificate holder;
- Report as a premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

For purposes of taxation, neither of the following are considered to be insurance:

- A cancellation fee waiver;
- Travel assistance services.

Travel assistance services are noninsurance services in which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in

¹⁰ R.C. 3901.067(D) and (E).

transfer or shifting of risk that would constitute the business of insurance. "Travel assistance services" include all of the following:

- 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;
- Any other service that is furnished in connection with planned travel.

The one exception to this taxation requirement is surplus brokers. Surplus insurance brokers provide insurance for risks that are otherwise uninsurable in this state. Under the bill, surplus lines brokers selling travel insurance pay taxes as they normally would and not in accordance with the requirements of the bill.

With regard to an automobile or truck rental or leasing company obtaining travel insurance coverage for a group of individuals who may become renters, lessees, or passengers, the common carrier, operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company, is designated as being the policyholder. In other words, insurers pay tax in accordance with the location of the rental or leasing company and not in accordance with the location of the group of individuals who are renters, passengers, etc.¹¹

¹¹ R.C. 3905.064(L) and (M)(2) and 3905.068.

Travel administrators

The bill adds oversight for travel administrators, which Ohio law is currently silent on. The bill prohibits any person from acting or portraying themselves as a travel administrator for travel insurance unless that person holds one of the following licenses in good standing in this state:

- Property and casualty license;
- Managing general agent license;
- Third-party administrator license.

A travel insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the travel insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the travel insurer. The travel administrator must make such books and records available to the Superintendent of Insurance upon request.¹²

Inland marine

Except as provided below, travel insurance is to be classified and filed, for purposes of rates and forms, under an inland marine line of insurance. 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 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, provided those standards also meet the state's underwriting standards for inland marine.¹³

Miscellaneous

The bill adds the following miscellaneous provisions to the LLTIAL:

- Expands the existing definition of travel insurance to include covering all of the following types of risk:
 - Emergency evacuation;
 - Repatriation of remains;

¹² R.C. 3905.069.

¹³ R.C. 3905.0610.

- Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the Superintendent of Insurance.¹⁴
- Specifies that in the event of a conflict between the amended LLTIAL and another provision of insurance law regarding the sale and marketing of travel insurance and travel protection plans, the LLTIAL is to control.¹⁵
- Prohibits any person offering, selling, or negotiating travel insurance or travel protection from doing so by using a negative option or opt out when the consumer purchases a trip, including requiring a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form.¹⁶
- Authorizes the Superintendent to adopt rules as necessary to implement the LLTIAL.¹⁷

The bill also amends the existing LLTIAL in the following ways:

- Current law allows travel insurance to be provided under an individual or group insurance policy; the bill authorizes travel insurance to also be provided under a blanket policy.¹⁸
- Current law requires a travel insurance agent to designate an agent employee to be responsible for the agent's compliance with the LLTIAL. This responsible agent is required to submit fingerprints for the purpose of conducting a background check. The bill expands this requirement to include a president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance agent's insurance operations.¹⁹

The effective date of the bill would be 90 days after the bill is enacted.²⁰

Definitions

The bill defines the following terms:

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.

¹⁴ R.C. 3905.064(M)(1).

¹⁵ R.C. 3905.065(G).

¹⁶ R.C. 3905.065(J).

¹⁷ R.C. 3905.0611.

¹⁸ R.C. 3905.065(E).

¹⁹ R.C. 3905.051(A)(1) and 3905.066(A)(2)(b).

²⁰ Section 3.

Blanket travel insurance means 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.

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.

Eligible group means, solely for the purposes of travel insurance, two or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship. "Eligible group" includes any of the following:

- Any entity engaged in the business of providing travel or travel services, including all of the following:
 - Tour operators;
 - Lodging providers;
 - Vacation property owners;
 - Hotels and resorts;
 - Travel clubs;
 - Travel agencies;
 - Property managers;
 - Cultural exchange programs;
 - Common carriers or the operator, owner, or lessor of a means of transportation of passengers, including airlines, cruise lines, railroads, steamship companies, and public bus carriers that, with regard to any particular travel or type of travel or travelers, subjects all members or customers of the group to a common exposure to risk attendant to such travel;
- Any college, school, or other institution of learning, obtaining travel insurance covering students, teachers, employees, or volunteers;
- Any employer obtaining travel insurance coverage for any group of employees, volunteers, contractors, board of directors, dependents, or guests;
- Any sports team, camp, or sponsor thereof, obtaining travel insurance coverage for participants, members, campers, employees, officials, supervisors, or volunteers;
- Any religious, charitable, recreational, educational, or civic organization, or branch thereof, obtaining travel insurance coverage for any group of members, participants, or volunteers;

- Any 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 account holders, credit card holders, debtors, guarantors, or purchasers;
- Any incorporated or unincorporated association, including labor unions, that have a common interest, constitution, and bylaws, and that are organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association covering its members;
- Any trust or the trustees of a fund established, created, or maintained for the benefit of and covering obtaining travel insurance coverage for members, employees, or customers of one or more associations meeting the related requirements, subject to the Superintendent's permitting the use of a trust and the state's premium tax provisions;
- Any entertainment production company obtaining travel insurance coverage for any group of participants, volunteers, audience members, contestants, or workers;
- Any volunteer fire department, ambulance, rescue, police, or court, or any first aid, civil defense, or other such volunteer group;
- Preschools, day-care institutions for children or adults, and senior citizen clubs;
- Any automobile or truck rental or leasing company obtaining travel insurance coverage for a group of individuals who may become renters, lessees, or passengers, defined by their travel status, on the rented or leased vehicles;
- Any other group whose members the Superintendent has determined are engaged in a common enterprise, or that have an economic, educational, or social affinity or relationship, if the Superintendent also determines that issuance of the travel insurance policy would not be contrary to the public interest.

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 assistance details.

Group travel insurance means travel insurance issued to any eligible group.

Offer and sell means providing general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

Primary certificate holder means an individual person who elects and purchases travel insurance under a group policy.

Primary policyholder means an individual person who elects and purchases individual travel insurance.

Travel administrator means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on Ohio residents, in connection with travel insurance. The following persons are not to be considered a travel

administrator if they engage in no other activities that would cause them to be considered a travel administrator:

- 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;
- An insurance agent selling insurance or engaged in administrative and claims-related activities within the scope of the agent's license;
- A travel retailer offering and selling travel insurance and registered under the license of a limited-lines travel insurance;
- An individual adjusting or settling claims in the normal course of that individual's practice or employment as an attorney at law and who does not collect charges or premiums in connection with insurance coverage;
- A business entity affiliated with a licensed insurer while that insurer is acting as a travel administrator for the direct and assumed insurance business of a separate affiliated insurer.

Travel insurer means an insurer that provides travel insurance.

Travel protection plan means a plan that provides one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.²¹

HISTORY

Action	Date
Introduced	10-19-21

S0256-I-134/ec

²¹ R.C. 3905.064.