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## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

### Travel Insurance Model Act

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*Originally adopted by the NCOIL Property-Casualty Insurance Committee on November 16, 2012, and Executive Committee on November 18, 2012. **Sponsored by Rep. Robert Damron (KY)***

*Updated version adopted by the NCOIL Property-Casualty Committee and Executive Committee on March 5, 2017. Updated version amended by the NCOIL Property and Casualty Committee on July 14, 2017 and approved by the NCOIL Executive Committee on July 15, 2017. **Amendments sponsored by Rep. Matt Lehman (IN)***

**Drafting Note:** This Travel Insurance Model Act is intended to be enacted as a standalone chapter of the insurance code with appropriate cross references to seamlessly incorporate provisions such as licensing and premium tax into the adopting state's existing statutory structure. Alternatively, sections such as the licensing and premium tax provisions that may fit into other sections of an adopting state's statutory structure could be pulled from the Model and incorporated into the sections of the adopting state's insurance code that address those topics.

#### **Section 1. Short Title**

This Act shall be known as the "Travel Insurance Model Act."

#### **Section 2. Scope and Purposes**

A. The purpose of this Act is to promote the public welfare by creating a comprehensive legal framework within which Travel Insurance may be sold in this state through the establishment of clear regulatory obligations for those involved in the development and distribution of Travel Insurance, preserving the unique aspects of Travel Protection Plans, and protecting and benefiting consumers by encouraging fair and effective competition within the market.

B. The requirements of this Act shall apply to Travel Insurance, whether or not provided as part of a Travel Protection Plan, where policies and certificates are delivered or issued for delivery in this state. It shall not be applicable to Cancellation Fee Waivers and Travel Assistance Services, except as expressly provided herein.

#### **Section 3. Definitions**

As used in this Act:

“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.

“Blanket Travel Insurance” means Travel Insurance issued to any Eligible Group providing coverage for specified circumstances and specific classes of persons defined in the policy and issued to a policyholder and not by specifically naming the persons covered, by certificate or otherwise, although a statement of the coverage provided may be given, or required by policy to be given, to eligible persons.

“Cancellation Fee Waiver” means a contractual agreement between a supplier of travel arrangements or travel services and its customer to waive some or all of the non-refundable cancellation fee or penalty provisions of the underlying travel contract between the supplier and customer. A Cancellation Fee Waiver is not insurance.

"Commissioner" means the commissioner of insurance of this state.

**Drafting Note:** Insert the title of the state’s chief insurance regulatory official wherever the term "Commissioner" appears.

“Eligible Group” means any of the following:

- a. Any 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, property managers, cultural exchange programs, and common carriers of passengers, including but not limited to airlines, cruise lines, railroads, steamship companies, and public bus carriers;
- b. Any college, school, or other institution of learning covering students, teachers or employees defined by reference to specified hazards incident to activities or operations of the institution of learning;
- c. Any employer covering any group of employees, contractors, dependents or guests, defined by reference to specified hazards incident to activities or operations of the employer;
- d. Any sports team, camp, or sponsor thereof covering participants, members, campers, employees, officials, supervisors, or volunteers;
- e. Any religious, charitable, recreational, educational, or civic organization or branch thereof covering any group of members, participants, or volunteers defined by reference to specified hazards incident to any

activity or activities or operations sponsored or supervised by or on the premises of such organization or branch;

- f. Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institution or financial institution vendor, under which accountholders, credit card holders, debtors, guarantors, or purchasers are insured;
- g. Any 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;
- h. Any trust or the trustees of a fund established, created or maintained for the benefit of members or customers of one or more associations meeting the above requirements;
- i. Any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;
- j. Any newspaper or other publisher covering its journalists and carriers;
- k. Any volunteer fire department or any first aid, civil defense or other such volunteer group, or agency having jurisdiction thereof, covering all or any group of the members, participants or volunteers of such fire department or first aid, civil defense or other group; or
- l. Any other group where the Commissioner 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 best interests of the public.

“Group Travel Insurance” means Travel Insurance issued to any Eligible Group.

“Limited Lines Travel Insurance Producer” means a (i) licensed managing general agent or third party administrator, (ii) licensed insurance producer, including a limited lines producer, or (iii) Travel Administrator.

“Offer and disseminate” means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other non-licensable activities permitted by the state.

“Travel Administrator” means 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 shall not be considered a

Travel Administrator if that person's only actions that would otherwise cause it to be considered a Travel Administrator are among 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 this Act;
- d. 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; 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.

"Travel Assistance Services" means non-insurance services that may be distributed by Limited Lines Travel Insurance Producers or other entities, and for which there is no indemnification for the Travel Protection Plan customer based on a fortuitous event, nor any transfer or shifting of risk that would constitute the business of insurance. Travel Assistance Services include, but are not limited to: 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; and any other service that is furnished in connection with planned travel that is not related to the adjudication of a Travel Insurance claim, unless otherwise approved by the Commissioner in a Travel Insurance filing. Travel Assistance Services are not insurance and not related to insurance.

"Travel Insurance" means insurance coverage for personal risks incident to planned travel, including but not limited to:

1. interruption or cancellation of trip or event;
2. loss of baggage or personal effects;
3. damages to accommodations or rental vehicles; or
4. sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six (6) months or longer, including for example, those working overseas as an ex-patriot or military personnel being deployed, or any other product that requires a specific insurance producer license.

“Travel Protection Plans” means plans that provide one or more of the following: Travel Insurance, Travel Assistance Services, and Cancellation Fee Waivers.

“Travel Retailer” means a business entity that makes, arranges or offers travel services 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.

**Drafting Note:** States that have recently adopted Travel Insurance producer licensing and registration laws or regulations may refer to the applicable definitions adopted therein rather than restating them in this section.

#### **Section 4. Licensing and Registration**

A. The Commissioner may issue to an individual or business entity that has filed with the Commissioner an application for such limited license in a form and manner prescribed by the Commissioner, a Limited Lines Travel Insurance Producer License, which authorizes the Limited Lines Travel Insurance Producer to sell, solicit or negotiate Travel Insurance through a licensed insurer.

B. A Travel Retailer may offer and disseminate Travel Insurance under a Limited Lines Travel Insurance Producer business entity (“licensed business entity”) license only if the following conditions are met:

1. The Limited Lines Travel Insurance Producer or Travel Retailer provides to purchasers of travel insurance:

a. A description of the material terms or the actual material terms of the insurance coverage;

b. A description of the process for filing a claim;

c. A description of the review or cancellation process for the travel insurance policy; and

d. The identity and contact information of the insurer and Limited Lines Travel Insurance Producer.

2. At the time of licensure, the Limited Lines Travel Insurance Producer shall establish and maintain a register on a form prescribed by the [insert commissioner] of each Travel Retailer that offers Travel Insurance on the Limited

Lines Travel Insurance Producer's behalf. The register shall be maintained and updated by the limited lines travel insurance producer and shall include the name, address, and contact information of the Travel Retailer and an officer or person who directs or controls the Travel Retailer's operations, and the Travel Retailer's Federal Tax Identification Number. The Limited Lines Travel Insurance Producer shall submit such register to the state insurance department upon reasonable request. The Limited Lines Travel Insurance Producer shall also certify that the Travel Retailer registered complies with 18 USC 1033.

3. The Limited Lines Travel Insurance Producer has designated one of its employees who is a licensed individual producer as the person (a "Designated Responsible Producer" or "DRP") responsible for the Limited Lines Travel Insurance Producer's compliance with the travel insurance laws, rules and regulations of the state.
4. The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the Limited Lines Travel Insurance Producer's insurance operations comply with the fingerprinting requirements applicable to insurance producers in the resident state of the Limited Lines Travel Insurance Producer.
5. The Limited Lines Travel Insurance Producer has paid all applicable insurance producer licensing fees as set forth in applicable state law.
6. The Limited Lines Travel Insurance Producer requires each employee and authorized representative of the Travel Retailer whose duties include offering and disseminating Travel Insurance to receive a program of instruction or training, which may be subject to review by the commissioner. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.
7. Limited Lines Travel Insurance Producers, and those registered under their licenses, are exempt from the examination requirements under *[cite applicable state code section]*, and the pre-licensing and continuing education requirements of *[cite applicable state code section]*.

C. Any Travel Retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that:

1. Provide the identity and contact information of the insurer and the Limited Lines Travel Insurance Producer;
2. Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the Travel Retailer; and
3. Explain that an unlicensed Travel Retailer is permitted to provide general information about the insurance offered by the Travel Retailer, including a

description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the Travel Retailer or to evaluate the adequacy of the customer's existing insurance coverage;

D. A Travel Retailer's employee or authorized representative, who is not licensed as an insurance producer may not:

1. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;
2. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or
3. Hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

E. Notwithstanding any other provision in law, a Travel Retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating Travel Insurance on behalf of and under the direction of a Limited Lines Travel Insurance Producer meeting the conditions stated in this Act, is authorized to do so and receive related compensation, upon registration by the Limited Lines Travel Insurance Producer as described in Sub-section (B)(2) above.

F. **Responsibility:** As the insurer designee, the Limited Lines Travel Insurance Producer is responsible for the acts of the Travel Retailer and shall use reasonable means to ensure compliance by the Travel Retailer with this Act.

**Drafting Note:** States that have already implemented a licensing and registration law or regulation consistent with the NCOIL Limited Lines Travel Insurance Model Act and NAIC Uniform Licensing Standard 34 (Limited Lines Travel Insurance Standard) may choose to cross-reference that law or regulation instead of using the language set forth in this Section. States that have not yet implemented such a law or regulation with respect to Travel Insurance may choose to incorporate this Section under their existing producer licensing laws.

## **Section 5. Premium Tax**

A. A travel insurer shall pay premium tax, as provided in [cross-reference to the state's existing premium tax provision] on Travel Insurance Premiums paid by any of the following:

1. an individual policyholder who is a resident of this state;
2. a certificate-holder who is a resident of this state who elects coverage under a Group Travel Insurance policy; or

3. an Eligible Group policyholder that is resident in, or has its principal place of business in, this state that purchases a Blanket Travel Insurance policy.
- B. An insurer shall obtain and maintain documentation necessary to determine the state to which premium tax should be reported based on information provided by the policyholder or certificate-holder, as applicable.

## **Section 6. Competitive Market**

- A. A competitive market is presumed to exist for Travel Insurance unless the Commissioner, after hearing, determines that a reasonable degree of competition does not exist in the market and the Commissioner issues a ruling to that effect. Such ruling shall expire no later than one year after issue unless the Commissioner renews the ruling after hearing and a finding as to the continued lack of a reasonable degree of competition.
- B. In determining whether a reasonable degree of competition exists, the Commissioner shall consider relevant tests of workable competition pertaining to market structure, market performance, and market conduct, and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers. The tests for determining whether a competitive market exists shall include one or all of the following:
1. The size and number of firms actively engaged in the market;
  2. Market shares and changes in market shares of firms;
  3. Ease of entry and exit from a given market;
  4. Underwriting restrictions;
  5. Whether profitability for companies generally in the market segment is unreasonably high;
  6. The availability of consumer information concerning the product and sales outlets or other sales mechanisms; and
  7. Efforts of insurers to provide consumer information.
- C. The determination of competition involves the interaction of the various tests and the weight given to specific tests depends upon the particular situation and pattern of test results.

**Drafting Note:** States that have existing competitive market provisions in statute may choose to cross-reference those provisions instead of using the language in this section.

## **Section 7. Forms and Rates**

- A. Notwithstanding any other provision of the [insurance code], Travel Insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance.



**Drafting Note:** For consistency, states may wish to update their statutory definition of inland marine to include travel insurance as defined in this Act.

- B. All Travel Insurance policies, certificates of insurance, endorsements, riders and rates delivered, issued for delivery, or charged in this state shall be filed with the Commissioner before being used. No policy, certificate of insurance, or endorsement shall be issued until the expiration of thirty (30) days after it has been filed, unless the Commissioner shall have given prior written approval.

**Drafting note:** This subsection is for those states that have form and/or rate filing requirements.

- C. 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, and the Travel Insurance offered as part of the Travel Protection Plan may be offered as individual Travel Insurance, Group Travel Insurance, or Blanket Travel Insurance.

- D. Rates filed subject to this Section shall be made in accordance with the following provisions:

1. Rates shall not be excessive, inadequate or unfairly discriminatory.
  - a. Excessive rates.
    - i. A rate in a competitive market is not excessive.
    - ii. A rate in a noncompetitive market is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.
  - b. Inadequate Rates. A rate is not inadequate unless such rate is clearly insufficient to sustain projected losses, expenses and special assessments in the class of business to which it applies and the use of such rate has or, if continued, will have the effect of substantially lessening competition or the tendency to create monopoly in any market.
  - c. Unfairly Discriminatory Rates. Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory if it is averaged broadly among persons insured under single insurance plans, whether offered on an individual, Group, or Blanket Travel Insurance policy.

2. In determining whether rates comply with the excessiveness standard upon a finding of a noncompetitive market under subparagraph 1(a)(ii), the inadequacy standards under subparagraph 1(b), or the unfair discrimination standard under subparagraph 1(c), the following criteria shall apply:
  - a. Due consideration shall be given to past and prospective loss experience within and outside this state; to the conflagration and catastrophe hazards; to a reasonable margin for profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers; to past and prospective expenses both countrywide and those specifically applicable to this state; and to provisions for special assessments and to all other relevant factors within and outside the state.
  - b. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. No risk classification, however, may be based upon race, creed, national origin or the religion of the insured.
  - c. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and its anticipated expenses.
  - d. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to all investment income attributable to the line of insurance.

**Drafting Note:** States that have form and rate requirements may choose to cross-reference their existing rate making provisions instead of using the language in this section.

## **Section 8. Travel Protection Plans**

Travel Protection Plans may be offered for one price in this state if:

- A. There is no finding by the Commissioner, pursuant to Section 6 [or cross-reference to the state's other competitive market provisions], that the Travel Insurance market in the state is non-competitive or that the Travel Protection Plan restricts competition by either significantly decreasing output or efficiency in the market or that a travel insurer or Travel Retailer is exerting sufficient market power in providing Travel Insurance or Travel Protection Plans such that competition is adversely impacted or

that the Travel Protection Plan would exact burdensome terms that would not exist in a competitive market;

- B. The Travel Insurance, Travel Assistance Services and Cancellation Fee Waivers are clearly delineated in the Travel Protection Plan's fulfillment materials. The fulfillment materials shall include the Travel Insurance disclosures required under state law and the contact information for persons providing Travel Assistance Services and Cancellation Fee Waivers, as applicable; and
- C. The Travel Protection Plan clearly discloses to the consumer at or prior to the time of purchase and fulfillment that it includes Travel Insurance, Travel Assistance Services and Cancellation Fee Waivers, as applicable, and provides an opportunity for the consumer to obtain additional information regarding the features and pricing of each.

### **Section 9. Sales Practices**

- A. All persons offering Travel Insurance to residents of this state are subject to the Unfair Trade Practices Act at [*insert reference to state UTPA law*], except as otherwise provided in this Section. In the event of a conflict between this Act and other provisions of the [insurance code] regarding the sale and marketing of Travel Insurance and Travel Protection Plans, the provisions of this Act shall control.
- B. Illusory Travel Insurance. Offering or selling a Travel Insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice under [*insert reference to state UTPA law*].
- C. Marketing.
  - 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, shall be consistent with all Travel Insurance policy documents, including but not limited to, forms, endorsements, policies, rate filings and certificates of insurance.
  - 2. Travel Insurance policies or certificates that contain pre-existing condition exclusions must clearly disclose the exclusion in the coverage's fulfillment materials.
  - 3. Policyholders or certificate holders shall have a minimum of ten (10) days from the later of the date of purchase of a Travel Protection Plan or the delivery of the Travel Protection Plan's fulfillment materials to review and cancel the policy or certificate for a full refund of the Travel Protection Plan price, unless the insured has either started the covered trip or has filed a claim under the Travel Insurance coverage. For the purposes of this section, sending documentation confirming the purchase and providing the Travel Protection Plan's coverage and assistance details, as applicable, to

a physical or electronic mail address provided by the purchaser of a Travel Protection Plan shall constitute delivery of the Travel Protection Plan's fulfillment materials.

4. The company shall disclose in the policy fulfillment and documentation whether the Travel Insurance is primary or secondary to other applicable coverage.
  5. Where 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 or short description 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.
- D. Opt out. Unless otherwise permitted by state or federal law, no person offering Travel Insurance or Travel Protection Plans on an individual or Group basis may do so 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 they purchase a trip.
- E. It shall not be an unfair trade practice to include Blanket Travel Insurance coverage with the purchase of a trip, provided the coverage is not marketed as free.

#### **Section 10. Travel Administrators**

- A. Notwithstanding any other provisions of the [insurance code], no person shall act or represent itself as a Travel Administrator in this state unless that person:
1. is a licensed producer for property insurance in this state with an inland marine line of authority;
  2. holds a valid managing general agent (MGA) license in this state; or
  3. holds a valid third -party administrator (TPA) license in this state.
- B. A Travel Administrator and its employees are exempt from the licensing requirements of [reference to adjuster licensing act].

#### **Section 11. Registration**

A Travel Retailer whose insurance-related activities, and those of its employees, are limited to offering and disseminating Travel Insurance on behalf of and under the direction of a Limited Lines Travel Insurance Producer meeting the conditions stated in this Act, is authorized to do so and receive related compensation, upon registration by the Limited Lines Travel Insurance Producer as described in Section (B)(2) above.

## **Section 12. Policy**

Travel insurance may be provided under an individual policy or under a group or master policy.

## **Section 13. Enforcement**

- A. The Commissioner may conduct investigations or examinations of travel insurers, Limited Lines Travel Insurance Producers, Travel Retailers, and Travel Administrators to enforce the provisions of this Act to protect resident Travel Insurance consumers.
- B. The Commissioner may take action, following notice and a hearing, necessary or appropriate to enforce the provisions of this Act, Commissioner's orders, and state statutes to protect consumers of Travel Insurance in this state, pursuant to Section [*insert reference to state notice/hearings/court actions law*].

**Drafting Note:** It is recommended that states review the enforcement procedures in their insurance laws and administrative procedure laws and ensure that enforcement authority under this Section is designated to the proper official(s).

## **Section 14. Regulations**

The Commissioner may promulgate regulations to implement the provisions of this Act.

## **Section 15. Effective Date**

This Act shall take effect 90 days after enactment.