

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 702
 Finance

(Senator Middleton)

Property and Casualty Insurance - Travel Insurance - Regulation

This bill clarifies that travel insurance must be classified as inland marine insurance, meaning that a travel insurer must maintain specified levels of paid-in capital stock and file rates in a specified manner. The bill also (1) clarifies that premium taxes must be collected for travel insurance; (2) specifies that a travel assistance service or cancellation waiver is not insurance; (3) allows the services provided through a travel protection plan to be sold together for one price (rather than separately) if specified conditions are met; (4) establishes consumer protections for consumers who purchase or seek to purchase travel insurance; (5) specifies what type of person may act as a travel administrator; and (6) authorizes the Insurance Commissioner to adopt regulations to implement the bill. Violation of the consumer protections established by the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA’s civil and criminal penalty provisions.

Fiscal Summary

State Effect: Maryland Insurance Administration (MIA) special fund expenditures increase by \$48,800 in FY 2018 to hire one customer service representative. Future years reflect annualization, ongoing operating expenses, and the elimination of one-time costs. MIA special fund revenues increase as travel administrators begin to register with MIA. The premium tax collection and filing requirements codify existing treatment of travel insurance and do not affect State operations or finances. Imposition of existing MCPA penalty provisions does not have a material impact on State finances or operations.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	-	-	-	-	-
SF Expenditure	\$48,800	\$60,500	\$63,500	\$66,600	\$69,900
Net Effect	(-)	(-)	(-)	(-)	(-)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill’s imposition of existing MCPA penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful. Small business travel administrators are required to register with MIA under the bill.

Analysis

Bill Summary:

Requirements to Act as a Travel Administrator and Definitions

A person may not act or represent itself as a travel administrator unless the person is registered as a third-party administrator or a managing general agent.

The bill establishes the following definitions related to travel insurance.

- “Aggregator site” means a website that provides access to information regarding insurance products and other insurer information from more than one insurer for use in comparison shopping.
- “Blanket travel insurance” means travel insurance that provides coverage for an eligible group under a travel insurance policy issued to and purchased by a policyholder in a specified manner.
- “Cancellation waiver” means a contractual agreement between a person engaged in the business of providing travel arrangements or travel services and a customer to waive some or all of a nonrefundable cancellation fee or penalty provision under a contract for travel arrangements or travel services.
- “Eligible group” has a broad definition that encompasses a variety of people involved that can provide travel insurance in a variety of ways.
- “Group travel insurance” means travel insurance that provides coverage for certificate holders of an eligible group under a travel insurance policy issued to a policyholder.
- “Travel administrator” means a person that (1) directly or indirectly underwrites policies; (2) collects charges, collateral, or premiums; or (3) adjusts or settles claims. It does not include specified types of persons that only sell or are tangentially involved with in the travel insurance business.
- “Travel assistance service” means a noninsurance-related service that meets specified requirements. For example, it includes translation assistance, travel reservation services, and lost luggage assistance.

- “Travel protection plan” means a plan that provides (1) travel insurance; (2) a travel assistance service; and/or (3) a cancellation waiver.

A cancellation waiver or travel assistance service may not be construed to be insurance. The travel coverage that is offered or sold for an eligible group may be defined by reference to specified hazards incident to activities or operations of the eligible group.

Premium Tax Collection for Travel Insurance

The bill clarifies that an insurer that issues or sells a travel insurance policy in the State is required to pay the premium tax on all new and gross direct travel insurance premiums paid by a resident of the State who purchases an individual travel insurance policy or purchases coverage as a certificate holder under a group travel insurance policy. Additionally, the premium tax must be paid by a resident of the State, or an individual whose principal place of business is in the State, who purchases as the group policyholder a blanket travel insurance policy. An insurer must obtain and maintain the documentation necessary to determine whether Maryland or another state is owed premium taxes, as applicable. MIA advises the premium taxes are currently being collected in this manner, and the bill codifies this practice.

Travel Protection Plan Pricing

As previously noted, a travel protection plan means a plan that provides travel insurance, a travel assistance service, and/or a cancellation waiver. The bill authorizes the services provided by such a plan to be sold together for one price but only if:

- the Insurance Commissioner determines that (1) a reasonable degree of competition exists within the travel insurance market; (2) the plan does not restrict competition in a specified manner or include burdensome terms that would not exist in a competitive market; and (3) market power is not being exerted by specified persons in a manner that adversely impacts competition;
- the travel insurance, travel assistance service, and cancellation waiver, as applicable, are clearly delineated in the travel protection plan’s fulfillment materials and the materials include specified information; and
- the plan clearly discloses what it contains and provides an opportunity for the consumer to obtain additional information about the plan.

Consumer Protections

A person who offers or sells travel insurance to residents of the State is subject to MCPA. It is an unfair or deceptive trade practice under MCPA for a person to offer or sell a travel

insurance policy that could never result in payment of any claims for any insured under the policy. Documents provided to a consumer before the purchase of travel insurance must be consistent with the policy being offered. A policy or certificate that contains a preexisting condition must clearly disclose the exclusion in the plan's fulfillment materials. A travel insurance policy and the fulfillment materials must disclose whether the travel insurance is primary or secondary to other applicable insurance coverage. Unless otherwise authorized by federal or State law, a person offering or selling travel insurance or a travel protection plan may not offer or sell travel insurance or the travel protection plan using a negative option or opt-out provision that requires a consumer to take an affirmative action to deselect travel insurance coverage.

Unless a policyholder or certificate holder has started a trip or filed a claim that is covered under a travel insurance policy or certificate, the policyholder or certificate holder has at least 10 days after the date of purchase of the travel insurance policy or certificate to review and cancel the travel insurance policy or certificate for a full refund of the travel protection plan price.

It is not an unfair or deceptive trade practice under MCPA if (1) travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator site; (2) the website or aggregator site provides an accurate summary or short description of travel insurance coverage; and (3) the consumer has access to the full provisions of the travel insurance policy through electronic means. Additionally, it is not an unfair or deceptive trade practice for a person to include blanket travel insurance with the purchase of a trip, if the insurance is not marked as free of charge.

Current Law/Background:

Travel Insurance

Travel insurance is coverage for personal risk incident to planned travel, including (1) interruption or cancellation of a trip or an event; (2) loss of baggage or personal effects; (3) damage to accommodations or a rental vehicle; or (4) sickness, accident, disability, or death occurring during travel, if issued as incidental to other coverage. Travel insurance does not include a major medical plan that provides comprehensive medical protection for a traveler on a trip lasting six months or longer. Travel insurance may be sold in the State as one of eight authorized limited lines. A limited lines license authorizes an insurance producer to sell a type of insurance that is otherwise restricted.

Chapter 15 of 2014 expanded the regulatory framework for travel insurance in the State by, among other things, (1) requiring insurance producers selling travel insurance to make specified disclosures about the policy and other information to a customer purchasing or seeking to purchase travel insurance; (2) requiring certain employees of an insurance

producer or travel retailer to be registered with MIA and receive ethical sales practices training; (3) authorizing those same employees to disseminate travel insurance information, process applications, and collect premiums; and (4) prohibiting a travel retailer from compensating an employee or authorized representative to sell travel services based primarily on the number of customers who purchase travel insurance.

Managing General Agents and Third-party Administrators

A managing general agent is a person that manages all or part of the insurance business of an insurer, including the management of a separate division, department, office, or subsidiary of the insurer and meets other specified requirements. To act as an agent, a person must obtain a certificate of qualification from the Insurance Commissioner. An applicant for the certificate must be licensed as an insurance producer and be deemed competent and trustworthy by the Insurance Commissioner. The application fee for a certificate of qualification is \$25, the initial certificate fee is \$30, and the annual renewal fee is \$30.

A third-party administrator is a person that acts for an insurer or plan sponsor and has (1) control over or custody of premiums, contributions, or any other money related to a plan or (2) discretionary authority over the adjustment, payment, or settlement of benefit claims under a plan or over the investment of a plan's assets. To be an administrator, an applicant must register with the Commissioner and meet other specified requirements. The application fee is \$250 and the renewal fee is \$65 every two years.

A third-party administrator must maintain a bond that provides protection to the plans for which the person acts as an administrator. The bond must be issued by an authorized corporate surety insurer and take into consideration specified information to determine the amount of the bond.

Inland Marine Insurance – Capital Stock and Rate Filing

To qualify for a certificate of authority to engage in one kind of insurance business in the State on or after July 1, 1991, an insurer must have and maintain paid-in capital stock with a fixed nominal or par value in an amount not less than \$750,000 for property insurance and marine insurance other than wet marine and transportation insurance.

Each insurer in the State must file with the Commissioner all rates, supplementary rate information, policy forms, and endorsements as well as all modifications of rates, supplementary rate information, policy forms, and endorsements that the insurer proposes to use. The rates must be reasonable and adequate for the applicable class of risks, and they may not discriminate unfairly between risks that involve essentially the same hazards and expense elements.

Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

State Revenues: MIA special fund revenues increase as travel administrators begin to register as managing general agents and third-party administrators, as required by the bill. The total number of administrators that must register is currently unknown, as MIA is not currently required to license or register these entities. Therefore, the total revenue impact on MIA cannot be reliably estimated at this time. *For illustrative purposes only*, if MIA registers 100 people as third-party administrators in fiscal 2018, then special fund revenues increase by \$25,000 in fiscal 2018 (due to the initial \$250 fee) and by \$6,500 every two years thereafter (due to the renewal fee). If MIA registers 100 people as managing general agents in fiscal 2018, then special fund revenues increase by \$5,500 in fiscal 2018 (due to application and initial registration fees) and by \$3,000 annually thereafter (due to renewal fees).

MIA advises that the bill's designation of travel insurance as inland marine insurance and requirement that premium taxes be collected in a specified manner codify the current way that travel insurance is treated in the State. Therefore, these provisions do not affect State revenues.

State Expenditures: The bill establishes a new requirement that a person who acts or represents itself as a travel administrator be registered as either a third-party administrator or a managing general agent. To assist in the ongoing registration of travel administrators,

MIA requires additional staff. Therefore, special fund expenditures for MIA increase by \$48,812 in fiscal 2018 to hire a customer service representative to assist travel administrators in registering and to review their applications. The estimate includes a salary, fringe benefits, one-time start-up costs, and operating expenses.

	<u>FY 2018</u>	<u>FY 2019</u>
Position	1	
Salary and Fringe Benefits	\$43,703	\$59,888
Operating Expenses	<u>5,109</u>	<u>625</u>
Total State Expenditures	\$48,812	\$60,513

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 964 (Delegate Kramer) - Economic Matters.

Information Source(s): Maryland Insurance Administration; Department of Legislative Services

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md/ljm

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