



**Comments of the Center for Economic Justice  
To the NAIC Travel Insurance Working Group**

**August 25, 2017**

Following a general comment, CEJ provides specific recommendations for model law language. Many of the specific language recommendations are based on the general comment regarding the need for regulatory oversight over the entire travel protection package.

**General Comment: The model should specify regulatory oversight over the entire travel protection package – travel insurance and non-insurance travel services bundled into a travel protection plan.** We understand the purposes of the model law development include:

- to provide both a consistent and comprehensive regulatory framework for travel insurance and non-insurance travel services bundled into a travel protection plan;
- to ensure adequate consumer protections; and
- to ensure efficient and effective regulatory oversight.

As originally adopted by NCOIL, the travel insurance model law accomplishes none of these purposes because the model is a disjointed combination of contradictory and unmatched provisions. Instead of regulatory consistency and efficiency, the NCOIL and current draft NAIC models will surely lead to significant variation in regulatory treatment across states due to vagaries built into the model and will lead to consumer protection gaps fueled by an inefficient regulatory framework.

Since the working group has decided that travel insurers and producers should be permitted to offer a travel protection bundle of travel insurance and non-insurance related services, it follows logically that the model should provide for regulatory oversight by the insurance commissioner of the entire travel protection package for several reasons.

1. **Regulatory efficiency, consistency and a comprehensive framework.** The insurance regulator will, under any circumstances, determine what parts of the travel protection plan are insurance products and what parts are not. It makes sense for efficiency, consistency (both across providers within a state and for providers across states), for the commissioner to review the entire travel protection plan to ensure the insurance products are identified and treated as insurance products. This is efficient for accurate premium tax determination and calculation and promotes greater consistent and uniformity of travel protection plan oversight.

2. **Effective and efficient consumer protection.** Under the current model, consumer protection gaps and inefficiencies in market regulation abound because of the limited oversight authority provided to the commissioner.

Consider a scenario under the current model in which the commissioner identifies unfair sales practices of the travel protection plan. With the current model, the commissioner could take action only regarding the travel insurance portions of the travel protection plan while consumer protection and enforcement of the non-insurance travel assistance portions of the travel protection plan would be left to some unspecified statutory authority and unspecified regulatory or enforcement agency.

The current model is both ineffective – leaving consumer protection gaps – and inefficient. If the commissioner were to find unfair sales practices for the travel protection plan, it is clearly more efficient for the commissioner to address the entire problem than to limit her consumer protection activities to just a portion of the plan.

Despite the travel industry's glib claim that other non-insurance consumer protections exist, the likely result is no consumer protection for the non-insurance portions of the plan. But even if there is another enforcement agency with relevant authority, it would clearly be more efficient for the commissioner to completely handle the unfair sales practices problem. At best, under the current model, two or more regulatory or enforcement agencies would have to each and separately address the same unfair sales practice of the same travel protection plan – a clearly illogical and inefficient result.

The consumer protection gaps and regulatory inefficiencies of the current model – resulting from commissioner authority over only part of the travel protection plan – can and will play out in countless ways. What happens if the travel insurance portion of the travel protection plan cannot be used because of a problem with the delivery of a non-insurance travel assistance part of the plan? At best, under the current model, the commissioner would have to fight with the travel protection provider over the commissioner's authority to address the problem. At worst, the commissioner could not protect a travel insurance consumer because of lack of oversight over a related non-insurance travel assistance part of the travel protection plan.

For another example of potential regulatory arbitrage by the travel protection provider, consider what happens if there is a problem with the sale of or provision of benefits for a travel fee waiver product. Under the current model, the commissioner has no authority over fee waiver products even if the product is deceptively sold and benefits are unfairly denied. What regulatory or enforcement agency would the consumer turn to? Not to banking regulators since a travel fee waiver product is not offered by banking licensee. **It should be clear that the result of the current model's limited authority of the commissioner to only the insurance portion of the travel protection plan is to render non-existent the oversight of, and consumer protection for, the non-insurance portions of the travel protection plan.**

3. **A bundled product requires comprehensive oversight.** It follows from the first two points that a logical, consistent and efficient regulatory framework for a product consisting of bundled insurance and non-insurance products and services requires a single regulatory agency to provide consistent, uniform and comprehensive oversight and consumer protection.

4. **The insurance commissioner has whatever authority the legislature assigns to the commissioner.** The boiler plate argument offered by industry for its proposed model is that insurance regulators do not have authority over non-insurance products or entities. In fact, the insurance commissioner has whatever authority the legislature gives to the commissioner that does not usurp a person's constitutional rights. Clearly, providing the commissioner with authority over the non-insurance portions of a travel protection plan does not infringe on the constitutional rights of a travel provider, insurer or producer. **There is precedent in another NAIC model for providing the commissioner with authority over products, practices and entities not considered insurance or insurance licensees.** The NAIC Creditor-Placed Model Law sets specific requirements for lenders (who are not insurance licensees) disclosures to borrowers regarding force-placed insurance. Even though the commissioner has no general authority or oversight over lenders, the Creditor-Placed Model Law gives the commissioner specific authority to enforce the disclosure requirements of lenders.

Below we provide specific comments on current sections 2, 3, 4 and 6. We will provide comments on the remaining sections prior to the working group's discussion of these sections.

Discussion/Explanation	Current Text with Proposed Edits
<p>Provide for commissioner’s comprehensive authority over the entire travel protection plan, including travel insurance and non-insurance travel assistance services bundled into a travel protection plan. See general comment for discussion.</p>	<p><b>Section 2. Scope and Purposes</b></p> <p>A. The purpose of this Act is to promote the public welfare by creating a comprehensive legal framework within which Travel Insurance <a href="#">and Related Travel Assistance Services in a Travel Protection Plan</a> may be sold in this state</p>
<p>Provide for commissioner’s comprehensive authority over the entire travel protection plan, including travel insurance and non-insurance travel assistance services bundled into a travel protection plan. See general comment for discussion.</p> <p>We suggest the working group consider if the term “policies and certificates are delivered or issued for delivery in this state” accurately and adequately describes the scope of regulatory authority. For example, what state would have authority in the following situations:</p> <ul style="list-style-type: none"> <li>• A certificate of coverage for a consumer in Georgia is issued from a group policy issued to a group located in Maryland.</li> <li>• A policy purchased by a consumer residing in Oklahoma from an aggregator website operated by an insurance producer licensed in Michigan</li> <li>• A policy purchased by a Louisiana consumer from a cruise line headquartered outside of the country selling travel insurance from a group policy issued in Bermuda.</li> </ul>	<p>B. The requirements of this Act shall apply to Travel Insurance <a href="#">and Related Travel Assistance Services</a> where policies and certificates are delivered or issued for delivery in this state. <del>It shall not apply to Cancellation Fee Waivers and Travel Assistance Services, except as expressly provided herein.</del></p>

<p>The purpose of the model is to “create a comprehensive legal framework” as stated in section 2.A. It is unclear what purpose Section 2.C. has since, in the absence of Section 2.C, applicable insurance laws will apply to travel insurance in the absence of specific provisions in the model. One purpose might be that by adding 2.C about application of other insurance laws to travel insurance, the model precludes application of other consumer protection laws to the non-insurance travel assistance services covered by the model. The addition of section 2.C. may be interpreted as precluding the application of other consumer protection laws applying to the non-insurance travel assistance services since 2.C. refers only to application of relevant insurance laws to travel insurance. Since we find no benefit to the language and possible significant problems, we recommend deletion.</p>	<p><del>C. All other applicable provisions of this state’s insurance laws shall continue to apply to Travel Insurance except that the specific provisions of this Act shall supersede any general provisions of law that would otherwise be applicable to Travel Insurance.</del></p>
<p>As currently defined, “aggregator site” would cover any web site providing a description of two or more travel insurance products. The difference between an aggregator site and, say, a Consumers Union article on travel insurance is compensation received by the aggregator for selling travel insurance or for referring a consumer to a travel protection plan provider.</p>	<p><b>Section 3. Definitions</b></p> <p>As used in this Act:</p> <p>“Aggregator Site” means a website <del>providing that provides access to</del> information regarding <u>travel</u> insurance products from more than one insurer <u>or producer and whose owner or operator receives compensation for the sale of travel insurance products or for the referral of consumers to travel insurance providers, including product and insurer information, for use in comparison shopping.</u></p>

<p>Blanket coverage is a type of group coverage that provides coverage for all eligible members of the group by virtue of being a member of the group and without a separate charge to the member for the insurance. The current definition fails to distinguish between a group policy and blanket coverage. In addition, the second part of the definition is meaningless and, if there are requirements for identifying covered members of the group or providing an explanation of coverage, such requirements are more appropriately included in a section regarding requirements for blanket coverage and not in the definition of blanket coverage.</p>	<p>“Blanket Travel Insurance” means <u>a policy of Travel Insurance issued to any Eligible Group providing coverage for <del>specified circumstances and</del> specific classes of persons defined in the policy with coverage provided to all members of the Eligible Group a separate charge to individual members of the Eligible Group. <del>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.</del></u></p>
<p>In addition to the reasons discussed in the general comment regarding the need for commissioner authority and oversight over the entire travel protection package, another reason is to prevent sham non-insurance products. Certain travel fee waiver products are precisely sham non-insurance products.</p> <p>Insurance involves a transfer of risk from a consumer to an insurance company in which the insurance company agrees to pay an amount if certain events occur. Fee waiver products, in theory, are a contractual relationship between the travel provider and consumer in which the travel provider agrees to waive or cancel a fee if certain events occur. In fact, the vast majority of fee waiver products are backed by a contractual liability insurance policy and administered by an insurance company.</p> <p>We ask the working group to consider the following scenarios.</p> <p>Scenario 1: the travel provider sells cancellation fee insurance in which an insurance company agrees to pay a certain amount to the travel provider on behalf of the consumer in the event a consumer has to cancel a trip due to specified events.</p>	<p>“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 nonrefundable cancellation fee or penalty provisions of the underlying travel contract between the supplier and customer. A Cancellation Fee Waiver is not insurance <u>only if the supplier does not utilize directly or indirectly an insurance policy or policies for reimbursement of fees waived under the contractual agreement with the customer.</u></p>

Scenario 2: the travel provider sells cancellation fee waiver in which the travel provider agrees to waive the cancellation fee if a consumer has to cancel the trip due to specified events. The travel provider purchases a contractual liability policy to cover any cancellation fees waived and charges the consumer the premium amount plus a mark-up as the waiver fee.

In our view, the travel provider is engaged in a sham waiver transaction that robs consumers of insurance protections and robs states of premium tax. We submit that this discussion of cancellation fee waiver demonstrates the need for the model to provide regulators with oversight of the entire travel protection product and the need for to limit the definition of fee waiver products to only those that do not involve an insurance policy to ensure that any fee waiver products are genuine and not sham..

The industry response is without merit. TTICC (July 26, 2017 comments) argues that a fee waiver backed by contractual liability insurance is simply a risk of the travel supplied insured like any other risk borne by the travel supplier. This is clearly not the case. The fee waiver is a risk created by the travel supplier and not a risk generated through the normal course of business. Unlike other risks of the travel supplier, this added risk is associated with a specific fee to a consumer and, with the backing of contractual liability insurance, is transferred – immediately – to an insurance company. It is clearly a sham non-insurance product if the transfer of risk remains identical whether presented as cancellation fee insurance or cancellation fee waiver.

<p>The current definition of Eligible Group simply lists potential groups, but fails to distinguish between an eligible group and any group of consumers seeking insurance. The current definition might permit a group policy to be issued to a travel supplier who defines the group as people who purchase travel insurance from this specific travel supplier. We recommend deleting the laundry list of groups and replacing with a definition based on criteria to determine an eligible group, perhaps along the lines of a modified item g in the current definition.</p> <p>Item h makes no sense since it refers to “above requirements” when no such requirements are clearly articulated.</p> <p>Item l gives far too much discretion to the commissioner to designate any group as eligible with no accountability for such designation. Item l is inconsistent with the definition in item g. Finally, item l refers to “not contrary to the best interests of the public,” which is undefined, subject to abuse and without accountability to the public.</p>	<p>“Eligible Group” delete all other than:</p> <p>“Eligible Group” Any <del>incorporated or unincorporated</del> association <u>of ten or more people, including labor unions,</u> having a common interest, <del>constitution and bylaws,</del> and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association.</p>
<p>The definition is missing the second of two requirements of group insurance – a group policy and an eligible group.</p>	<p>“Group Travel Insurance” means Travel Insurance issued to any Eligible Group <u>through a group insurance policy.</u></p>
<p>This definition does not make sense. First, it defines a fully licensed MGA or licensed producer as a limited lines travel insurance producer. It also defines a limited lines travel producer as limited lines producer, but does not specify that the limited lines producer license must be travel as opposed to, say, credit. If the intent is to allow all these entities to sell travel insurance, then such permission should be in a section on sales, not in an overbroad definition.</p>	<p>“Limited Lines Travel Insurance Producer” means <u>a (i) licensed managing general agent or third party administrator, (ii) licensed insurance producer, including a limited lines producer, or (iii) Travel Administrator a person holding a limited lines travel producer license.</u></p>



We reserve comments on these definitions until there is greater clarity on the role of the Travel Administrator versus a licensed producer.

According to the definition of “limited lines travel insurance producer,” a travel administrator is such a limited lines travel insurance producer. The definition of travel administrator sets out a list of activities of a travel insurance producer, including “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,” But, the definition of travel insurance administrator then exempts a person engaged in any of five activities from being a travel administrator – including the very activities that define a travel administrator. It is unclear what a travel administrator is or does separate from or in addition to the activities of limited or fully licensed producer or insurer.

“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”

This definition is problematic because it defines activities as non-insurance assistance services that are clearly related providing an insurance benefit. For example, emergency messaging, international legal and medical referrals, medical case monitoring and other items can clearly be related to a travel insurance medical benefit claim.

As discussed in the general comment, it is essential for the commissioner to have authority and oversight over the entire contents of a travel protection plan that features travel insurance. We suggest that the components of the plan be limited to Travel Insurance and Non-Insurance Travel Services instead of, as proposed in the current definition of Travel Protection Plans, Travel Insurance, Travel Assistance Services and Cancellation Fee Waivers. For purposes of the model and regulatory oversight, the functional distinction is insurance versus non-insurance. Consequently, there is no benefit to splitting out cancellation fee waivers from travel assistance services since both are non-insurance products or services.

The reference to a filing is more appropriately included in a section on rates and forms and product filings. The provision regarding the commissioner's determination of what is or isn't insurance is essential, but may be better placed elsewhere.

“Non-Insurance Travel ~~Assistance~~ Services” means non-insurance services sold in connection with travel insurance and which are not related to the use of any travel insurance benefit. 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. The determination of whether a product or service in a Travel Protection Plan is Travel Insurance or Non-Insurance Travel Services rests solely with the commissioner. Non-Insurance Travel ~~Assistance~~ Services are not insurance for purposes of premium tax calculation. and not related to insurance.

<p>The current definition is illogical. According to the definition, the sale of cancellation fee waivers alone or non-insurance travel services alone would be a travel protection plan. Yet, the current definitions do not provide authority for the commissioner over these products.</p> <p>Our recommended revision accomplishes two significant changes. First, it organizes the definition around just the two categories – insurance and non-insurance – discussed above. Second, it makes clear that a travel protection plan that does not include any Travel Insurance will not trigger oversight by the commissioner. The sale of non-insurance travel services <b>alone</b> does not trigger the same concerns – premium tax payment, adherence to insurance regulatory oversight and consumer protections – as the bundled sale of travel insurance and non-insurance travel services. The commissioner, of course, has the authority to take action against a travel retailer for the unauthorized sale of travel insurance of the purported only non-insurance travel services do, in fact, include travel insurance or sham fee waivers.</p>	<p>“Travel Protection Plans” means plans that provide Travel Insurance <u>or Travel Insurance and Non-Insurance Travel Services, Travel Assistance Services, and Cancellation Fee Waivers.</u></p>
<p>We think it may be useful to have a definition of Travel Retailer for sections later in the model dealing with sales practices, disclosures and rates because travel insurance sales by a travel retailer represent significantly different market forces than direct sales by a travel insurer via a web site. However, the current definition is flawed. A travel retailer that sells travel insurance should do so pursuant to, at least, a limited lines travel insurance producer license – not under the “direction” of a limited lines licensee. The purpose of a limited lines license is to allow reduced training and education requirements compared to a fully-license producer for purposes of limited types of insurance sales. It makes no sense to further dilute consumer protections by having a limited lines licensee direct a non-licensee. The phrase “as a service” is gratuitous and serves no purpose. For purposes</p>	<p>“Travel Retailer” means a <u>person or</u> business entity that makes, arranges or offers travel services and <del>may offers and disseminate</del> travel insurance and <u>related services, in a travel protection plan, as a service</u> to its customers <u>pursuant to on behalf of and under the direction of a Limited Lines Travel Insurance Producer</u> <u>required producer licensing.</u></p>

<p>of regulatory oversight, it makes no difference why the travel retailer offers its customers travel insurance or travel protection.</p>	
<p>Section 4.A. provides authority for the creation of a limited lines travel insurance producer license. The purpose of a limited lines license is to provide for lesser qualifications than a full producer license because the limited lines producer is engaged in limited sales – like the offer of rental car insurance only.</p> <p>As a preliminary matter, travel insurance is one of the most complex insurance products sold because it comprises many disparate coverages covering medical, life and other (property/casualty) perils and benefits. It is simply bizarre that a producer selling a subset of these coverages must be fully licensed but a travel retailer selling all the coverages would only require a limited license.</p> <p>In any event, the term “limited lines producer” is a misnomer in this situation because the current Section 4.B. describes the limited lines travel producer as a managing agent of the actual producers – the travel retailers. Logically, the travel retailers should have a limited lines license and the person or entity responsible for a group of limited lines licensee should be either an insurer or a fully-license producer.</p> <p>Section 4B is further problematic because it conditions the sale of travel insurance by a travel retailer on certain disclosures as opposed to qualifications of the licensee to sell travel protection. We agree with the IIABA that disclosure requirements to a consumer should be consolidated into a single section related to sales and not in a section on licensing and registration. We agree with the other comments of the IIABA regarding Section 4 set out in IIABA’s July 28, 2017 letter.</p>	<p><b>Section 4. Licensing and Registration</b></p> <p>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.</p> <p>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:</p>

Section 6A: There is an important distinction between classifying a product as inland marine and assigning standard inland marine rate and form regulation to that product. Inland marine rate and form is inconsistent across the states and typically involves less oversight than other personal lines of insurance. Travel insurance products and travel protection plans must be filed for review by the commissioner for several reasons:

- To determine and approve travel insurance versus non-insurance travel services; and
- To ensure that the travel insurance forms and travel protection contracts are not deceptive, misleading or unfair.

Section 6B: We recommend a 60-day review period to allow adequate review of these complex products and to allow for public comment to the commissioner prior to the commissioner's approval.

Section 6C: It is unclear what this section means or is intended to accomplish. Standards for approval of policy forms should be included.

Section 6D: The references to competitive markets are not relevant particularly in light of the elimination of the section on competitive markets. Further, some rates can clearly be excessive or unfairly discriminatory in a generally-competitive market. For example, rates for travel insurance sold through aggregator sites may reflect a competitive market, while rates for travel insurance sold as an add-on by a travel agent or cruise line likely will not reflect competitive market forces.

Section 6.D.3. It is unclear what the purpose of" under single insurance plans, whether offered on an individual, Group, or

## Section 6. 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~~as 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 (630) days after it has been filed, unless the Commissioner shall have given prior written approval.

**Drafting note:** The intent of this section is to require the filing, review and approval prior to use of travel insurance and travel protection plans regardless of default rate and form filing and approval requirements for inland marine in the state. ~~his 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. The commissioner shall disapprove any travel insurance policy form or travel protection plan contract that is~~

Blanket Travel Insurance policy.” The broadly-averaged language does not have meaning for blanket coverage.

deceptive, misleading, ambiguous or contrary to the public interest. In disapproving a policy form, the commissioner shall state and explain the specific reasons for disapproval.

~~D.C.~~ 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.

~~A rate in a competitive market is not excessive.~~

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.~~

Section 6.D.2: Remove reference to competitive market as discussed above.

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: