

Comments of the Center for Economic Justice
June 12, 2007 Draft Regarding Life Insurance Travel Underwriting
Submitted July 9, 2007

The Center for Economic Justice submits the following comments on the June 12, 2007 draft of the proposed changes to the model Unfair Trade Practices Act related to life insurance underwriting and pricing based on past or future travel plans.

The new proposal approaches the travel underwriting issue by not prohibiting travel underwriting, but by stating that such practice is permissible. We disagree with this approach. There should be a prohibition unless the practice meets certain criteria to prevent unfair practices that harm consumers.

The proposal deals only with future travel plans and does not address underwriting based on past travel plans. There should be a prohibition on any action based on past legal travel activities and any permissible activity related to travel should be limited to future travel.

The approach should be a specific prohibition against the use of future travel plans for determining eligibility, amount or type of coverage or premium based in whole or in part on future travel plans unless the travel is planned within the next 12 months, if the travel destination meets one or more of the three criteria set out in proposed subsection (b) and is supported by sound actuarial principles.

The proposal effectively defines “sound actuarial principles or actual or reasonably related anticipated experience” as the three items in section 2(b). While CEJ agrees that these are reasonable criteria for underwriting or pricing based on future travel plans, these criteria should not be equated to sound actuarial principles because “sound actuarial principles” have a fairly well-developed meaning that is different from the three criteria set out in section 2(b). Rather, the language should state that that underwriting or rating based on future lawful travel plans is prohibited unless the action are based on “sound actuarial principles” and one or more of the criteria in section 2(b).

A prohibition on underwriting or rating based on certain future travel plans should be “in whole or in part” on some aspect of the future travel plans and should not be based on the “sole” use of future travel plans. As CEJ has discussed in prior comments, prohibitions based on “sole” use provide no meaningful consumer protection because such sole-use prohibitions fail to change the offensive behavior. See page 2 of our November 27, 2006 comments, which are attached.

The proposal provides that the filing of underwriting guidelines based on future lawful travel plans and the filing of supporting actuarial analysis is optional. At a minimum, the filing of underwriting guidelines should not be optional. It is not a burden on insurers to file underwriting guidelines and rating rules based utilizing future travel plans with the Commissioner as such documents would have to have been developed by the insurer to communicate its policies and practices to agents and underwriters. It is reasonable and necessary to file this information with the Commissioner so the Commissioner can monitor the market practices of insurers in a manner consistent with the new paradigm of market conduct regulation based on market analysis.

CEJ also believes that filing of actuarial support should be required and not an optional provision of the model law. Unlike other underwriting or rating criteria which are typically grounded in clearly-identified mortality risk based on actuarial analysis of experience data, the use of past and future travel plans for underwriting by life insurers has been based on anecdote and cultural bias. There is, consequently, a need to require insurers to ground any travel underwriting in a sound actuarial analysis – over and beyond meeting the three criteria in section 2(b) – to ensure there is an actual mortality risk basis for such travel-based underwriting.

Finally, the penalties for violations included in the model Unfair Trade Practices Act are greatly outdated and fail to provide a meaningful deterrent to the prohibited practices. The penalties either need to be significantly increased in the penalty section of the model Act or greater penalties need to be added that are specifically available to the Commissioner for violation of the travel underwriting provisions. We suggest the former for consistency in the model Act, but failure to increase the standard penalties will result in a failure to tell insurers that regulators are serious about protecting consumers from these unfair practices. We have previously discussed this issue in our December 18, 2006 comments and attach those comments for your reference.

Thank you for your consideration.