HOUSE DOCKET, NO. 1630 FILED ON: 1/18/2023

HOUSE . . . . . No. 971

The Commonwealth of Massachusetts

PRESENTED BY:

Tackey Chan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to travel insurance.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Tackey Chan	*2nd Norfolk*	*1/18/2023*

HOUSE DOCKET, NO. 1630 FILED ON: 1/18/2023

HOUSE . . . . . No. 971

By Representative Chan of Quincy, a petition (accompanied by bill, House, No. 971) of Tackey Chan relative to travel insurance. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1220* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to travel insurance.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 176J of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out in the definition of "Health benefit plan" the words "travel insurance;", which appear after the phrase "if offered as a separate insurance policy;", and by striking out the sentences in the same definition that read "Travel insurance for the purpose of this chapter is insurance coverage for personal risks incident to planned travel, including but not limited to: (i) interruption or cancellation of trip or event; (ii) loss of baggage or personal effects; (iii) damages to accommodations or rental vehicles; or (iv) sickness, accident, disability or death occurring during travel, provided that the health benefits are not offered on a stand-alone basis and are incidental to other coverages. The term, "travel insurance" shall not include major medical plans, which provide comprehensive medical protection for

travelers with trips lasting 6 months or longer, including for example, those working overseas as an ex-patriot or military personnel being deployed."

SECTION 2. Chapter 175 of the General Laws is amended by striking out section 162Z, as appearing in the 2020 Official Edition, and inserting in place thereof the following section:-

Section 162z- (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Designated responsible producer" or "DRP", a person responsible for the limited lines travel insurance producer's compliance with the travel insurance laws, rules and regulations.

"Limited lines travel insurance producer", a (i) licensed managing general agent or third-party administrator; or (iii) licensed insurance producer, including a limited lines producer; or (iii) travel administrator.

"Offer and disseminate", to provide general information, including a description of the coverage and price, as well as processing the application, collecting premiums.

"Travel administrator", 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:

(1) 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;

(2) an insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(3) a travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with this section;

(4) 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

(5) 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 insurance", insurance coverage for personal risks incidental to planned travel including: (i) an interruption or cancellation of trip or event; (ii) loss of baggage or personal effects; (iii) damages to accommodations or rental vehicles; (iv) sickness, accident, disability or death occurring during travel; (v) emergency evacuation; (vi) repatriation of remains; or (vii) any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner; provided, however, that "travel insurance" shall not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including, for example, people working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license.

"Travel retailer", a business entity that makes, arranges or offers planned travel 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.

(b)(1) The commissioner may issue to an individual or business entity a limited lines travel insurance producer license if that individual or business entity has filed an application for a limited lines travel insurance producer license with the commissioner in a form and manner prescribed by the commissioner. A limited lines travel insurance producer license authorizes a limited lines travel insurance producer to sell, solicit or negotiate travel insurance through a licensed insurer. No person may act as a limited lines travel insurance producer or travel retailer unless properly licensed or registered, respectively.

(2) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer license if the following conditions are met:

(i) 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;

(ii) at the time of licensure, the limited lines travel insurance producer shall establish and maintain a register, on a form prescribed by the commissioner, of each travel retailer that offers travel insurance on the limited lines travel insurance producer's behalf; provided, however, that the register shall be maintained and updated annually 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; provided further, that the limited lines travel insurance producer shall submit the register to the division of insurance upon reasonable request and shall

certify that the travel retailer register complies with 18 U.S.C. section 1033; provided further, that the grounds for the suspension, revocation, and the penalties applicable to resident insurance producers under this chapter and Chapter 176D, shall be applicable to the limited lines travel insurance producers and travel retailers;

(iii) the limited lines travel insurance producer has designated 1 of its employees, who is a licensed individual producer, as the DRP;

(iv) the DRP, president, secretary, treasurer and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations shall comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer;

(v) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees;

(vi) 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 , at the discretion of the Commissioner, to review and approval by the commissioner; provided, however, that the training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices and required disclosures to prospective customers;

(c) Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers, brochures or other written materials that have been approved by the travel insurer. Such materials shall include information which, at a minimum: (i) provide the identity and contact information of the insurer and the limited lines travel insurance producer; (ii)

explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and (iii) 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 a limited lines travel insurance producer shall not: (i) evaluate or interpret the technical terms, benefits and conditions of the offered travel insurance coverage; (ii) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or (iii) hold oneself 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 section, may receive related compensation, not in the form of commissions, upon registration by the limited lines travel insurance producer as described in subsection (b).

(f) Travel insurance may be provided under an individual policy or under a group or blanket policy.

(g) 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 section.

(h) Any person licensed in a major line of authority as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

SECTION 3. The General Laws are hereby further amended by inserting after chapter 175M the following chapter:-

Chapter 175N TRAVEL INSURANCE

Section 1. Scope and purposes.

(a) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(b) The requirements of this chapter shall apply to travel insurance that covers any resident of this state, and is sold, solicited, negotiated, or offered in this state, and policies and certificates are delivered or issued for delivery in this state. It shall not apply to cancellation fee waivers or travel assistance services, except as expressly provided herein.

(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 chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 2. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context requires otherwise:

"Aggregator site", 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", 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", a contractual agreement between a supplier of travel services and its customer to waive some or all of the non-refundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

"Commissioner", the commissioner of insurance.

"Eligible group", solely for the purposes of travel insurance, 2 or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including but not limited to any of the following:

(1) 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, travel agencies, property managers, cultural exchange programs, and common carriers or the operator, owner, or lessor of a means of transportation of passengers, including but not limited to airlines, cruise lines, railroads, steamship companies, and public bus carriers, wherein with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel;

(2) any college, school, or other institution of learning, covering students, teachers, employees, or volunteers;

(3) any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

(4) any sports team, camp, or sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers;

(5) any religious, charitable, recreational, educational, or civic organization, or branch thereof, covering any group of members, participants, or volunteers;

(6) 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 accountholders, credit card holders, debtors, guarantors, or purchasers;

(7) 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 covering its members;

(8) any trust or the trustees of a fund established, created, or maintained for the benefit of and covering members, employees, or customers, subject to the commissioner's permitting the use of a trust and the state's premium tax provisions in section 3 of one or more associations meeting the above requirements of paragraph (7);

(9) any entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers;

(10) any volunteer fire department, ambulance, rescue, police, court, or any first aid, civil defense, or other such volunteer group;

(11) preschools, daycare institutions for children or adults, and senior citizen clubs;

(12) any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles; provided, that the common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company, is the policyholder under a policy to which this section applies; or

(13) 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 public interest.

"Fulfillment materials", 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", travel insurance issued to any eligible group.

"Limited lines travel insurance producer", a (i) licensed managing general agent or third-party administrator; (ii) licensed insurance producer, including a limited lines producer, designated by an insurer as the travel insurance supervising entity under subsection (g) of section 162Z of Chapter 175; or (iii) travel administrator.

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

“Primary certificate folder”, specific to section 3, an individual person who elects and purchases travel insurance under a group policy.

“Primary policyholder”, specific to section 3, an individual person who elects and purchases individual travel insurance.

“Travel administrator”, 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:

(1) 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;

(2) an insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer’s license;

(3) a travel retailer offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with section 162Z of Chapter 175 ;

(4) 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

(5) 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", non-insurance services for which the consumer is not indemnified based on a fortuitous event, and where providing the service does not result in 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. Travel assistance services are not insurance and not related to insurance.

"Travel insurance", insurance coverage for personal risks incidental to planned travel including, but not limited to: (i) an interruption or cancellation of trip or event; (ii) loss of baggage or personal effects; (iii) damages to accommodations or rental vehicles; (iv) sickness, accident, disability or death occurring during travel; (v) emergency evacuation; (vi) repatriation of remains; or (vii) any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the commissioner;

provided, however, that “travel insurance” shall not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including, for example, people working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license.

“Travel protection plans”, plans that provide one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

“Travel retailer”, 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.

Section 3. Premium tax.

(a) A travel insurer shall pay premium tax, as provided in section 22 of Chapter 63 of Title IX, on travel insurance premiums paid by any of the following:

(1) an individual primary policyholder who is a resident of this state;

(2) a primary certificate holder who is a resident of this state who elects coverage under a group travel insurance policy; or

(3) a blanket travel insurance policyholder that is a resident in, or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in this state for eligible blanket group members, subject to any apportionment rules which 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.

(b) A travel insurer shall: (i) document the state of residence or principal place of business of the policyholder or certificate holder, as required in subsection (a); and (ii) report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 4. Travel protection plans.

Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this state if:

(a) the travel protection plan clearly discloses to the consumer, at or prior to the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and

(b) the fulfillment materials: (i) describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and (ii) include the travel insurance disclosures and the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 5. Sales practices.

(a) All persons offering travel insurance to residents of this state are subject to chapter 176D, except as otherwise provided in this section. In the event of a conflict between this chapter and other provisions of this title regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) 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 chapter 176D.

(c)(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 the travel insurance policy itself, including but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(2) For travel insurance policies or certificates that contain pre-existing condition exclusions, information and an opportunity to learn more about the pre-existing condition exclusions shall be provided any time prior to the time of purchase, and in the coverage's fulfillment materials

(3) The fulfillment materials and the information described in subsection (b)(2)(i)(A)-(D) of section 162Z of Chapter 175 shall be provided to a policyholder or certificate holder as soon as practicable, following the purchase of a travel protection plan. 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 policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least: (i) 15 days following the date of delivery of the travel protection plan's fulfillment materials by postal mail; or (ii) 10 days following the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail. For the purposes of this section, delivery means 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.

(4) The company shall disclose in the policy documentation and fulfillment materials 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) No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may do so by 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 the consumer purchases a trip.

(e) It shall be an unfair trade practice to market blanket travel insurance coverage as free.

(f) Where a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package: (i) purchasing the coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or (ii) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements prior to departure.

Section 6. Travel administrators.

(a) Notwithstanding any other provisions of this title, no person shall act or represent itself as a travel administrator for travel insurance in this state unless that person:

(1) is a licensed property and casualty insurance producer in this state for activities permitted under that producer license;

(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) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer, and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the commissioner upon request.

Section 7. Policy.

(a) Notwithstanding any other provision of this title, travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, provided, however, that 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.

(b) 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.

Section 8. Regulations.

The commissioner may promulgate regulations to implement the provisions of this chapter.

Section 9. Short title.

This chapter may be cited as the travel insurance act.

SECTION 4. This act shall take effect 90 days after enactment.