

MODERNIZING THE REGULATION OF TRAVEL INSURANCE FOR A CONSUMER-READY MARKET

Sixty percent of Americans planned to travel for vacation an average of 2.4 times in 2014.¹ Domestic or foreign, adventurous or benign, these trips create a number of travel risks. There are weather delays. There are natural disasters. There are mechanical delays. There are medical emergencies. In short, Life intervenes.²

Cue the need for travel insurance. In 2012, 148 million travelers in the United States purchased some type of travel insurance.³ The same year, Americans spent approximately \$1.9 billion on travel insurance, effecting a sales growth for the year of 14 percent.⁴ Sales at travel agencies alone grew by 12 percent.⁵ As a market, then, travel insurance is poised to expand.

Yet the growth of travel insurance as a retail product has, to date, been limited by a regulation scheme that far surpasses the product in complexity. Until only a year or two ago, each state regulated travel insurance retailers and frequently, incongruently. Reform was needed to bring the industry to its full potential. From 2009 through today, leaps and bounds have been made toward making the regulation of travel insurance at the state level uniform and workable so that it does not impede the sector's potential.

The following article reviews the historical regulatory challenges travel insurance providers have faced in marketing and selling their product. It then discusses the efforts to rectify these difficulties in order to make travel insurance more accessible. The Article concludes that though progress has been made, more remains to be done in order to mainstream travel insurance as a consumer product.

I. An Industry Ripe for Change

The market for travel insurance retailers has traditionally been populated overwhelmingly by travel agents as retailers.⁶ In 2012, travel agencies accounted for 55 percent of all travel insurance sales.⁷ As the world has modernized, the sale of travel-related products has also modernized: travel agents now

¹ *Americans Taking Average 2.4 trips in 2014, Most will Travel within U.S., says UStiA Survey*, UStiA US Travel Insurance Association (Jan. 7, 2014). The survey defined a "vacation trip" as traveling 100 miles or more from home.

² Recent statistics from the US Travel Insurance Association indicate that trip cancellation/interruption benefits continue to be the primary benefits sought by travelers purchasing travel insurance. However, travel medical and medical evacuation plans are a current growth area in travel insurance. *See Travel Agents, Suppliers Lead in Travel Insurance Sales*, UStiA US Travel Insurance Association (Nov. 12, 2013).

³ *See Travel Agents, Suppliers Lead in Travel Insurance Sales*, UStiA US Travel Insurance Association (Nov. 12, 2013).

⁴ *Id.*

⁵ *Id.*

⁶ Kate Rice, *Efforts to change travel insurance laws have paid off*, *Travel Weekly* (Oct. 20, 2014), <http://www.travelweekly.com/print.aspx?id=263580> (the "2014 Rice Article").

⁷ *Travel Agents, Suppliers Lead in Travel Insurance Sales*, UStiA US Travel Insurance Association (Nov. 12, 2013).

consult with clients remotely and sell products via the internet.⁸ In 2012, growing competition from online travel agencies and airlines also accounted for at least 25 percent of the sales of travel insurance.⁹ This shift in the market from being primarily local and in-person to global and remote outpaced the regulation of it.

As a type of limited line insurance, travel insurance has historically been regulated at the state level, requiring retailers to obtain a license authorizing “the sale, solicitation or negotiation of a line of insurance other than a major line of insurance.”¹⁰ State-specific licensing has also necessitated retailers to obtain a separate license for each state in which they offer insurance.¹¹ As such, the limited line license system was the antithesis of uniformity: at one point in time there were at least 55 different forms of limited lines licenses available across the states.¹²

Where the limited line licensing systems differed, so did the requirements for being licensed.¹³ There was no reciprocity of licenses.¹⁴ The patchwork of regulation among the states was confusing, expensive to comply with, and made the risk of noncompliance high.¹⁵ Because of such cumbersome regulation, the barriers to entry into the retail market of travel insurance products and producers’ relative effectiveness at getting travel insurance products to consumers discouraged the market’s potential.

Thus, at the root of the problem of why travel insurance has not been a prevalent product is its classification as low priority by regulators. In 2012, most regulators did not understand the importance of travel insurance to consumers; most did not understand why facilitating a travel agency’s ability to retail the product would help consumers at relatively low regulatory risk.¹⁶ In turn, travel insurance was treated like any other limited line insurance, and a travel agent retailing travel insurance was characterized as another run-of-the-mill insurance agent. It would take a unified effort by the industry to facilitate change.

II. Paving the Way at the National Level

In 1999, the Gramm Leach Bliley Act provided the impetus for a gradual modernization of the regulation of limited line insurance.¹⁷ A provision of the Gramm Leach Bliley Act required that states

⁸ *A Focus on Uniformity*, International Travel & Health Insurance Journal (Aug. 7, 2014), <http://www.itij.com/feature/focus-uniformity>.

⁹ *See Travel Agents, Suppliers Lead in Travel Insurance Sales*, UStiA US Travel Insurance Association (Nov. 12, 2013).

¹⁰ Greg E. Mitchell, *NAIC Review of Limited Lines Producer Licenses Update*, Federation of Regulatory Counsel, Inc. (Fall 2013).

¹¹ 2014 Rice Article.

¹² Greg E. Mitchell, *NAIC Review of Limited Lines Producer Licenses Update*, Federation of Regulatory Counsel, Inc. (Fall 2013).

¹³ Greg E. Mitchell, *NAIC Review of Limited Lines Producer Licenses Update*, Federation of Regulatory Counsel, Inc. (Fall 2013).

¹⁴ *Id.*

¹⁵ Maria Lenhart, *Uneven Insurance Laws Can Cost You up to \$40,000 a Year*, Travel Market Report (Mar. 28, 2013), <http://www.travelmarketreports.com/articles>.

¹⁶ *Id.* (quoting John Pittman, Vice President of Industry Affairs at ASTA).

¹⁷ *Travel Insurance Producer Licensing Reform*, UStiA US Travel Insurance Association (Feb. 2014).

enact uniform laws and regulation to govern the licensure of the sale of insurance within their states.¹⁸ In short form, the National Association of Insurance Commissioners (NAIC) launched a reciprocity system for permitting limited lines licensees to practice in multiple states; however, while the Producer Licensing Model Act of 2000 established uniform definitions for six major lines of insurance and one limited line of insurance (credit insurance), it did not address travel insurance providers.¹⁹ Travel insurance, it would appear, was again marginalized. It would take nearly a decade more before uniformity in the core limited lines of insurance—including travel insurance—would be addressed by NAIC reforms.²⁰

In 2009, NAIC's Uniform Producer Licensing Initiatives Working Group (PLWG) began assessing the needs of the core limited lines of insurance through a study of state licensing rules and regulations of producers and sellers of limited lines of insurance.²¹ Through the study, PLWG acknowledged that the current system of licensing retailers (such as travel agents) did little in terms of providing consumer protection: the bigger issue of substantive protections for consumers rested with carriers and their products.²² PLWG tipped its hat to the fact that the web of regulation of retailers of travel insurance put a faulty emphasis of regulation where regulation was not effective.²³ It was regulation for the sake of regulation, not for the sake of protection. PLWG then identified key areas needing change and developed them into the 2010 Uniform Licensing Standard and Implementation Guidelines.²⁴ The Standard and Guidelines soon became the basis for further reform.²⁵

In 2012, a joint effort by the NAIC, National Conference of Insurance Legislators (NCOIL), U.S. Travel Insurance Association (USTIA) and the American Society of Travel Agents (ASTA) to develop a system of model laws, which the several states could use as the basis for modernizing regulation of the travel insurance industry with clearer, more workable licensing and improving consumer protections, led to the creation of The Limited Lines Travel Insurance Model Act.²⁶ The Model Act aimed to specifically reduce the burden on travel agents and agencies as the primary retailer of travel insurance products.²⁷ Everyone anticipated the Model Act would make compliance for travel agents easier because it recognized that travel agents are different from insurance agents and, thus, should not be regulated at a comparable level.²⁸

¹⁸ *A Focus on Uniformity*, International Travel & Health Insurance Journal (Aug. 7, 2014), <http://www.itij.com/feature/focus-uniformity>.

¹⁹ Greg E. Mitchell, *NAIC Review of Limited Lines Producer Licenses Update*, Federation of Regulatory Counsel, Inc. (Fall 2013).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *A Focus on Uniformity*, International Travel & Health Insurance Journal (Aug. 7, 2014), <http://www.itij.com/feature/focus-uniformity>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Travel Insurance Producer Licensing Reform*, USTIA US Travel Insurance Association (Feb. 2014).

²⁷ *A Focus on Uniformity*, International Travel & Health Insurance Journal (Aug. 7, 2014), <http://www.itij.com/feature/focus-uniformity>.

²⁸ *Id.*

Key developments of the Model Act include three areas.

First, the Model Act defined “offer and disseminate” to include “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.”²⁹ This change was crucial to modernization because it indicated a recognition that a travel agent is best positioned to sell travel insurance to clients but has none of the same responsibilities licensed insurance agents have to “sell, solicit and negotiate” insurance on their clients’ behalves.³⁰ Under the Model Act, travel agents can do many of the things they were already doing in relation to offering travel insurance but without the need for restrictive licensure.³¹

Second, the Model Act defined a “travel retailer” as “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.”³² The definition for “travel retailer” thus reinforced the idea that a travel agent offering insurance is fundamentally different than an insurance agent.

Third, the Model Act enabled travel agents to work under the license of the producer of the insurance product itself.³³ This puts the onus for the product to comply with state regulations on the producers—the carriers—rather than the agents retailing on the front lines.³⁴ By bringing them under the producer’s umbrella, The Model Act also provided the necessary protection to travel retailers from being tied up in complaints related to the travel insurance product—complaints to which the producers are the ultimate respondents.³⁵

Under this provision of the Model Act, producers must further comply with specific criterion in order to be able to offer their product to travel retailers.³⁶ The provision is backstopped by the non-elimination of the limited lines of insurance license: in the event a producer is not in compliance with the minimum standards set by the Model Act—such as transparent marketing materials, registration and contact information for claims assistance, payment of licensing compliance fees, and basic training for travel retailers offering and disseminating the product—the retailers of the product must nonetheless

²⁹ Section 2.B., *Proposed Limited Lines Travel Insurance Model Act*, National Conference of Insurance Legislators (NCOIL) (Jul. 13, 2012).

³⁰ *Id.*

³¹ 2014 Rice Article.

³² Section 2.D., *Proposed Limited Lines Travel Insurance Model Act*, National Conference of Insurance Legislators (NCOIL) (Jul. 13, 2012).

³³ Section 3, *Proposed Limited Lines Travel Insurance Model Act*, National Conference of Insurance Legislators (NCOIL) (Jul. 13, 2012).

³⁴ See Kate Rice, *Travel Insurance Regs are Easing, But Still Pose Peril*, Travel Weekly (Mar. 11, 2013), <http://www.travelweekly.com/print.aspx?id=247164> (the “2013 Rice Article”).

³⁵ Section 5, *Proposed Limited Lines Travel Insurance Model Act*, National Conference of Insurance Legislators (NCOIL) (Jul. 13, 2012).

³⁶ Section 3, *Proposed Limited Lines Travel Insurance Model Act*, National Conference of Insurance Legislators (NCOIL) (Jul. 13, 2012).

obtain a license to sell such limited lines of insurance.³⁷ Thus, the Model Act sought to supplement, rather than supplant, current state regulatory schemes by instilling uniformity and reciprocity in the system.

III. Passing the Challenge on to the States

By-and-large, the Model Act has been successful at fomenting change in state-level regulation of travel insurance. As of the end of October 2014, a total of thirty-one states had adopted some form of the Model Act, specifically enabling travel agents to sell insurance under the provider license, rather than requiring them to obtain their own.³⁸ The roll-out of uniform change has been slowed by a number of factors, including that in some states, insurance commissioners set the licensing requirements for limited lines of insurance—permitting a direct effort to work with the regulators to make changes—while in other states, there are statutory requirements for licensure—meaning that changes must come from lobbying effort at the state legislature.³⁹ Above all, time appears to be the last necessary ingredient for uniformity.

There remain another nineteen states that have yet to adopt the Model Act.⁴⁰ Major steps forward occurred in 2014 when Arizona, California, Colorado, Hawaii, and Maryland adopted the Model Act.⁴¹ As a model of success, Colorado passed House Bill 1185 in May of 2014. The Colorado Bill incorporated the key definitions of “offer and disseminate” and “travel retailer” included in the Model Act, as well as the Model Act’s definitions of “limited lines travel insurance producer” and “travel insurance.”⁴² The Colorado Bill was widely accepted because it did not create more regulation, and it incorporated key consumer protections, including the limitations of what a travel agent may not do and the requirements a producer must meet in order to provide its product to travel retailers.⁴³

However, growing pains continue. Different states have adopted the Model Act to varying degrees, leading to remnants of piecemeal regulation that is still somewhat state-specific and may not be user-friendly.⁴⁴ California is one such example. California has the highest number of travel agents of any state.⁴⁵ Thus, it perhaps goes without saying that having California adopt the Model Act in 2014 was a success. However, the California Legislature enacted a distinct law which eliminated the option of maintaining low-cost limited lines travel insurance licenses, in their entirety.⁴⁶ Doing so effectively carved out the possibility for retailers maintaining their license or falling back on the backstop envisioned by the Model Act drafters. In the coming years, it is anticipated that further efforts will be required to bring the California law in line.

Nonetheless and to date, the sum of nearly four years of dedicated effort by a number of organizations in the insurance field has led to a much improved travel insurance industry. The changes

³⁷ See *Travel Insurance Producer Licensing Reform*, UStiA US Travel Insurance Association (Feb. 2014).

³⁸ 2014 Rice Article; see also *Status Updates*, ASTA (October 2014), <http://www.asta.org/Government>.

³⁹ 2013 Rice Article.

⁴⁰ 2014 Rice Article.

⁴¹ *Status Update*, ASTA (October 2014), <http://www.asta.org/Government>.

⁴² H.B. 1185, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

⁴³ *Vote Yes on HB 1185: Streamlining the Issue of Travel Insurance Policies*, White Paper prepared by Daniel Furman and Robert Ferm, Hall & Evans, LLC (Feb. 2014); see also Ed Sealover, *Travel-insurance Regulatory Bill on Way to Governor’s Desk*, Denver Business Journal (Apr. 21, 2014).

⁴⁴ 2014 Rice Article.

⁴⁵ 2013 Rice Article.

⁴⁶ *Status Update*, ASTA (October 2014), <http://www.asta.org//Government>.

reflect that by simply offering travel insurance, travel agents are not insurance agents requiring the same volume of regulation as in other insurance product lines.⁴⁷ Travel insurance has finally taken a leap ahead.

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⁴⁷ 2013 Rice Article.