

State of South Dakota

EIGHTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2014

625V0538

SENATE BILL NO. 115

Introduced by: Senators Maher, Begalka, Buhl O'Donnell, Holien, Jensen, Jones (Chuck),
and Lederman and Representatives Konzett, Cammack, Greenfield, Hawley,
Kirschman, Nelson, Rounds, and Solum

1 FOR AN ACT ENTITLED, An Act to provide for travel insurance and regulate travel insurance
2 retailers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-30-52 be amended to read as follows:

5 58-30-52. No examination is required of:

6 (1) An applicant for the same kind of license as that which the applicant has previously
7 held in this state for at least one year within the five years next preceding the date of
8 application and who is deemed by the director to be fully qualified and competent;

9 (2) ~~Transportation ticket agents of common carriers applying for limited license to solicit~~
10 ~~and sell, as incidental to their duties as such transportation ticket agents, only:~~

11 ~~———— (a) — Personal accident insurance ticket policies; or~~

12 ~~———— (b) — Insurance of personal effects while being carried as baggage on such common~~

13 ~~carriers~~ A travel retailer or applicant for a limited line travel insurance license

14 under sections 5 to 13, inclusive, of this Act;



- 1 (3) Attorneys licensed to practice law in this state;
- 2 (4) Insurance producers outside the United States or its territories;
- 3 (5) Insurance producers applying for a limited license to sell, solicit, or negotiate limited
- 4 line credit or limited line insurance exclusively;
- 5 (6) Employees of trade associations for the issuance of surety bonds to their association
- 6 members only;
- 7 (7) Travel accident agents of motor service clubs;
- 8 (8) A person who applies for an insurance producer license in this state who was
- 9 previously licensed for the same lines of authority in another state. This exemption
- 10 is available if the person is currently licensed in that state or if the application is
- 11 received within ninety days of the cancellation of the applicant's previous license as
- 12 long as the applicant was in good standing in that state and the state's insurance
- 13 producer database records, maintained by the National Association of Insurance
- 14 Commissioners, its affiliates, or its subsidiaries, indicate that the insurance producer
- 15 is or was licensed in good standing for the line of authority requested;
- 16 (9) A person licensed as an insurance producer in another state who moves to this state
- 17 and makes application within ninety days of establishing legal residence to become
- 18 a resident licensee pursuant to §§ 58-30-148 to 58-30-151, inclusive. An examination
- 19 may be required of that person to obtain any line of authority previously held in the
- 20 prior state unless the director determines otherwise by rule.

21 Section 2. That § 58-30-68 be amended to read as follows:

22 58-30-68. The director may issue to an applicant qualified therefor under this title a limited
23 lines insurance producer's license for the following types of insurance:

- 24 (1) Credit insurance as defined in § 58-30-142;

(2) Crop insurance as defined in § 58-30-142;

(3) Rental car insurance as defined in § 58-30-198; and

(4) Travel insurance as defined in ~~§ 58-30-142~~ sections 5 to 13, inclusive, of this Act.

Section 3. That § 58-30-69 be amended to read as follows:

58-30-69. Applicants for limited license as to ~~accident insurance or baggage~~ travel insurance under subdivision ~~58-30-68(1) or (2)~~ 58-30-68(4) are exempt from examination, as provided in § 58-30-52, and the fee for each such license, including issuance thereof and the appointment by the insurer, shall be in the amount specified in § 58-2-29.

Section 4. That § 58-30-142 be amended to read as follows:

58-30-142. Terms used in §§ 58-30-141 to 58-30-195, inclusive, mean:

(1) "Agent of the insurer," any insurance producer who is compensated directly or indirectly by an insurer and sells, solicits, or negotiates any product of that insurer;

(2) "Agent of insured," any insurance producer or person who secures compensation from an insured or insurance customer only and receives no compensation directly or indirectly from an insurer for a transaction with that insured or insurance customer;

(3) "Business entity," a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity;

(3A) "Consultant," an agent of the insured who sells, solicits, or negotiates insurance on behalf of an insured or prospective insured or who assists an insured or prospective insured in the procurement of insurance;

(4) "Credit insurance," insurance that includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any

1 other form of insurance offered in connection with an extension of credit that is
2 limited to partially or wholly extinguishing that credit obligation that the director
3 determines should be designated a form of limited line credit insurance;

4 (5) "Crop insurance," insurance providing protection against damage to crops from
5 unfavorable weather conditions, fire or lightening, flood, hail, insect infestation,
6 disease or other yield-reducing conditions or perils provided by the private insurance
7 market, or that is subsidized by the Federal Crop Insurance Corporation, including
8 Multi-Peril Crop Insurance;

9 (6) "Home state," the District of Columbia and any state or territory of the United States
10 in which an insurance producer maintains the insurance producer's principal place of
11 residence or principal place of business and is licensed to act as an insurance
12 producer;

13 (7) "Limited lines producer," any person authorized by the director to sell, solicit, or
14 negotiate limited lines insurance;

15 (8) "Negotiate," the act of conferring directly with or offering advice directly to a
16 purchaser or prospective purchaser of a particular contract of insurance concerning
17 any of the substantive benefits, terms, or conditions of the contract if the person
18 engaged in that act either sells insurance or obtains insurance from insurers for
19 purchasers;

20 (9) "Sell," to exchange a contract of insurance by any means, for money or its equivalent,
21 on behalf of an insurance company;

22 (10) "Solicit," attempting to sell insurance or asking or urging a person to apply for a
23 particular kind of insurance from a particular company;

24 (11) "Terminate," the cancellation of the relationship between an insurance producer and

1 the insurer or the termination of an insurance producer's authority to transact
2 insurance;

3 (12) "Travel insurance," ~~insurance coverage for trip cancellation, trip interruption,~~
4 ~~baggage, life, sickness and accident, disability, and personal effects when limited to~~
5 ~~a specific trip and sold in connection with transportation provided by a common~~
6 ~~carrier~~ a limited line of insurance as defined in sections 5 to 13, inclusive, of this Act.

7 Section 5. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Terms used in sections 5 to 13, inclusive, of this Act mean:

10 (1) "Limited lines travel insurance producer," a:

11 (a) Licensed managing general underwriter;

12 (b) Licensed managing general agent or third party administrator; or

13 (c) Licensed insurance producer, including a limited lines producer,

14 designated by an insurer as the travel insurance supervising entity as set forth in
15 section 13 of this Act;

16 (2) "Offer and disseminate," providing general information, including a description of
17 the coverage and price, as well as processing the application, collecting premiums,
18 and performing other nonlicensable activities permitted by the state;

19 (3) "Travel insurance," insurance coverage for personal risks incident to planned travel,
20 including:

21 (a) Interruption or cancellation of a trip or event;

22 (b) Loss of baggage or personal effects;

23 (c) Damages to accommodations or rental vehicles; or

24 (d) Sickness, accident, disability, or death occurring during travel.

1 Travel insurance does not include major medical plans, which provide
2 comprehensive medical protection for travelers with trips lasting six months or
3 longer, including those working overseas as an ex-patriot or as deployed military
4 personnel;

5 (4) "Travel retailer," a business entity that makes, arranges, or offers travel services and
6 may offer and disseminate travel insurance as a service to its customers on behalf of
7 and under the direction of a limited lines travel insurance producer.

8 Section 6. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Notwithstanding any other provision of law, the director may issue to an individual or
11 business entity that has filed with the director an application for such limited license in a form
12 and manner prescribed by the director, a limited lines travel insurance producer license, which
13 authorizes the limited lines travel insurance producer to sell, solicit, or negotiate travel insurance
14 through a licensed insurer.

15 Section 7. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Notwithstanding any other provision of law, a travel retailer may offer and disseminate
18 travel insurance under a limited lines travel insurance producer business entity license only if
19 the entity meets the following conditions:

20 (1) The limited lines travel insurance producer or travel retailer provides to purchasers
21 of travel insurance:

22 (a) A description of the material terms or the actual material terms of the
23 insurance coverage;

24 (b) A description of the process for filing a claim;

1 (c) A description of the review or cancellation process for the travel insurance
2 policy; and

3 (d) The identity and contact information of the insurer and limited lines producer;

4 (2) At the time of licensure, the limited lines travel insurance producer shall establish
5 and maintain a register on a form prescribed by the director of each travel retailer that
6 offers travel insurance on the limited lines producer's behalf. The limited lines travel
7 insurance producer shall maintain and update the register annually and shall include
8 the name, address, and contact information of the travel retailer and an officer or
9 person who directs or controls the travel retailer's operations, and the travel retailer's
10 federal tax identification number. The limited lines travel insurance producer shall
11 submit such register to the division of insurance upon reasonable request. The limited
12 lines producer shall certify that the travel retailer registered complies with 18 U.S.C.
13 1033;

14 (3) The limited lines travel insurance producer shall designate an employee who is a
15 licensed individual producer as a designated responsible producer, or DRP. The DRP
16 is responsible for the limited lines travel insurance producer's compliance with the
17 travel insurance laws and rules of this state;

18 (4) The DRP, president, secretary, treasurer, and any other officer or person who directs
19 or controls the limited lines travel insurance producer's insurance operations shall
20 comply with the fingerprinting requirements applicable to insurance producers in this
21 state;

22 (5) The limited lines travel insurance producer pays all applicable insurance producer
23 licensing fees;

24 (6) 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 is subject to review by the director. The training material shall, at a minimum, contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers; and

- (7) Limited lines travel insurance producers, and those registered under its license, are exempt from any examination, pre-licensing, and continuing education requirements under this chapter.

Section 8. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as follows:

Any travel retailer offering or disseminating travel insurance shall make available to prospective purchasers, brochures or other written materials that:

- (1) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;
- (2) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and
- (3) 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.

Section 9. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as follows:

A travel retailer's employee or authorized representative who is not licensed as an insurance

1 producer may not:

- 2 (1) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel
3 insurance coverage;
- 4 (2) Evaluate or provide advice concerning a prospective purchaser's existing insurance
5 coverage; or
- 6 (3) Hold oneself out as a licensed insurer, licensed producer, or insurance expert.

7 Section 10. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Notwithstanding any other provision of law, a travel retailer whose activities related to
10 insurance, and those of its employees and authorized representatives, are limited to offering and
11 disseminating travel insurance on behalf of and under the direction of a limited lines travel
12 insurance producer meeting the conditions stated in this Act, is authorized to do so and receive
13 related compensation for such services, upon registration by the limited lines travel insurance
14 producer as described in subdivision (2) of section 7 of this Act.

15 Section 11. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 Travel insurance may be provided under an individual policy or under a group or master
18 policy.

19 Section 12. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 As the insurer designee, the limited lines travel insurance producer is responsible for the acts
22 of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer
23 with this chapter.

24 Section 13. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The limited lines travel insurance producer and any travel retailer offering and disseminating
3 travel insurance under the limited lines travel insurance producer license shall comply with the
4 Unfair Trade Practices Act of this state, §§ 58-33-66 to 58-33-69, inclusive, and with the
5 enforcement provisions that apply to all insurers.