

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, Suite 1700
Sacramento, California 95814

REG-2012-00029

July 25, 2014

NOTICE OF PROPOSED RULEMAKING

TRAVEL INSURANCE AGENT LICENSING REGULATIONS

SUBJECT OF PROPOSED RULEMAKING

Notice is hereby given that the Insurance Commissioner proposes to adopt the regulations described below after considering public comment. The Commissioner proposes to add Article 13 to Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations. Article 13 is to include the following new sections: 2194.18; 2194.19; 2194.20, 2194.21; 2194.22; 2194.23; 2194.24; 2194.25; and 2194.26.¹

The proposed regulations set license application and renewal fees for those applying for the limited lines travel insurance agent license and prescribe required forms and materials for applicants and licensees. The proposed regulations implement training requirements for unlicensed travel retailer employees involved in the transaction of travel insurance. Finally, they clarify and add specificity to consumer disclosure and record keeping requirements.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the adoption of the proposed regulations as follows:

Date and time: September 8, 2014
10:00 A.M.

Location: 300 Capitol Mall, 13th Floor - Conference Room 13025
Sacramento, CA 95814

The hearing will continue on the date noted above until all testimony has been submitted or 5:00 p.m., whichever is earlier.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearings are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) identified above for special arrangements, if necessary.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSON(S)

¹ Unless noted otherwise, all references to "regulations" and "sections" refer to the proposed regulations for Article 13, subchapter Chapter 5 of Title 10 of the California Code of Regulations.

All interested persons may submit written comments relevant to the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on September 8, 2014**. Please direct all written comments to the following contact person(s):

Richard A. Lovell, Attorney III
California Department of Insurance
300 Capitol Mall Drive, Suite 1700
Sacramento, CA 95814
Richard.Lovell@insurance.ca.gov
Telephone: (916) 492-3614

Questions regarding the procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event that the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Tyler McKinney, Attorney
California Department of Insurance
300 Capitol Mall Drive, Suite 1700
Sacramento, CA 95814
Tyler.McKinney@insurance.ca.gov
Telephone: (916) 492-3512

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than **5:00 p.m. on September 8, 2014**. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following email address Richard.Lovell@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Richard Lovell and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadlines set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed regulations are necessary in order to implement, interpret, and make specific the provisions of California Insurance Code Sections 1752, 1753, 1754, 1755, and 1756 which were enacted on January 1, 2013 with the passage of Assembly Bill 2354 (Chapter 257, Statutes of 2012). The authority for these regulations is provided in Insurance Code section 1757 as well as the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Ins. Co. v. Garamendi*, 8 Cal.4th 216 (1994).

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW

Assembly Bill 2354 (Chapter 257, Statutes of 2012) was signed into law on September 7, 2012 and became effective on January 1, 2013. The legislation was sponsored by the travel services industry and is contained within California Insurance Code Sections 1752 through 1757. The legislation revised California law relating to the transaction of travel insurance and conformed licensing requirements to those adopted by the National Association of Insurance Commissioners (NAIC) in 2010. The NAIC standards were developed in order to establish a nationwide, uniform licensing model for the transaction of travel insurance.

Today, travel insurance is primarily offered and sold by travel retailers, incidental to their sale of travel destination plans. The vast majority of these insurance transactions occur at the offices or websites of travel retailers. Prior to the legislative adoption of the NAIC standards, each travel retailer that offered or sold travel insurance in California required a license. This was found to be an inefficient and burdensome manner of providing travel insurance to the public.

The new licensing standards create a model that better lends itself to the existing structure of the travel industry. Under the new model, limited lines travel insurance agent licenses are issued to business entities that are appointed by one or more insurance carriers. (Ins. Code § 1753(a)). These licensees do not directly offer and sell travel insurance products. Rather, the licensees provide oversight and training of employees of travel retailers who offer and sell travel insurance incidental to providing travel services and products.

The legislation authorizes the Commissioner to issue a limited lines travel insurance agent license “to any organization engaged in transacting travel insurance through travel retailers ...” (Ins. Code § 1752.) In order to receive the license, it must be applied for on “a written application ... in the form prescribed by the commissioner.” (Ins. Code § 1755(a)(1)).

In accordance with Insurance Code Section 1755(a)(1), the Commissioner has prescribed Form 441-11 for use by organizations applying for the limited lines travel insurance agent license. Form 441-11 is the producer application form already in use by the Commissioner for use by business entities that are applying for licensure. Required use of this form will assure uniformity in the travel insurance agent license applications that are submitted for approval and serves to facilitate the Department’s review of these applications.

The legislation requires payment of “an application fee, and, for each license period thereafter, a renewal fee, in an amount or amounts determined by the Commissioner as sufficient to defray the reasonable costs incurred by the department from implementing the provisions of Assembly Bill AB 2354...” (Ins. Code § 1755(a)(3)).

As with other insurance producer license designations, the legislation requires that applicants for the limited lines travel insurance agent license establish that they are appointed by an authorized insurer. (Ins. Code § 1755(a)(2)). An officer or managing agent of the appointing insurer must certify on a form prescribed by the Commissioner that the applicant is trustworthy and competent to act as the insurer’s agent.

Under the new licensing standards, unlicensed travel retailers are authorized to transact travel insurance on behalf of licensed organizations. However, the legislation requires that travel

retailers and their affected employees have an understanding of the insurance products being offered / sold and of their obligations under the new licensing model. Accordingly, a limited lines travel insurance agent must “[use] all reasonable means at its disposal to ensure compliance by the travel retailer and the travel retailer's employees with their obligations under [AB 2354].” (Ins. Code § 1754(a)(6)).

In addition to exercising “all reasonable means” to ensure compliance by travel retailers, the legislation also sets forth other specific duties required of the limited lines travel insurance agent. For example, a licensee is required to provide training for travel retailer employees that are authorized to transact travel insurance under its license. Such training must include materials that, “at a minimum ... contain instruction on the types of insurance offered, ethical sales practices, and disclosures to prospective insurance customers.” (Ins. Code § 1754(a)(6)). This training must occur at least every three years, or whenever there is a material change requiring modification of the training materials.

The legislation also imposes record keeping requirements on licensed travel insurance agents in order to assure that they are complying with their oversight responsibilities. The law requires that “the limited lines travel insurance agent, at the time of licensure and thereafter, maintains a register noting each travel retailer that transacts travel insurance on the licensee's behalf.” (Ins. Code § 1754(a)(2)). The register must be “maintained and updated annually by the licensee in a form prescribed by, or format acceptable to, the commissioner.” (Ins. Code § 1754(a)(2)). It must “include the name and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations ...” (Ins. Code § 1754(a)(2)).

The legislation also fosters consumer protection by setting forth specific consumer disclosure requirements. These disclosures are intended to assist consumers in making informed decisions concerning the purchase of travel insurance and in identifying a point of contact which they can use to obtain answers to technical, insurance related questions.

Thus, a travel retailer may transact travel insurance under the authority of a licensed limited lines travel insurance agent if “[t]he limited lines travel insurance agent is clearly identified on marketing materials and fulfillment packages distributed by the travel retailers to customers.” (Ins. Code § 1754(a)(1)). These materials are to include “the agent's name, business address, email address, telephone number, license number, [as well as] the availability of the department's toll-free consumer hotline.” (Ins. Code § 1754(a)(1)).

The legislation specifies the content of the disclosures that must be made to prospective and actual customers in the marketing materials and fulfillment packages used by travel retailers. It requires that these materials contain disclosures that indicate, in substance, the following: “The [travel insurance] plan provides insurance coverage that only applies during the covered trip. You may have coverage from other sources that provides you with similar benefits but may be subject to different restrictions depending upon your other coverages. You may wish to compare the terms of this policy with your existing life, health, home, and automobile insurance policies. If you have any questions about your current coverage, call your insurer or [travel] insurance agent or broker.” (Ins. Code § 1754(a)(7)).

Under 1754(a)(8), the travel insurance agent or travel retailer must provide additional disclosures which must either be acknowledged in writing at the time of purchase or posted on signs in conspicuous places where the travel insurance is purchased. These disclosures must inform

prospective customers that the purchase of travel insurance is not required in order to purchase the underlying travel services offered by the travel retailer. They must also inform prospective customers that the unlicensed travel retailer employees are not qualified or authorized to answer technical questions about travel insurance products and that they are unable to evaluate the adequacy of any existing insurance coverage the customer might have.

EFFECT OF PROPOSED ACTION

To obtain a limited lines travel insurance agent license, all applicants will be required to complete and submit a Business Entity Application for Insurance License Form LIC 441-11 (Rev 3/2014). This form is accessible online and its use is consistent with the business organization model established by the legislation. Required use of this form will assure uniformity in the license applications submitted for approval and serve to facilitate the Department's review and consideration of these applications.

Under the proposed regulations, deficient travel insurance agent license applications will be considered incomplete. Within 21 days of receipt of a deficient application, applicants will be notified by email or mail of the deficiency and informed about the specific information required in order to correct the deficiency and complete the application. Within 30 days of receipt of a completed application, the Commissioner will determine whether the license should be granted. If denied, the Commissioner will provide a notification that sets forth the reason(s) for denial. In the event that the Department takes legal action to deny an application, these time periods will be tolled.

The proposed regulations set forth forms and materials that must be submitted along with the Business Entity Application Form LIC 441-11 in order for the license application to be deemed complete. First, each application must include a Travel Insurance Agent Notice of Appointment Form LIC TA 1. This form must be completed by the applicant's appointing insurer and certifies that the applicant is trustworthy and competent to act as the insured's agent.

Under the proposed regulations, each applicants will also submit an initial certification form that lists the number of travel retailers that are qualified to offer and sell travel insurance products on its behalf. In this certification, the applicant will affirm that the travel retailer employees have completed required training and that only authorized travel retailer employees will offer and sell travel insurance on its behalf. Each applicant will also be required to affirm that its authorized travel retailers comply with Title 18, United States Code, Section 1033 and attach a list identifying each travel retailer. After licensure, licensees will be required to annually update their certification of authorized travel retailers. An annual certification must be maintained on the prescribed form and submitted to the Department upon request.

The Commissioner has examined the Department's costs in implementing the new licensing model required by the legislation. As a result of the passage of AB 2354, the licensing structure for the limited lines travel insurance agent license changed from numerous inexpensive individual licenses to fewer, more costly organization licenses. Accordingly, prior to the enactment of AB 2354, approximately 2,800 individuals were licensed as travel insurance agents. At that time, both the application and renewal fees for the license were \$44 for a two-year license. With the passage of AB 2354, the number of licensees has decreased dramatically. At that time, it was anticipated that CDI would ultimately license 40 organizations. However, as of May 23, 2014, CDI has only issued 27 such licenses. An additional five applications are pending, and if approved, the CDI's total would reach 32, which is short of the 40 projected at

the time AB 2354 was adopted. After identifying and quantifying the costs for implementing the new licensing standards, the Commissioner has determined that application and renewal fees should be set at \$3,752 in order to defray costs.

To ensure compliance with the legislation's training requirements, applicants will prepare and submit a copy of the training materials they intend to use for training travel retailer employees. The proposed regulations include a form containing an outline of required training elements for use by licensees in structuring their training program and materials. A separate set of training materials will be submitted for each travel insurance product that is offered and/or sold. In cases where a particular travel insurance product is sold by an employee of a travel retailer that is doing business at multiple locations under the same name, only one set of training materials need be submitted for that product. Also, in certain instances, applicants need not submit training materials if they have already been developed by an insurer or approved education provider and previously approved by the Department. Finally, changes to previously submitted training materials must be submitted to the Department within 30 days prior to their use. The changes must be highlighted in the materials and will be deemed approved for use unless there is Department notification to the contrary.

The proposed regulations also clarify and implement the disclosure requirements set forth in section 1754(a)(1),(7), and (8) of the legislation. The required disclosures must be written clearly and conspicuously. In addition to the disclosures required by statute, the written materials provided by the travel retailer to prospective customers, including marketing materials and fulfillment packages, must contain the approved true or fictitious business name of the travel insurance agent and the name of the insurer(s). Finally, a copy of the travel insurance agreement must be provided to customers when a travel insurance product is purchased.

Under the proposed regulations, licensed travel insurance agents are required to maintain records of insurance transactions for at least three years after the expiration or cancellation date of the policy to which they pertain. Additionally, they must maintain copies of the marketing materials, fulfillment packages, certifications, registers, and training materials for at least three years after their expired use. The materials must be kept in the licensee's principal California office and must be produced to the Department within 30 days of receipt of a written request.

In order to provide guidance to applicants for the travel insurance agent license, the regulations set forth additional procedural requirements. The Commissioner has determined the median, minimum and maximum times for processing a license application, from the receipt of the initial completed application to the final licensing decision (excluding applications that require legal action) as follows:

- (1) thirty (30) calendar days (median time);
- (2) fourteen (14) calendar days (minimum time); and,
- (3) one (1) calendar year (maximum).

FORMS INCORPORATED BY REFERENCE

Pursuant to the statutory authority conferred to him, the Commissioner has prescribed forms necessary for the proper and efficient implementation of the legislation. The proposed regulations incorporate the following forms by reference:

- Business Entity Application for Insurance License Form 441-11 (Rev 11/12);
- Travel Insurance Agent Notice of Appointment Form LIC TA 1 (Rev 12/12);
- Initial Certification Form LIC TA 2 (Rev 12/12);
- Outline of Required Training Elements Form LIC TA 3 (Rev 12/12);
- Annual Certification Form LIC TA 4 (Rev 12/12); and
- Travel Insurance Agent Authorized Employees Form LIC TA 5 (Rev 12/12)

COMPARABLE FEDERAL LAW

There is no existing federal statute or regulation that is comparable to the proposed regulations.

POLICY STATEMENT OVERVIEW

The specific policy underlying the proposed action is articulated by the following statements by the author of AB 2354:

“Inconsistences [sic] in travel insurance regulations nationwide are a disservice to the traveling public. Travel retailers are sometimes discouraged from offering the travel insurance opportunity due to the heavy cost of regulation, licensing, and testing. This is particularly true for retailers doing business online or in multiple jurisdictions. Travel insurance amounts to, on average, only 1.9% of total travel retailer revenue, so for those who are primarily selling travel, becoming a limited license travel insurance agent is more expensive and a bigger bother than it is worth. Therefore, it is important to all parties that the rules governing the distribution of travel insurance be uniform throughout the nation, simple and broad in scope.

AB 2354 would update the definition of what is considered travel insurance, and would authorize a shift in the licensing burden onto the limited lines travel insurance agent. The limited lines travel insurance agent would then be obligated to follow strict guidelines pertaining to transparency, consumer protection and the training of travel retailers providing travel insurance under the limited license of that travel insurance agent. AB 2354 would also provide California's insurance commissioner with the ability to follow the new standards approved by the National Association of Insurance Commissioners (NAIC) that will eliminate the travel insurance licensing burden on travel agents in California.”

The purpose of the proposed regulations is to implement and add both specificity and clarity to the law as enacted by AB 2354 in a manner that facilitates transparency and consumer protection. The areas the regulations are intended to address include: (1) providing clarity concerning the content of the license application and other forms that must be submitted to the Department; (2) setting appropriate licensing application and renewal fees in accordance with Insurance Code Section 1755(a)(3); (3) clarifying the requirements for the training of travel

retailers; (4) clarifying and implementing the disclosure requirements set forth in section Insurance Code Section 1754(a); and (5) establishing record keeping requirements in order ensure access to information and documents necessary to accomplish the Department's consumer protection responsibilities.

CONSISTENCY OR COMPATIBILITY WITH STATE REGULATIONS

After conducting a review, the Department has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

The Commissioner has examined the Department's costs in implementing the new licensing model as required by the legislation. With the passage of AB 2354, the number of travel insurance agent licensees has decreased dramatically. At that time, it was anticipated that the Department would ultimately license 40 organizations. As of April 18, 2014, the Department had only issued 27 such licenses. An additional five applications are pending, and if approved, the total number of licensees will reach 32, short of the 40 projected at the time AB 2354 was adopted. After identifying and quantifying the costs for implementing the new licensing standards, the Commissioner has determined that application and renewal fees should be set at \$3,752 in order to defray costs to the Department of Insurance.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner is required to assess any statewide adverse impact the proposed regulations may have which directly affects businesses. This includes adverse affects to the ability of California businesses to compete with businesses in other states.

The Commissioner has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. (Gov. Code § 11346.5(a)(8)). Moreover, although the proposed regulations will affect insurers, under the law, insurers are not small business (Gov. Code § 11342.610(b)(2)).

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed regulations.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Commissioner is required to assess any economic impact the proposed regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. Additionally, the Commissioner is required to assess the proposed regulations' benefits as they relate to the health and welfare of California residents, worker safety, and the state's environment.

The Commissioner has made an initial determination that that the proposed regulations will have a negligible impact on employment in California and the state economy. (Gov. Code § 11346.3(b)(1)(A)). An economic impact assessment has been conducted and finds that there will likely be no ascertainable impact on employment in the travel arrangement and reservations services industry and no effect on state-wide employment in California.

The Commissioner has also made an initial determination that the adoption of the proposed regulations will not impact the creation of new businesses or result in the elimination of existing businesses within the State of California (Gov. Code § 11346.3(b)(1)(B)). Further, the proposed regulations will not impact the expansion of businesses currently doing business within the State of California (Gov. Code § 11346.3(b)(1)(C), nor will it affect worker safety or the state's environment (Gov. Code § 11346.3(b)(1)(D)).

The benefits of the proposed regulations to the health and welfare of California residents are as set forth under "Policy Statement Overview" and "Effect of Proposed Action" in the Informative Digest Section of this Notice. The regulations address in part: (1) providing specificity concerning the form and content of the license application and other application materials as required under Insurance Code Section 1755(a)(1); (2) setting appropriate license and renewal fees as required under Insurance Code Section 1755(a)(3); and (3) clarifying and implementing the disclosure and training requirements contained in Insurance Code Section 1754(a).

The proposed regulatory requirements provide a benefit to Californians in that they: (1) serve to facilitate the licensing process for travel insurance agents; (2) set an appropriate fee to enable the Commissioner to properly administer and oversee the licensing process; and (3) foster consumer protection.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations will have a negligible effect on small businesses in California. (See also "ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE".)

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying, once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the initial statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 300 Capitol Mall, Suite 1700, Sacramento, CA 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTING

Documents concerning these proposed regulations are available on the Department's website. To access them, go to www.insurance.ca.gov/0250-insurers/0500-legal-info/0200-regulations/proposed-regulations.cfm.

SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no such requirements.

