



STATE OF NEW YORK
INSURANCE DEPARTMENT
ONE COMMERCE PLAZA
ALBANY, NEW YORK 12257

George E. Pataki
Governor

Howard Mills
Superintendent

Circular Letter No. 24 (2006)
December 29, 2006

TO: All Insurers Licensed to Write Accident and Health Insurance in New York State ("Commercial Insurers"), All Authorized Property/Casualty Insurers and All Insurance Producer Organizations

RE: Travel Insurance

STATUTORY REFERENCE: N.Y. Ins. Law §§ 2102, 2103, 2110, 2114, 2115, 2116, 4235 and 4237.

It has come to the Department's attention that some licensees and non-licensees are engaging in certain practices in connection with the sale of travel insurance that violate the New York State Insurance Law.

Certain non-licensee travel agents, tour operators and other travel suppliers such as airlines, cruise ships, etc. (hereinafter "travel agents") solicit and sell trip cancellation waivers (hereinafter "waivers"). These waivers generally provide for either a total or partial refund by such travel agents of any cancellation penalties or other costs that would not otherwise be refundable, such as the ticket price of a nonrefundable ticket.

Unconditional waivers that permit the ticket purchaser to cancel the trip for any reason are not insurance because the cancellation of the trip is not dependent upon the happening of a fortuitous event. The ticket holder could simply choose not to go on the trip. However, waivers that are not unconditional and that provide coverage upon the happening of fortuitous events are insurance. Thus, any travel agent or other person making or proposing to make such a waiver would be doing an insurance business, as defined by N.Y. Ins. Law § 1101 and would be required to be licensed as an insurer pursuant to N.Y. Ins. Law § 1102. Any person aiding in making such a waiver would be in violation of N.Y. Ins. Law § 2117. Any person who calls attention to an unauthorized insurer by any advertisement or other public announcement would be violating N.Y. Ins. Law § 2122.

In addition, some travel agents require the sale of waivers with insurance policies as a part of a travel protection plan¹. In some cases, the waiver is available only if the underlying insurance is purchased. In other cases, the waiver is less expensive if it is purchased with a particular insurer's travel insurance than if another insurer's travel insurance is purchased. Under either circumstance, the nonlicensee, any insurance producer, and the insurer would violate N.Y. Ins. Law §§ 2324 and/or 4224 as an illegal tie-in².

It also appears that some licensees permit travel agents or other persons to solicit and/or sell travel insurance without an insurance license. In such cases, the travel agent or other person would violate N.Y. Ins. Law § 2102, which prohibits a person from soliciting, negotiating or selling insurance without a license. A licensed insurance agent or broker who allows an unlicensed person to sell, solicit or negotiate insurance may be found by the Superintendent to be acting in an untrustworthy manner pursuant to N.Y. Ins. Law § 2110.

Pursuant to N.Y. Ins. Law §§ 2114, 2115 and 2116, no insurer and no representative of an insurer may pay a commission or other compensation to an unlicensed person acting as an insurance agent or broker. However, a nonlicensee may make referrals to a licensed insurance agent or broker pursuant to such sections provided that compensation for referrals is not based upon sales and the referral does not involve a discussion of the terms and conditions of the insurance. Such a referral may be made by making the producer's insurance brochures available to potential customers and by referring the customers to the brochures.

In addition, pursuant to N.Y. Ins. Law § 2103(g)(1), a travel agent may apply for a limited license without the requirement of an exam. Such license is limited to the sale of baggage or accident insurance primarily for the purpose of covering risks of travel.

Insurers and producers are also reminded that any advertisements or marketing materials must comply with all applicable provisions of the Insurance Law and regulations, including 11 NYCRR Part 215 (Regulation 34), which governs advertisements of accident and health insurance policies. Insurers must maintain an adequate system of control over the content, form and method of dissemination of all advertisements of their policies and will be responsible for any deviation from permissible standards and guidelines.

This Letter supplements and does not supersede Circular Letter 12 (1991).

Questions regarding this Circular letter should be directed to:

Paul Zuckerman
Principal Attorney
Office of General Counsel
New York State Insurance Department
25 Beaver Street
New York, NY 10004
(212) 480-5259

Very Truly Yours,



Howard Mills
Superintendent of Insurance

¹The waiver portion is often referred to as Part A coverage and the insurance portion as Part B coverage. Typically, the Part A coverage is provided by the travel agent, tour operator, cruise operator or other travel operator and Part B by an insurer.

²The types of risks insured determine which section applies. Trip cancellation insurance that covers cancellation due to sickness, injury or death is subject to § 4224. Trip insurance that covers cancellation for other reasons or lost baggage is property/casualty insurance and is subject to § 2324.