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THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2135 Session of 2012

INTRODUCED BY QUINN, BOYD, V. BROWN, CALTAGIRONE, CREIGHTON, DeLUCA, EVANKOVICH, GROVE, HARKINS, HORNAMAN, MILLARD, MOUL, MURT AND YOUNGBLOOD, JANUARY 20, 2012

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 23, 2012

AN ACT

Providing for licensure of vendors, for requirements for sale of portable electronics insurance, for authority of vendors of portable electronics, for termination of portable electronics insurance, for licensing, for renewal of license, for injunctions and for appeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Portable Electronics Insurance Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." A person as defined in section 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Application." A form as defined in section 601-A of the act

of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Appointment." A written agreement between an insurer and insurance producer as defined in section 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Business entity." A person which is not an individual.

"Commissioner." The Insurance Commissioner of the Commonwealth.

"Customer." A person who purchases portable electronics or services.

"Department." The PENNSYLVANIA Insurance Department ~~of the Commonwealth~~.

"Designated licensee." A licensed insurance producer as defined in section 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Enrolled customer." A customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

"Insurance producer." A person licensed to sell, solicit or negotiate contracts of insurance.

"Insurer." As defined in section 601-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

"Location." A physical location in this Commonwealth or an Internet website, call center site or similar location provided to residents of this Commonwealth.

"Portable electronics." ~~Electronic devices that are portable in nature with accessories and services related to the use of the device.~~ PERSONAL, SELF-CONTAINED, BATTERY-OPERATED

ELECTRONIC COMMUNICATION, VIEWING, LISTENING, RECORDING, GAMING, COMPUTING OR GLOBAL POSITIONING DEVICES THAT ARE EASILY CARRIED BY AN INDIVIDUAL, INCLUDING CELLULAR OR SATELLITE TELEPHONES, PAGERS, PERSONAL GLOBAL POSITIONING SATELLITE UNITS, PORTABLE COMPUTERS, PORTABLE AUDIO LISTENING, VIDEO VIEWING OR RECORDING DEVICES, DIGITAL CAMERAS, VIDEO CAMCORDERS, PORTABLE GAMING SYSTEMS, DOCKING STATIONS, AUTOMATIC ANSWERING DEVICES AND ANY OTHER SIMILAR DEVICES AND ANY ACCESSORIES RELATED TO THE USE OF THE DEVICES.

"Portable electronics insurance." Insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. The term does not include:

(1) a service contract as defined in section 358(b) of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921;

(2) a policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(3) a homeowner's, renter's, private passenger automobile, commercial multiperil or similar policy.

"Portable electronics transaction." Either of the following:

(1) the sale or lease of portable electronics by a vendor to a customer; or

(2) the sale of a service related to the use of portable electronics by a vendor to a customer.

"Vendor." A person in the business of engaging in portable electronics transactions that is licensed as a business entity.

Section 3. Licensure of vendors.

(a) Requirement.--A vendor is required to hold a limited lines INSURANCE PRODUCER license to sell, solicit or negotiate coverage under a policy of portable electronics insurance.

(b) Limited lines license.--A limited lines license issued under this act shall authorize an employee or authorized representative of the vendor to sell, solicit or negotiate coverage under a policy of portable electronics insurance to a customer at each location where the vendor engages in portable electronics transactions AND TO RECEIVE COMPENSATION FROM THE VENDOR FOR THOSE ACTIVITIES.

(c) List of locations.--The vendor shall maintain a list of the locations in this Commonwealth where it offers coverage and provide the list upon request to the department.

(d) License.--Notwithstanding any other provision of law, a license issued under this section shall authorize the licensee and its employees or authorized representatives to engage in those activities that are permitted in this section.

Section 4. Requirements for sale of portable electronics insurance.

(a) Written materials.--At every location where portable electronics insurance is offered to customers, brochures or other written materials shall be made available to a prospective customer that:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy or other source of coverage.

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services.

(3) Summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer.

(ii) The identity of the business entity.

(iii) The amount of any applicable deductible and how it is to be paid.

(iv) Benefits of the coverage.

(v) Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment.

(4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements.

(5) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of an applicable unearned premium.

(b) Offerings.--Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

(c) Eligibility and underwriting standards.--Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.

Section 5. Authority of vendors of portable electronics.

(a) Authority and licensure.--The employees and authorized

representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter provided that:

(1) The vendor obtains a limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance under this section.

(2) The insurer issuing the portable electronics insurance either directly supervises or authorizes a designated licensee to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendors. The training required by this paragraph shall comply with the following:

(i) The training shall be delivered to employees and authorized representatives of a vendor who ~~is~~ ARE directly engaged in the activity of selling, soliciting or negotiating portable electronics insurance.

(ii) The training may be provided in electronic form. If conducted in an electronic form, the vendor shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by the designated licensee.

(iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under section 4.

(3) No employee or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself out as a licensed insurance producer.

(b) Charges.--The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. A charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting the charges shall not be required to maintain the funds in a segregated account provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity within 60 days of receipt. The funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation FROM THE INSURER for billing and collection services ~~from the insurer~~.

Section 6. Termination of portable electronics insurance.

Notwithstanding any other provision of law:

(1) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a fraudulent claim.

(2) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance

policy:

(i) if the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(ii) if an enrolled customer exhausts the ~~aggregate annual~~ ANNUAL AGGREGATE limit of liability under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within 30 calendar days after exhaustion of the limit. If notice is not timely sent, however, enrollment shall continue notwithstanding the annual aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(3) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least 30 days prior to the termination.

(4) Whenever notice is required under this section, it shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, the insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder may comply with a notice required by this

section by providing electronic notice to a vendor or its affected enrolled customers by electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

Section 7. Licensing.

Applications for ~~license~~ LICENSURE under this act shall be in accordance with section 606-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

Section 8. Renewal of license.

A license may be renewed in accordance with section 608-A of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921.

~~Section 9. Injunctions.~~

~~The commissioner may maintain an action for an injunction or other process against a person to restrain and prevent the person from engaging in an activity violating this act or regulations promulgated under this act.~~

~~Section 10. Appeals.~~

~~The person aggrieved by a decision of the commissioner that has a direct interest in the decision may appeal the decision of the commissioner in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).~~

Section ~~19~~ 9. Repeals.

Section 5(a)(9) of the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act, is repealed insofar as it is inconsistent with this act.

Section ~~20~~ 10. Effective date.

This act shall take effect in 120 days.