

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 472**

4 (By Senator Minard)

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6 [Originating in the Committee on the Judiciary;

7 reported February 23, 2011.]

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12 A BILL to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §33-12-32a, relating
14 to providing an exemption from insurance licensing
15 requirements for vendors of portable electronics when offering
16 portable electronics insurance generally; defining terms;
17 establishing requirements and authority regarding the sale of
18 portable electronics insurance; stating authority of vendors
19 of portable electronics to sell portable electronics
20 insurance; requiring training of employees who sell portable
21 electronics insurance; providing for the suspension of
22 privileges and imposition of fines for violations of this
23 section; providing for the termination of portable electronics
24 insurance; and giving the Insurance Commissioner the authority
25 to bring administrative actions on supervising entities.

26 *Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended
2 by adding thereto a new section, designated §33-12-32a, to read as
3 follows:

4 **ARTICLE 12. Insurance Producers and Solicitors.**

5 **§33-12-32a. Exemption for Portable Electronics.**

6 (a) Definitions. For purposes of this section, the
7 following terms have the following meanings:

8 (1) "Authorized Representative" means any individual who is
9 authorized by a vendor to engage in portable electronic
10 transactions on behalf of the vendor and who conducts such
11 transactions under the direction and authority of such vendor;

12 (2) "Customer" means a person who purchases portable
13 electronics or services;

14 (3) "Enrolled Customer" means a customer who elects coverage
15 under a portable electronics insurance policy and issued to a
16 vendor of portable electronics;

17 (4) "Location" means any physical location in the State of
18 West Virginia or any website, call center site, or similar location
19 directed to residents of the State of West Virginia.

20 (5) "Portable Electronics" means electronic devices that are
21 portable in nature, their accessories and services related to the
22 use of the device;

23 (6) (A) "Portable Electronic Insurance" means insurance
24 providing coverage for the repair or replacement of portable
25 electronics which may cover portable electronics against any one or
26 more of the following causes of loss: loss, theft, mechanical

1 failure, malfunction, damage or other applicable perils.

2 (B) "Portable Electronics Insurance" does not include:

3 (i) A service contract or extended warranty providing coverage
4 limited solely to the repair, replacement, or maintenance of
5 property for the operational or structural failure of property due
6 to a defect in materials, workmanship, accidental damage from
7 handling or normal wear and tear;

8 (ii) A policy of insurance covering a seller's or a
9 manufacturer's obligations under a warranty; or

10 (iii) A homeowner's, renter's, private passenger automobile,
11 commercial multi-peril, or similar policy.

12 (7) "Portable Electronics Transaction" means:

13 (A) The sale or lease of portable electronics by a vendor to
14 a customer; or

15 (B) The sale of a service related to the use of portable
16 electronics by a vendor to a customer.

17 (8) "Supervising Entity" means a business entity that is a
18 licensed insurance producer or an insurer;

19 (9) "Vendor" means a person in the business of engaging in
20 portable electronics transactions directly or indirectly, whether
21 through an entity that is a corporate affiliate or an entity with
22 which it has a contractual relationship to market portable
23 electronics.

24 (b) *Exemption from licensing.*

25 (1) A vendor that complies with the provisions of this section
26 is deemed to be in compliance with the requirements of this article

1 regarding producer licensing not only for the vendor, but also for
2 any employee or authorized representative of the vendor selling or
3 offering coverage under a policy of portable electronics insurance
4 to a customer at each location at which the vendor engages in
5 portable electronics transactions.

6 (2) A vendor shall maintain, and share with its supervising
7 entity, a list of all locations in this state that offer portable
8 electronics insurance on its behalf. The supervising entity shall
9 submit the list to the Insurance Commissioner within thirty days
10 upon request.

11 (c) *Requirements for Sale of Portable Electronics Insurance.*

12 (1) At every location where portable electronics insurance is
13 offered to customers, brochures or other written materials must be
14 made available to a prospective customer which:

15 (A) Disclose that portable electronics insurance may provide
16 a duplication of coverage already provided by a customer's
17 homeowner's insurance policy, renter's insurance policy or other
18 source of coverage;

19 (B) State that the enrollment by the customer in a portable
20 electronics insurance program is not required in order to purchase
21 or lease portable electronics or services;

22 (C) Summarize the material terms of the insurance coverage,
23 including:

24 (i) The identity of the insurer;

25 (ii) The identity of the supervising entity;

26 (iii) The amount of any applicable deductible and how it is to

1 be paid;

2 (iv) Benefits of the coverage; and

3 (v) Key terms and conditions of coverage such as whether
4 portable electronics may be repaired or replaced with similar make
5 and model reconditioned or non-original manufacturer parts or
6 equipment.

7 (D) Summarize the process for filing a claim, including a
8 description of any requirements:

9 (i) To return portable electronics and the maximum fee
10 applicable in the event the enrolled customer fails to comply with
11 any equipment return requirements; and

12 (ii) Proof of loss requirements.

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

17 (2) Portable electronics insurance may be offered on a month
18 to month or other periodic basis as a group or master commercial
19 insurance policy issued to a vendor of portable electronics under
20 which individual customers may elect to enroll for coverage.

21 (3) Eligibility and underwriting standards for customers
22 electing to enroll in coverage shall be established for each
23 portable electronics insurance program.

24 (d) *Authority of Vendors of Portable Electronics.*

25 (1) The employees and authorized representatives of vendors
26 may sell or offer portable electronics insurance to customers and

1 shall not be subject to licensure as an insurance producer under
2 this article provided that:

3 (A) The vendor complies with the provisions of this section;

4 (B) The insurer issuing the portable electronics insurance
5 appoints a supervising entity to supervise the administration of
6 the program including development of a training program for
7 employees and authorized representatives of the vendors. The
8 training required by this subdivision shall comply with the
9 following:

10 (i) The training shall be delivered to all employees and
11 authorized representatives of the vendors who sell or offer
12 portable electronics insurance.

13 (ii) The training may be provided in electronic form. However,
14 if conducted in an electronic form the supervising entity shall
15 implement a supplemental education program regarding portable
16 electronics insurance that is conducted and overseen by licensed
17 employees of the supervising entity; and

18 (iii) Each employee and authorized representative shall
19 receive basic instruction about the portable electronics insurance
20 offered to customers and the disclosures required under subsection
21 c;

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

25 (D) No employee or authorized representative of a vendor of
26 portable electronics is compensated based primarily on the number

1 of customers enrolled for portable electronics insurance coverage
2 but may receive compensation for activities under the limited lines
3 license which is incidental to their overall compensation.

4 (2) The charges for portable electronics insurance coverage
5 may be billed and collected by the vendor of portable electronics.
6 Any charge to the enrolled customer for coverage that is not
7 included in the cost associated with the purchase or lease of
8 portable electronics or related services shall be separately
9 itemized on the enrolled customer's bill. If the coverage is
10 included in the purchase or lease of portable electronics or
11 related services the vendor shall clearly and conspicuously
12 disclose to the enrolled customer that the portable electronics
13 insurance coverage is included with the portable electronics or
14 related services. No vendor shall require the purchase of any kind
15 of insurance specified in this section as a condition of the
16 purchase or lease of portable electronics or services. Vendors
17 billing and collecting such charges shall not be required to
18 maintain such funds in a segregated account provided that the
19 vendor is authorized by the insurer to hold such funds in an
20 alternative manner and remits such amounts to the supervising
21 entity within sixty (60) days of receipt. All funds received by a
22 vendor from an enrolled customer for the sale of portable
23 electronics insurance shall be considered funds held in trust by
24 the vendor in a fiduciary capacity for the benefit of the insurer.
25 Vendors may receive compensation for billing and collection
26 services.

1 (e) *Suspension of Privileges.*

2 (1) If a vendor of portable electronics or its employee or
3 authorized representative violates any provision of this section,
4 the Insurance Commissioner may do any of the following:

5 (A) After notice and hearing, impose fines not to exceed \$500
6 per violation or \$5,000 in the aggregate for such conduct.

7 (B) After notice and hearing, impose other penalties that the
8 commissioner deems necessary and reasonable to carry out the
9 purpose of this article, including:

10 (i) Suspending the privilege of transacting portable
11 electronics insurance pursuant to this section at specific business
12 locations where violations have occurred; and

13 (ii) Suspending or revoking the ability of individual
14 employees or authorized representatives to act under the section.

15 (f) *Termination of Portable Electronics Insurance.*

16 (1) Notwithstanding any other provision of law:

17 (A) An insurer may terminate or otherwise change the terms
18 and conditions of a policy of portable electronics insurance only
19 upon providing the policyholder and enrolled customers with at
20 least thirty (30) days notice.

21 (B) If the insurer changes the terms and conditions, then the
22 insurer shall provide the vendor policyholder with a revised policy
23 of endorsement and each enrolled customer with a revised
24 certificate, endorsement, updated brochure, or other evidence
25 indicating a change in the terms and conditions has occurred and a
26 summary of material changes.

1 (2) Notwithstanding subdivision (1) of this subsection, an
2 insurer may terminate an enrolled customer's enrollment under a
3 portable electronics insurance policy upon fifteen (15) days notice
4 for discovery of fraud or material misrepresentation in obtaining
5 coverage or in the presentation of a claim number.

6 (3) Notwithstanding subdivision (2) of this subsection, an
7 insurer may immediately terminate an enrolled customer's enrollment
8 under a portable electronics insurance policy:

9 (A) For nonpayment of premium;

10 (B) If the enrolled customer ceases to have an active service
11 with the vendor of portable electronics; or

12 (C) If an enrolled customer exhausts the aggregate limit of
13 liability, if any, under the terms of the portable electronics
14 insurance policy and the insurer sends notice of termination to the
15 enrolled customer within thirty (30) calendar days after exhaustion
16 of the limit. However, if notice is not timely sent, enrollment
17 shall continue notwithstanding the aggregate limit of liability
18 until the insurer sends notice of termination to the enrolled
19 customer.

20 (4) Where a portable electronics insurance policy is
21 terminated by a policyholder, the policyholder shall mail or
22 deliver written notice to each enrolled customer advising the
23 enrolled customer of the termination. The written notice shall be
24 mailed or delivered to the enrolled customer at least (30) days
25 prior to the termination.

26 (5) Whenever notice is required pursuant to this section, it

1 shall be in writing and may be mailed or delivered to the vendor of
2 portable electronics at the vendor's mailing address and to its
3 affected enrolled customers' last known mailing addresses on file
4 with the insurer. If notice is mailed, the insurer or vendor of
5 portable electronics, as the case may be, shall maintain proof of
6 mailing in a form authorized or accepted by the United States
7 Postal Service or other commercial mail delivery service.
8 Alternatively, an insurer or vendor policyholder may comply with
9 any notice required by this section by providing electronic notice
10 to a vendor or its affected enrolled customers, as the case may be,
11 by electronic means. If notice is accomplished through electronic
12 means the insurer or vendor of portable electronics, as the case
13 may be, shall maintain proof that the notice was sent.

14 (g) If a supervising entity is determined by the Insurance
15 Commissioner to have not performed its required duties under this
16 section or has otherwise violated any provision of this section, it
17 shall be subject to the administrative actions set forth in section
18 twenty-four of this article.