

Senate Bill No. 472

(By Senator Minard)

[Introduced February 9, 2011; referred to the Committee on
Banking and Insurance; and then to the Committee on the
Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §33-12-32a, relating
to providing an exemption from insurance licensing
requirements for vendors of portable electronics when offering
portable electronics insurance.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32a. Exemption for portable electronics.

(a) *Definitions.* For purposes of this section:

(1) "Authorized representative" means any individual who is
authorized by a vendor to engage in portable electronics

1 transactions on behalf of the vendor and who conducts the
2 transactions under the direction and authority of the vendor.

3 (2) "Customer" means a person who purchases portable
4 electronics or services.

5 (3) "Covered customer" means a customer who elects coverage
6 under a portable electronics insurance policy issued to a vendor of
7 portable electronics.

8 (4) "Portable electronics" means electronic devices that are
9 portable in nature, their accessories and services related to the
10 use of the device.

11 (5) (A) "Portable electronics insurance" means insurance
12 providing coverage for the repair or replacement of portable
13 electronics which may cover portable electronics against any one or
14 more of the following causes of loss: Loss, theft, mechanical
15 failure, malfunction, damage or other applicable perils.

16 (B) "Portable electronics insurance" does not include:

17 (i) A service contract;

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

20 (iii) A homeowner's, renter's, private passenger automobile,
21 commercial multiperil or similar policy.

22 (6) "Portable electronics transaction" means:

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

25 (B) The sale of a service related to the use of portable

1 electronics by a vendor to a customer.

2 (7) "Supervising agency" means a business entity that is a
3 licensed insurance producer.

4 (8) "Vendor" means a person in the business of engaging in
5 portable electronics transactions directly or indirectly, whether
6 through an entity that is a corporate affiliate or an entity with
7 which it has a contractual relationship to market portable
8 electronics.

9 (b) *Exemption from licensing.*

10 (1) A vendor that complies with the provisions of this section
11 is in compliance with the requirements of this article regarding
12 producer licensing not only for the vendor, but also for any
13 employee or authorized representative of the vendor selling or
14 offering coverage under a policy of portable electronics insurance
15 to a customer at each location at which the vendor engages in
16 portable electronics transactions.

17 (2) A vendor shall maintain a list of all locations in this
18 state at which it offers coverage.

19 (c) *Requirements for sale of portable electronics insurance.*

20 (1) A vendor shall at every location where portable
21 electronics insurance is offered to a customer make available to a
22 prospective customer brochures or other written materials which:

23 (A) Disclose that portable electronics insurance may provide
24 a duplication of coverage already provided by a customer's
25 homeowner's insurance policy, renter's insurance policy or other

1 source of coverage;

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

5 (C) Summarize the material terms of the insurance coverage,
6 including:

7 (i) The identity of the insurer;

8 (ii) The identity of the supervising agency;

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

11 (iv) Benefits of the coverage; and

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

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

18 (i) To return portable electronics and the maximum fee
19 applicable in the event the customer fails to comply with any
20 equipment return requirements; and

21 (ii) Any proof of loss requirements; and

22 (E) State that the customer may cancel enrollment for coverage
23 under a portable electronics insurance policy at any time and
24 receive a refund of any applicable premium.

25 (2) Portable electronics insurance may be offered on a month

1 to month or other periodic basis as a group or master commercial
2 insurance policy issued to a vendor of portable electronics under
3 which individual customers may elect to enroll for coverage.

4 (3) Eligibility and underwriting standards for customers
5 electing to enroll in coverage shall be established for each
6 portable electronics insurance program.

7 (d) *Authority of vendors of portable electronics.*

8 (1) The employees and authorized representatives of vendors
9 may sell or offer portable electronics insurance to customers and
10 are not subject to licensure as an insurance producer under this
11 article if:

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

13 (B) The insurer issuing the portable electronics insurance
14 appoints a supervising agency to supervise the administration of
15 the program including development of a training program for
16 employees and authorized representatives of the vendors. The
17 training required by this subdivision shall comply with the
18 following:

19 (i) The training shall be delivered to all employees and
20 authorized representatives of the vendors who sell or offer
21 portable electronics insurance;

22 (ii) The training may be provided in electronic form; and, if
23 conducted in an electronic form the supervising agency shall
24 implement a program of in-person training conducted by licensed
25 employees of the supervising agency to supplement the electronic

1 training; and

2 (iii) Each employee and authorized representative shall
3 receive basic instruction about the portable electronics insurance
4 offered to customers and the disclosures required under subsection
5 (c) of this section;

6 (C) No employee or authorized representative of a vendor of
7 portable electronics may advertise, represent or otherwise hold
8 himself or herself out as a licensed insurance producer;

9 (D) No employee or authorized representative of a vendor of
10 portable electronics may be compensated based primarily on the
11 number of customers enrolled for portable electronics insurance
12 coverage but may receive compensation for activities under the
13 limited lines license which is incidental to their overall
14 compensation.

15 (2) The charges for portable electronics insurance coverage
16 may be billed and collected by the vendor of portable electronics.
17 Any charge to the customer for coverage that is not included in the
18 cost associated with the purchase or lease of portable electronics
19 or related services shall be separately itemized on the customer's
20 bill. If the charge for coverage is included in the cost associated
21 with the purchase or lease of portable electronics or related
22 services the vendor shall clearly and conspicuously disclose to the
23 customer that the charge for the portable electronics or related
24 services includes the charge for coverage. Vendors billing and
25 collecting the charges are not required to maintain the funds in a

1 segregated account provided that the vendor is authorized by the
2 insurer to hold the funds in an alternative manner and remits the
3 amounts to the supervising agency within sixty days of receipt. All
4 funds received by a vendor from a customer for the sale of portable
5 electronics insurance shall be considered funds held in trust by
6 the vendor in a fiduciary capacity for the benefit of the insurer.
7 Vendors may receive compensation for billing and collection
8 services.

9 (e) *Suspension of privileges.*

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

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

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

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

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

23 (f) *Termination of portable electronics insurance.*

24 (1) Notwithstanding any other provision of law:

25 (A) An insurer may terminate or otherwise change the terms and

1 conditions of a policy of portable electronics insurance only upon
2 providing the policyholder and enrolled customers with at least
3 sixty days notice.

4 (B) If the insurer changes the terms and conditions, the
5 insurer shall provide the vendor policyholder with a revised policy
6 or endorsement and each enrolled customer with a revised
7 certificate, endorsement, updated brochure, or other evidence
8 indicating a change in the terms and conditions has occurred and a
9 summary of material changes.

10 (2) Notwithstanding subdivision (1) of this subsection, an
11 insurer may terminate an enrolled customer's enrollment under a
12 portable electronics insurance policy upon fifteen days notice for
13 discovery of fraud or material misrepresentation in obtaining
14 coverage or in the presentation of a claim thereunder.

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

18 (A) For nonpayment of premium;

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

21 (C) If an enrolled customer exhausts the aggregate limit of
22 liability, if any, under the terms of the portable electronics
23 insurance policy and the insurer sends notice of termination to the
24 customer within thirty calendar days after exhaustion of the limit.
25 However, if notice is not timely sent, enrollment shall continue

1 notwithstanding the aggregate limit of liability until the insurer
2 sends notice of termination to the enrolled customer.

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

9 (5) Whenever notice is required pursuant to this section, it
10 shall be in writing and may be mailed or delivered to the vendor of
11 portable electronics at the vendor's mailing address and to its
12 affected enrolled customers' last known mailing addresses on file
13 with the insurer. If notice is mailed, the insurer or vendor of
14 portable electronics, as the case may be, shall maintain proof of
15 mailing in a form authorized or accepted by the United States
16 Postal Service or other commercial mail delivery service.
17 Alternatively, an insurer or vendor policyholder may comply with
18 any notice required by this section by providing electronic notice
19 to a vendor or its affected enrolled customers, as the case may be,
20 by electronic means. If notice is accomplished through electronic
21 means the insurer or vendor of portable electronics, as the case
22 may be, shall maintain proof that the notice was sent.

NOTE: The purpose of this bill is to provide an exemption
from insurance licensing requirements for vendors of portable

electronics when they offer portable electronics insurance.

This section is new; therefore, strike-throughs and underscoring have been omitted.