

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 472

(By Senator Minard)

[Originating in the Committee on the Judiciary;
reported February 23, 2011.]

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 generally; defining terms; establishing requirements and authority regarding the sale of portable electronics insurance; stating authority of vendors of portable electronics to sell portable electronics insurance; requiring training of employees who sell portable electronics insurance; providing for the suspension of privileges and imposition of fines for violations of this section; providing for the termination of portable electronics insurance; and giving

the Insurance Commissioner the authority to bring administrative actions on supervising entities.

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.

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

3 (1) “Authorized Representative” means any individual who
4 is authorized by a vendor to engage in portable electronic
5 transactions on behalf of the vendor and who conducts such
6 transactions under the direction and authority of such
7 vendor;

8 (2) “Customer” means a person who purchases portable
9 electronics or services;

10 (3) “Enrolled Customer” means a customer who elects
11 coverage under a portable electronics insurance policy and
12 issued to a vendor of portable electronics;

13 (4) “Location” means any physical location in the State of
14 West Virginia or any website, call center site, or similar
15 location directed to residents of the State of West Virginia.

16 (5) “Portable Electronics” means electronic devices that
17 are portable in nature, their accessories and services related
18 to the use of the device;

19 (6) (A) “Portable Electronic Insurance” means insurance
20 providing coverage for the repair or replacement of portable
21 electronics which may cover portable electronics against any
22 one or more of the following causes of loss: loss, theft,
23 mechanical failure, malfunction, damage or other applicable
24 perils.

25 (B) “Portable Electronics Insurance” does not include:

26 (i) A service contract or extended warranty providing
27 coverage limited solely to the repair, replacement, or mainte-
28 nance of property for the operational or structural failure of
29 property due to a defect in materials, workmanship, acciden-
30 tal damage from handling or normal wear and tear;

31 (ii) A policy of insurance covering a seller’s or a manufac-
32 turer’s obligations under a warranty; or

33 (iii) A homeowner’s, renter’s, private passenger automo-
34 bile, commercial multi-peril, or similar policy.

35 (7) “Portable Electronics Transaction” means:

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

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

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

42 (9) "Vendor" means a person in the business of engaging in
43 portable electronics transactions directly or indirectly,
44 whether through an entity that is a corporate affiliate or an
45 entity with which it has a contractual relationship to market
46 portable electronics.

47 (b) *Exemption from licensing.*

48 (1) A vendor that complies with the provisions of this
49 section is deemed to be in compliance with the requirements
50 of this article regarding producer licensing not only for the
51 vendor, but also for any employee or authorized representa-
52 tive of the vendor selling or offering coverage under a policy
53 of portable electronics insurance to a customer at each
54 location at which the vendor engages in portable electronics
55 transactions.

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

61 (c) *Requirements for Sale of Portable Electronics Insur-*
62 *ance.*

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

66 (A) Disclose that portable electronics insurance may
67 provide a duplication of coverage already provided by a
68 customer's homeowner's insurance policy, renter's insurance
69 policy or other source of coverage;

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

73 (C) Summarize the material terms of the insurance cover-
74 age, including:

75 (i) The identity of the insurer;

76 (ii) The identity of the supervising entity;

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

79 (iv) Benefits of the coverage; and

80 (v) Key terms and conditions of coverage such as whether
81 portable electronics may be repaired or replaced with similar
82 make and model reconditioned or non-original manufacturer
83 parts or equipment.

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

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

89 (ii) Proof of loss requirements.

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

94 (2) Portable electronics insurance may be offered on a
95 month to month or other periodic basis as a group or master
96 commercial insurance policy issued to a vendor of portable
97 electronics under which individual customers may elect to
98 enroll for coverage.

99 (3) Eligibility and underwriting standards for customers
100 electing to enroll in coverage shall be established for each
101 portable electronics insurance program.

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

103 (1) The employees and authorized representatives of
104 vendors may sell or offer portable electronics insurance to
105 customers and shall not be subject to licensure as an insur-
106 ance producer under this article provided that:

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

108 (B) The insurer issuing the portable electronics insurance

109 appoints a supervising entity to supervise the administration

110 of the program including development of a training program

111 for employees and authorized representatives of the vendors.

112 The training required by this subdivision shall comply with

113 the following:

114 (i) The training shall be delivered to all employees and

115 authorized representatives of the vendors who sell or offer

116 portable electronics insurance.

117 (ii) The training may be provided in electronic form.

118 However, if conducted in an electronic form the supervising

119 entity shall implement a supplemental education program

120 regarding portable electronics insurance that is conducted

121 and overseen by licensed employees of the supervising entity;

122 and

123 (iii) Each employee and authorized representative shall

124 receive basic instruction about the portable electronics

125 insurance offered to customers and the disclosures required

126 under subsection c;

127 (C) No employee or authorized representative of a vendor

128 of portable electronics shall advertise, represent or otherwise

129 hold himself or herself out as a licensed insurance producer.

130 (D) No employee or authorized representative of a vendor
131 of portable electronics is compensated based primarily on
132 the number of customers enrolled for portable electronics
133 insurance coverage but may receive compensation for
134 activities under the limited lines license which is incidental
135 to their overall compensation.

136 (2) The charges for portable electronics insurance cover-
137 age may be billed and collected by the vendor of portable
138 electronics. Any charge to the enrolled customer for coverage
139 that is not included in the cost associated with the purchase
140 or lease of portable electronics or related services shall be
141 separately itemized on the enrolled customer's bill. If the
142 coverage is included in the purchase or lease of portable
143 electronics or related services the vendor shall clearly and
144 conspicuously disclose to the enrolled customer that the
145 portable electronics insurance coverage is included with the
146 portable electronics or related services. No vendor shall
147 require the purchase of any kind of insurance specified in
148 this section as a condition of the purchase or lease of porta-
149 ble electronics or services. Vendors billing and collecting
150 such charges shall not be required to maintain such funds in
151 a segregated account provided that the vendor is authorized

152 by the insurer to hold such funds in an alternative manner
153 and remits such amounts to the supervising entity within
154 sixty (60) days of receipt. All funds received by a vendor
155 from an enrolled customer for the sale of portable electronics
156 insurance shall be considered funds held in trust by the
157 vendor in a fiduciary capacity for the benefit of the insurer.
158 Vendors may receive compensation for billing and collection
159 services.

160 (e) *Suspension of Privileges.*

161 (1) If a vendor of portable electronics or its employee or
162 authorized representative violates any provision of this
163 section, the Insurance Commissioner may do any of the
164 following:

165 (A) After notice and hearing, impose fines not to exceed
166 \$500 per violation or \$5,000 in the aggregate for such
167 conduct.

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

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

174 (ii) Suspending or revoking the ability of individual
175 employees or authorized representatives to act under the
176 section.

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

178 (1) Notwithstanding any other provision of law:

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

183 (B) If the insurer changes the terms and conditions, then
184 the insurer shall provide the vendor policyholder with a
185 revised policy of endorsement and each enrolled customer
186 with a revised certificate, endorsement, updated brochure, or
187 other evidence indicating a change in the terms and condi-
188 tions has occurred and a summary of material changes.

189 (2) Notwithstanding subdivision (1) of this subsection, an
190 insurer may terminate an enrolled customer's enrollment
191 under a portable electronics insurance policy upon fifteen
192 (15) days notice for discovery of fraud or material misrepre-
193 sentation in obtaining coverage or in the presentation of a
194 claim number.

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

198 (A) For nonpayment of premium;

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

201 (C) If an enrolled customer exhausts the aggregate limit of
202 liability, if any, under the terms of the portable electronics
203 insurance policy and the insurer sends notice of termination
204 to the enrolled customer within thirty (30) calendar days
205 after exhaustion of the limit. However, if notice is not timely
206 sent, enrollment shall continue notwithstanding the aggre-
207 gate limit of liability until the insurer sends notice of
208 termination to the enrolled customer.

209 (4) Where a portable electronics insurance policy is
210 terminated by a policyholder, the policyholder shall mail or
211 deliver written notice to each enrolled customer advising the
212 enrolled customer of the termination. The written notice
213 shall be mailed or delivered to the enrolled customer at least
214 (30) days prior to the termination.

215 (5) Whenever notice is required pursuant to this section,
216 it shall be in writing and may be mailed or delivered to the

217 vendor of portable electronics at the vendor's mailing
218 address and to its affected enrolled customers' last known
219 mailing addresses on file with the insurer. If notice is mailed,
220 the insurer or vendor of portable electronics, as the case may
221 be, shall maintain proof of mailing in a form authorized or
222 accepted by the United States Postal Service or other
223 commercial mail delivery service. Alternatively, an insurer
224 or vendor policyholder may comply with any notice required
225 by this section by providing electronic notice to a vendor or
226 its affected enrolled customers, as the case may be, by
227 electronic means. If notice is accomplished through elec-
228 tronic means the insurer or vendor of portable electronics, as
229 the case may be, shall maintain proof that the notice was
230 sent.

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