

ARKANSAS SENATE
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of Senate Bill No. 938

TO EXPAND THE AVAILABILITY AND OPTIONS FOR INSURANCE ON PORTABLE
ELECTRONICS.

Amendment No. 1 to Senate Bill No. 938

Amend Senate Bill No. 938 as originally introduced:

Delete the title in its entirety and substitute the following:

"AN ACT TO EXPAND THE AVAILABILITY OF INSURANCE ON PORTABLE ELECTRONICS; AND FOR OTHER PURPOSES."

Delete the subtitle in its entirety and substitute the following:

"TO ESTABLISH A REGULATORY SCHEDULE FOR THE SALE OF INSURANCE ON PORTABLE ELECTRONICS."

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 23 is amended to add an additional chapter to read as follows:

Chapter 104 - Portable Electronics Insurance

23-104-101. Definitions.

As used in this chapter:

(1) "Customer" means a person who purchases portable electronics or services;

(2) "Enrolled customer" means a customer who elects to have coverage under a portable electronics insurance policy issued by a vendor;

(3) "Location" means, as directed to residents of the state of Arkansas:

(A) A physical location in this state;

(B) A website; or

(C) A call center site or similar location;

(4) "Portable electronics" means electronic devices that are portable in nature, including the accessories and services related to the use of the electronic device;

(5)(A) "Portable electronics insurance" means insurance for the repair or replacement of portable electronics that includes the following causes of loss:



(i) Loss;
(ii) Theft; and
(iii) Inoperability due to mechanical failure, malfunction, damage, or other similar causes of loss.

(B) "Portable electronics insurance" does not include a service contract governed by the Service Contracts Act, § 4-114-101 et seq.;

(6) "Portable electronics transaction" means:

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

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

(7) "Supervising entity" means a business entity that is an insurer or insurance producer licensed under the insurance laws of this state; and

(8) "Vendor" means a person that engages in the business of portable electronics transactions.

23-104-102. Licensure of vendors.

(a) A vendor is required to hold a limited lines license to sell or offer coverage under a policy of portable electronics insurance.

(b) A limited lines license issued under this chapter shall authorize an employee or authorized representative of the licensee to sell or offer coverage under a policy of portable electronics insurance to a customer at locations the vendor engages in the business of portable electronics transactions.

(c) Upon application for a limited lines license, the vendor shall provide a list to the Insurance Commissioner of the locations in this state where it offers coverage for portable electronics and at each calendar quarter thereafter.

(d) A license issued under this chapter shall authorize the licensee and its employees or authorized representatives to engage in the activities authorized by this chapter.

23-104-103. Requirements for sale of portable electronics insurance.

(a) At a location where portable electronics insurance coverage is offered to customers, a prospective customer shall receive written disclosure that states:

(1) Portable electronics insurance may provide duplication of coverage provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) The enrollment by the customer for portable electronics insurance coverage is not required in order to purchase or lease portable electronics devices or services;

(3) The material terms of the insurance coverage, to include:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of an applicable deductible;

(D) An explanation of the individual that is responsible for the applicable deductible;

(E) Benefits of the coverage; and

(F) Key terms and conditions of coverage, including without limitation whether or not portable electronics may be repaired or

replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

(4) The process for filing a claim, including:

(A) A description of how to return portable electronics;

and

(B) The maximum fee if the customer fails to comply with requirements for returning the portable electronics; and

(5)(A) An enrolled customer may cancel a portable electronics insurance policy at any time.

(B) The person paying the premium shall receive a refund of the unearned premium.

(b) A vendor that has been issued a group or master commercial inland marine policy may offer portable electronics insurance on a month-to-month or other periodic basis for its enrolled customers.

(c) Eligibility and underwriting standards for customers to enroll in coverage are to be established by the supervising entity for a portable electronics insurance policy before offering the portable electronics insurance to a customer.

23-104-104. Authority of vendors to sell or offer portable electronics insurance.

(a)(1) Employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers without a license as an insurance producer if:

(A) The vendor obtains a limited lines license; and

(B)(i) The insurer issuing the portable electronics insurance supervises or appoints a supervising entity to supervise the insurance coverage policies, including development of a training program for vendors.

(ii) The training program for vendors shall:

(a) Be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance; and

(b) Receive basic instruction about the portable electronics insurance offered to customers and the written disclosures required under § 23-104-103.

(iii)(a) The training program for vendors may be provided in an electronic format.

(b) If the training program for vendors is provided in an electronic format, the supervising entity shall implement a supplemental education program of the portable electronics insurance coverage that is supervised by licensed employees of the supervising entity.

(2) An employee or authorized representative of a vendor shall not:

(A) Advertise, represent, or otherwise hold himself or herself out as a licensed nonlimited lines insurance producer; or

(B)(i) Be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage.

(ii) An employee or authorized representative of a vendor may receive compensation for activities under a limited lines license that is incidental to his or her overall compensation.

(b)(1)(A) Charges for portable electronics insurance may be billed and collected by the vendor.

(B) A charge that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be itemized separately on the enrolled customer's bill.

(C) If portable electronics insurance 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 is included.

(2)(A) Vendors billing and collecting charges for portable electronics insurance shall not be required to maintain the funds in a segregated account if the vendor:

(i) Is authorized by the insurer to hold the funds in an alternative manner; and

(ii) Remits the amount to the supervising entity within sixty (60) days of receipt by the vendor.

(B) 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 acting in a fiduciary capacity for the benefit of the insurer.

(C) Vendors may receive compensation from the insurer for billing and collection services authorized under this section.

23-104-105. Suspension or revocation of license.

If a vendor, its employee, or its authorized representative violates a provision of this chapter, the Insurance Commissioner may after notice and a hearing impose on the vendor:

(1) Fines not to exceed five hundred dollars (\$500) per violation or five thousand dollars (\$5,000) in the aggregate; and

(2) Other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this chapter, including without limitation:

(A) Suspending the privilege of transacting portable electronics insurance at specific business locations where violations have occurred; and

(B) Suspending or revoking the ability of individual employees or authorized representatives of the vendor to act under a license issued under this chapter.

23-104-106. Termination of portable electronics insurance.

(a) Notwithstanding any other law:

(1) An insurer may terminate or otherwise change the terms and conditions of portable electronics insurance policy only if the policyholder and enrolled customer is provided with at least thirty (30) days' notice; and

(2) If the insurer changes the terms and conditions of a portable electronics insurance policy, the insurer shall provide the vendor and enrolled customer with:

(A) A revised policy or endorsement;

(B) A revised certificate or endorsement;

(C) An updated written disclosure brochure or other evidence indicating a change in the terms and conditions; and

(D) A summary of material changes to the portable electronics insurance policy coverage.

(b) Notwithstanding subsection (a) of this section, an insurer may terminate an enrolled customer's coverage under a portable electronics insurance policy on fifteen (15) days' notice if the insurer discovers fraud or material misrepresentation were used in obtaining coverage or in the presentation of a claim under the portable electronics insurance policy.

(c) Notwithstanding subsection (a) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(1) For nonpayment of premium;

(2) If an enrolled customer ceases to have an active service with the vendor; or

(3)(A) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit.

(B) If notice to the enrolled customer is not timely sent by the insurer, enrollment and coverage shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(d)(1) If a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to the enrolled customer to advise the enrolled customer of the termination of the portable electronics insurance coverage and the effective date of termination.

(2) The written notice shall be mailed or delivered to the enrolled customer at least thirty (30) days before the termination by the policyholder.

(e)(1) When notice is required under this chapter, the notice shall be in writing and may be mailed or delivered by registered mail to:

(A) The vendor at the vendor's last known mailing address; and

(B) The vendor's affected enrolled customers' last known mailing addresses on file with the insurer.

(2)(A) If notice is completed through the mail, the person providing notice shall maintain proof of mailing.

(B) An insurer may comply with a notice requirement under this chapter by providing electronic notice to a vendor or its affected enrolled customers through electronic means.

(C) If notice is completed through electronic means, the insurer shall maintain proof that the notice was sent.

23-104-107. Application for license and fees.

(a)(1) An application for licensure under this chapter shall be made to and filed with the Insurance Commissioner on forms prescribed and furnished by the State Insurance Department.

(2) The application for licensure under this chapter shall:

(A)(i) Provide the name, residence address, and other information required by the commissioner for an employee or authorized representative of the vendor designated by the applicant as the person

responsible for the vendor's compliance with the requirements of this chapter.

(ii) If the vendor derives more than fifty percent (50%) of its revenue from the sale of portable electronics insurance, the information required in subdivision (a)(2)(A) of this section shall be provided for all officers, directors, and shareholders of record that have beneficial ownership of ten percent (10%) or more of any class of securities registered under the federal securities law;

(B)(i) Appoint the commissioner as authorized to receive service on behalf of the applicant for any legal process issued against it in a civil action or proceeding in this state brought in connection with portable electronics insurance coverage and agree that process of the commissioner shall be valid and binding against the applicant.

(ii) The appointment under subdivision (a)(2)(B)(i) of this section shall:

(a) Be irrevocable;

(b) Bind the applicant and any successor in interest as to the assets or liabilities of the applicant; and

(c) Remain in effect as long as the applicant's licensure remains in force in this state; and

(C) Provide the location of the applicant's principle place of business or home office.

(b) Applications for licensure under this chapter shall be submitted within ninety (90) days of the application forms being made available by the commissioner.

(c) An initial license issued under this chapter shall be valid for a period of twenty-four (24) months.

(d)(1) A vendor applying for a limited lines license under this chapter shall pay to the commissioner a nonrefundable application and license fee of one thousand dollars (\$1,000) and five hundred dollars (\$500) for a renewal license fee.

(2) However, for a vendor that is engaged in portable electronics transactions at ten (10) or fewer locations in the state, the nonrefundable application and license fee for a limited lines license shall not exceed one hundred dollars (\$100) and one hundred dollars (\$100) for a renewal license fee."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Teague
ANS/ANS - 03/22/11 10:30
ANS156

Secretary