

SENATE BILL No. 511

June 21, 2011, Introduced by Senators HILDENBRAND and MARLEAU and referred to the Committee on Insurance.

A bill to enact the portable electronics insurance act; to regulate the sale of portable electronics insurance; to provide for the powers and duties of certain state governmental officers and entities; to provide for fees; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "portable electronics insurance act".

3 Sec. 3. As used in this act:

4 (a) "Commissioner" means the commissioner of the office of
5 financial and insurance regulation.

6 (b) "Customer" means a person that purchases portable
7 electronics or services.

8 (c) "Enrolled customer" means a customer that elects coverage
9 under a portable electronics insurance policy issued to a vendor.

1 (d) "Location" means any physical location in this state or
2 any website, call center site, or similar location directed to
3 residents of this state.

4 (e) "Office" means the office of financial and insurance
5 regulation.

6 (f) "Portable electronic device" means an electronic device
7 that is portable in nature and any accessories or services related
8 to the use of that device.

9 (g) "Portable electronics insurance" means insurance that
10 provides coverage for the repair or replacement of a portable
11 electronic device, including, but not limited to, insurance that
12 provides coverage for a portable electronic device against loss,
13 theft, inoperability because of mechanical failure, malfunction,
14 damage, or other similar causes of loss. Portable electronics
15 insurance does not include any of the following:

16 (i) A service contract or extended warranty that provides
17 coverage that is limited to the repair, replacement, or maintenance
18 of a portable electronic device if there is an operational or
19 structural failure of the device caused by a defect in materials or
20 workmanship, accidental damage from handling, or normal wear and
21 tear.

22 (ii) A policy of insurance covering a seller's or
23 manufacturer's obligations under a warranty.

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

26 (h) "Portable electronics transaction" means any of the
27 following:

1 (i) A sale or lease of a portable electronic device by a vendor
2 to a customer.

3 (ii) A sale of a service related to the use of a portable
4 electronic device by a vendor to a customer.

5 (i) "Supervising entity" means a business entity that is an
6 insurance producer or insurer licensed under the insurance code of
7 1956, 1956 PA 218, MCL 500.100 to 500.8302.

8 (j) "Vendor" means a person in the business of directly or
9 indirectly engaging in portable electronic device transactions.

10 Sec. 5. (1) A vendor shall not sell or offer coverage under a
11 policy of portable electronics insurance to a customer unless the
12 vendor is licensed as a limited lines producer under chapter 12 of
13 the insurance code of 1956, 1956 PA 218, MCL 500.1201 to 500.1247,
14 which license authorizes any employee or authorized representative
15 of the vendor to sell or offer coverage under a policy of portable
16 electronics insurance to a customer at any location at which the
17 vendor engages in portable electronics transactions.

18 (2) A vendor shall maintain a registry of locations that are
19 authorized to sell or solicit portable electronics insurance in
20 this state. Upon the commissioner's request and within 10 days'
21 notice to the vendor, the registry shall be open to inspection and
22 examination by the commissioner during the vendor's regular
23 business hours.

24 Sec. 7. (1) At every location where a vendor offers portable
25 electronics insurance to customers, the vendor shall make brochures
26 or other written materials available to a prospective customer. The
27 brochures or other written materials shall do all of the following:

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

5 (b) State that the enrollment by the customer in a portable
6 electronics insurance program is not required to purchase or lease
7 a portable electronic device or services for the device.

8 (c) Summarize the material terms of the portable electronics
9 insurance coverage, including at least all of the following:

10 (i) The identity of the insurer.

11 (ii) The identity of the supervising entity.

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

14 (iv) Benefits of the coverage.

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

19 (d) Summarize the process for filing a claim, including a
20 description of how to return a portable electronic device and the
21 maximum fee applicable if the customer fails to comply with any
22 equipment return requirements.

23 (e) State that the customer may cancel enrollment for coverage
24 under a portable electronics insurance policy at any time and that
25 the person paying the premium will receive a refund of any
26 applicable unearned premium.

27 (2) A vendor may offer portable electronics insurance on a

1 month-to-month or other periodic basis as a group or master
2 commercial inland marine policy issued to the vendor for its
3 enrolled customers.

4 (3) An insurer issuing a policy of portable electronics
5 insurance shall establish eligibility and underwriting standards
6 for customers electing to enroll in coverage for each portable
7 electronics insurance program.

8 Sec. 9. (1) The employees and authorized representatives of a
9 vendor may sell or offer portable electronics insurance under this
10 act to customers without a limited lines producer license if either
11 of the following is met:

12 (a) The vendor that employs the employees and authorized
13 representatives has a limited lines producer license that
14 authorizes its employees or authorized representatives to sell or
15 offer portable electronics insurance.

16 (b) The insurer issuing the portable electronics insurance
17 coverage either directly supervises or appoints a supervising
18 entity to supervise the administration of the portable electronics
19 insurance coverage program, including development of a training
20 program for employees and authorized representatives of the
21 vendors. The training required under this subdivision shall comply
22 with all of the following:

23 (i) The training shall be delivered to employees and authorized
24 representatives of a vendor who are directly engaged in the
25 activity of selling or offering portable electronics insurance
26 coverage.

27 (ii) The training may be provided in electronic form. If the

1 training is conducted in electronic form, the supervising entity
2 shall implement a supplemental education program regarding portable
3 electronics insurance that is conducted and overseen by licensed
4 employees of the supervising entity.

5 (iii) The training shall provide basic instruction about the
6 portable electronics insurance coverage offered to customers and
7 the disclosures required under section 7.

8 (2) An employee or authorized representative of a vendor
9 described in subsection (1) shall not advertise, represent, or
10 otherwise hold himself or herself out as a limited lines licensed
11 insurance producer.

12 (3) A vendor may bill and collect the charges for portable
13 electronics insurance coverage. A vendor shall separately itemize
14 on the enrolled customer's bill any charge for coverage that is not
15 included in the cost associated with the purchase or lease of a
16 portable electronic device or related services. If the portable
17 electronics insurance coverage is included with the purchase or
18 lease of a portable electronic device or related services, the
19 vendor shall clearly and conspicuously disclose to the enrolled
20 customer that the portable electronics insurance coverage is
21 included with the portable electronic device or related services.
22 Vendors billing and collecting charges described in this subsection
23 are not required to maintain the proceeds in a segregated account
24 if the vendor is authorized by the insurer to hold the proceeds in
25 an alternative manner and remits those proceeds to the supervising
26 entity within 60 days after receiving them. All money received by a
27 vendor from an enrolled customer from the purchase of portable

1 electronics insurance is considered money held in trust by the
2 vendor in a fiduciary capacity for the benefit of the insurer. A
3 vendor may receive compensation for billing and collection services
4 described in this subsection.

5 Sec. 11. If a vendor or an employee or authorized
6 representative of a vendor violates this act, the commissioner may
7 do any of the following:

8 (a) After notice and hearing, impose an administrative fine of
9 not more than \$500.00 for each violation. However, the commissioner
10 may not assess administrative fines under this act against any
11 person that in the aggregate are more than \$5,000.00 for multiple
12 violations that involve the same conduct, action, or practice.

13 (b) After notice and hearing, impose other penalties that the
14 commissioner considers necessary and reasonable to carry out the
15 purpose of this act, including, but not limited to, any of the
16 following:

17 (i) Suspending the privilege of transacting portable
18 electronics insurance under this act at specific locations where
19 violations have occurred.

20 (ii) Suspending or revoking the ability of individual employees
21 or authorized representatives to act under the vendor's license.

22 Sec. 13. (1) Except as provided in subsections (2) and (3), an
23 insurer may terminate or otherwise change the terms and conditions
24 of a policy of portable electronics insurance only if it provides
25 the vendor that is the policyholder and enrolled customers with at
26 least 30 days' notice of the termination or change. If the insurer
27 changes the terms and conditions of the policy, the insurer shall

1 provide the vendor that is the policyholder with a revised policy
2 or endorsement and each enrolled customer with a revised
3 certificate, endorsement, updated brochure, or other evidence
4 indicating that a change in the terms and conditions has occurred
5 and a summary of material changes.

6 (2) An insurer may terminate an enrolled customer's enrollment
7 under a portable electronics insurance policy 15 days after
8 providing notice to the customer if the insurer discovers fraud or
9 material misrepresentation in obtaining coverage or in the
10 presentation of a claim under the policy.

11 (3) An insurer may immediately terminate an enrolled
12 customer's enrollment under a portable electronics insurance policy
13 for any of the following reasons:

14 (a) Nonpayment of premium.

15 (b) The enrolled customer has ceased to have an active service
16 with the vendor of the portable electronic device.

17 (c) The enrolled customer has exhausted the aggregate limit of
18 liability, if any, under the terms of the portable electronics
19 insurance policy and the insurer has sent notice of termination to
20 the enrolled customer within 30 calendar days after exhaustion of
21 the limit. However, if notice is not timely sent, enrollment shall
22 continue notwithstanding that the aggregate limit of liability has
23 been exhausted until the insurer sends notice of termination to the
24 enrolled customer.

25 (4) If a portable electronics insurance policy is terminated
26 by a vendor policyholder, the vendor policyholder shall mail or
27 deliver written notice to each enrolled customer advising the

1 enrolled customer of the termination of the policy and the
2 effective date of termination. The written notice shall be mailed
3 or delivered to the enrolled customer at least 30 days before the
4 termination.

5 (5) Any notice required under this section shall be in
6 writing. An insurer may mail or deliver a notice to a vendor at the
7 vendor's mailing address and to its affected enrolled customers'
8 last known mailing addresses on file with the insurer. If a notice
9 is mailed, the insurer or vendor that sent the notice shall
10 maintain proof of mailing in a form authorized or accepted by the
11 United States postal service or other commercial mail delivery
12 service. Alternatively, an insurer or vendor policyholder may
13 comply with any notice required under this section by providing
14 electronic notice to a vendor or its affected enrolled customers,
15 as applicable, by electronic means. If notice is provided by
16 electronic means, the insurer or vendor shall maintain proof that
17 the notice was sent.

18 Sec. 15. (1) A person seeking a license under this act shall
19 file a sworn application for a license with the office on forms
20 prescribed and furnished by the office.

21 (2) An application for a license under this act shall do all
22 of the following:

23 (a) Provide the name, residence address, and other information
24 required by the office for an employee or officer of the vendor
25 that is designated by the applicant as the person responsible for
26 the vendor's compliance with the requirements of this act. However,
27 if the vendor derives more than 50% of its revenue from the sale of

1 portable electronics insurance, the vendor shall provide the name,
2 residence address, and other information required by the office of
3 all of the vendor's officers, directors, and shareholders of record
4 who have beneficial ownership of 10% or more of any class of
5 securities registered under federal securities laws.

6 (b) Provide the location of the applicant's home office.

7 (3) An application for a license under this act shall be made
8 within 90 days after the application is made available by the
9 office.

10 (4) An initial license issued under this act expires 24 months
11 after the issue date assigned by the office.

12 (5) Each vendor licensed under this act shall pay the office a
13 fee in the amount determined by the office. The fee established by
14 the office shall not exceed \$1,000.00 for an initial portable
15 electronics limited lines license or \$500.00 for each renewal of
16 that license. However, if a vendor is engaged in portable
17 electronic device transactions at 10 or fewer locations in this
18 state, the fee shall not exceed \$100.00 for an initial license or a
19 renewal.

20 Enacting section 1. This act does not take effect unless
21 Senate Bill No. 512 of
22 the 96th Legislature is enacted into law.