

As Amended by House Committee

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 170

By Committee on Financial Institutions and Insurance

2-9

1 AN ACT enacting the portable electronics insurance act.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. Sections 1 through 9 shall be known and may be cited as
5 the portable electronics insurance act.

6 Sec. 2. For purposes of this act:

7 (a) "Commissioner" means the commissioner of insurance.

8 (b) "Covered customer" means a customer who elects coverage under
9 a portable electronics insurance policy issued to a vendor of portable
10 electronics devices.

11 (c) "Customer" means a person who purchases or leases portable
12 electronics devices or services.

13 (d) "Insurance producer" shall have the meaning ascribed to it in
14 K.S.A. 2010 Supp. 40-4902, and amendments thereto.

15 **(e) "Location" means any physical location in the state of Kansas.**

16 ~~(e)~~ **(f)** "Portable electronic device" means an electronic device that is
17 portable in nature. The term portable electronic device also includes any
18 accessory for such device and any service related to the use of such
19 portable electronic device that is sold to a customer.

20 ~~(f)~~ **(g)** "Portable electronic devices" does not mean devices used
21 exclusively by communication companies or commercial entities to
22 provide service to a customer.

23 ~~(g)~~ **(h)** (1) "Portable electronics insurance" means insurance
24 providing coverage for the repair or replacement of portable electronics
25 devices which may ~~cover~~ **provide coverage for** portable electronics
26 devices against any one or more of the following causes of loss: loss,
27 theft, **are inoperable due to** mechanical failure, malfunction, damage or
28 other ~~applicable perils~~ **similar causes of loss.**

29 (2) "Portable electronics insurance" does not include:

30 (A) Any service contract as defined by K.S.A. 2010 Supp. 40-201a,
31 and amendments thereto;

32 (B) any policy of insurance covering a seller's or a manufacturer's
33 obligations under a warranty; or

1 (C) any homeowner's, renter's, private passenger automobile,
2 commercial multiperil, or similar policy.

3 ~~(i)~~ (i) "Portable electronics transaction" means:

4 (1) The sale or lease of portable electronics device by a vendor to a
5 customer; or

6 (2) the sale of a service related to the use of portable electronics
7 device by a vendor to a customer.

8 ~~(j)~~ (j) "Supervising ~~agency~~ entity" means a business entity that is a
9 licensed insurance producer **or insurer**.

10 ~~(k)~~ (k) "Vendor" means a person in the business of engaging in
11 portable electronics transactions directly or indirectly.

12 Sec. 3. (a) A vendor shall be required to hold a limited lines license to
13 sell or offer coverage under a policy of portable electronics insurance. To
14 hold a limited lines license to sell or offer coverage under a policy of
15 portable electronics insurance, a vendor shall meet all the requirements to
16 be a producer including:

17 (1) Paying all fees to be an insurance producer;

18 (2) complying with all the same terms and conditions that are
19 specified for an insurance producer license; and

20 (3) submitting to the commissioner any additional information or
21 documentation that the commissioner requires, including any information
22 or documentation needed to determine the professional competence, good
23 character and trustworthiness of the vendor.

24 (b) In connection with a vendor's application for licensure, and
25 quarterly thereafter, the vendor shall provide a list to the commissioner of
26 all locations in this state at which it offers coverage.

27 (c) Notwithstanding any other provision of law, any license issued
28 pursuant to this section shall authorize the licensee and its employees or
29 authorized representatives to engage ~~only~~ in those activities that are
30 ~~expressly~~ expressly permitted in this act.

31 Sec. 4. (a) At every location where portable electronics insurance is
32 offered to customers, brochures or other written material shall be made
33 available to a prospective customer which:

34 (1) discloses that portable electronics insurance may provide a
35 duplication of coverage already provided by a customer's homeowner's
36 insurance policy, renter's insurance policy or other source of coverage;

37 (2) states that the enrollment by the customer in a portable electronics
38 insurance program is not required in order to purchase or lease portable
39 electronics devices or services;

40 (3) summarizes the material terms of the insurance coverage,
41 including:

42 (A) The identity of the insurer;

43 (B) the identity of the supervising ~~agency~~ entity;

- 1 (C) the amount of any applicable deductible and how it is to be paid;
2 (D) benefits of the coverage; and
3 (E) key terms and conditions of coverage such as whether portable
4 electronics devices may be repaired or replaced with similar make and
5 model, reconditioned, or repaired with nonoriginal manufacturer parts or
6 equipment.

7 (4) Summarizes the process for filing a claim, including a description
8 of ~~any requirements~~;

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

12 ~~(B) any proof of loss requirements.~~

13 (5) States that the customer may cancel enrollment for coverage
14 under a portable electronics insurance policy at any time and receive ~~a~~
15 ~~refund of any unearned premium~~ **any applicable unearned premium**
16 **refund.**

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

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

24 Sec. 5. (a) The employees and authorized representatives of vendors
25 may sell or offer portable electronics insurance to customers at each
26 location at which the vendor engages in portable electronics transactions
27 and shall not be subject to licensure as an insurance producer under K.S.A.
28 40-4901 et seq., and amendments thereto, if:

29 (1) The vendor has a limited lines license to authorize its employees
30 or authorized representatives to sell or offer portable electronics insurance
31 pursuant to this section;

32 (2) the insurer complies with all statutes and regulations applicable to
33 limited lines insurers;

34 (3) the insurer issuing the portable electronics insurance **either**
35 **directly supervises or** appoints a supervising ~~agency~~ **entity** to supervise
36 the administration of the program including development of a training
37 program for employees and authorized representatives of the vendors. The
38 training required by this subdivision shall comply with the following:

39 (A) The training shall be delivered to ~~all~~ employees and authorized
40 representatives of ~~the vendors who sell or offer~~ **a vendor who is directly**
41 **engaged in the activity of selling or offering** portable electronics
42 insurance.

43 (B) The training may be provided in electronic form. However, if

1 conducted in an electronic form, the supervising ~~agency~~ **entity** shall
2 implement a program of in-person training conducted by licensed
3 employees of the supervising ~~agency~~ **entity** to supplement the electronic
4 training **supplemental education program regarding the portable**
5 **electronics insurance product that is conducted and overseen by**
6 **licensed employees of the supervising entity.**

7 (C) Each employee and authorized representative shall receive basic
8 instruction about the portable electronics insurance offered to customers
9 and the disclosures required under section 4, and amendments thereto.

10 (4) No employee or authorized representative of a vendor of portable
11 electronics devices shall advertise, represent or otherwise hold one's self
12 out as a nonlimited lines licensed insurance producer.

13 (b) The charges for portable electronics insurance coverage may be
14 billed and collected by the vendor of portable electronics devices. Any
15 charge to the customer for coverage that is not included in the cost
16 associated with the purchase or lease of portable electronics devices or
17 related services shall be separately itemized on the customer's bill. If the
18 ~~charge for portable electronic insurance~~ coverage is included in the cost
19 associated with the purchase or lease of portable electronics devices or
20 related services, the vendor shall clearly and conspicuously disclose to the
21 customer that ~~the charge for the portable electronics devices or related~~
22 ~~services includes the charge for coverage~~ **the portable electronics**
23 **insurance coverage is included with the portable electronics or related**
24 **services.** Vendors billing and collecting such charges shall not be required
25 to maintain such funds in a segregated account provided that the vendor is
26 authorized by the insurer to hold such funds in an alternative manner and
27 remits such amounts to the supervising ~~agency~~ **entity** within 60 days of
28 receipt. All funds received by a vendor from a customer for the sale of
29 portable electronics insurance shall be considered funds held in trust by the
30 vendor in a fiduciary capacity for the benefit of the insurer. Vendors may
31 receive compensation for billing and collection services.

32 Sec. 6. If a ~~supervision agency~~ **supervising entity**, vendor of portable
33 electronics, or employee or authorized representative of a vendor violates
34 any provision of this act, K.A.R. 40-1-34, K.S.A. 40-2404 or 40-4909, and
35 amendments thereto, the commissioner may: (a) Impose on the ~~supervision~~
36 ~~agency~~ **supervising entity** or vendor any or all of the penalties authorized
37 under chapter 40 of the Kansas Statutes Annotated, and amendments
38 thereto, for those violations; and

39 (b) suspend or revoke the ability of individual employees or
40 authorized representatives to act under the license of the vendor.

41 Sec. 7. Notwithstanding any other provision of law:

42 (a) An insurer may not ~~terminate or otherwise~~ change the terms and
43 conditions of a policy of portable electronics insurance more than once in

1 any six-month period.

2 ***(b) An insurer may not terminate an individually enrolled customer***
3 ***based solely upon the age of such enrolled customer's covered portable***
4 ***electronic device.***

5 ~~(b)~~ ***(c)*** If the insurer changes the terms and conditions of a policy, the
6 insurer shall provide the policyholder with a revised policy or endorsement
7 and each enrolled customer with a revised certificate, endorsement,
8 updated brochure or other evidence indicating a change in the terms and
9 conditions has occurred and a summary of material changes 30 days prior
10 to the end of the term of the policy.

11 ~~(c)~~ ***(d)*** Notwithstanding ~~paragraph (1) of~~ subsection (a), an insurer
12 may terminate an enrolled customer's enrollment under a portable
13 electronics insurance policy upon 15 days notice for:

14 (1) Fraud or material misrepresentation in obtaining coverage or in
15 the presentation of a claim thereunder; or

16 (2) nonpayment of premium;

17 ~~(d)~~ ***(e)*** notwithstanding subsection (a), an insurer may terminate an
18 enrolled customer's enrollment under a portable electronics insurance
19 policy immediately if:

20 (1) The enrolled customer ceases to have an active service with the
21 vendor of portable electronics; or

22 (2) an enrolled customer exhausts the aggregate limit of liability, if
23 any, under the terms of the portable electronics insurance policy and the
24 insurer sends notice of termination to the customer within 30 calendar days
25 after exhaustion of the limit. However, if notice is not timely sent,
26 enrollment shall continue notwithstanding the aggregate limit of liability
27 until the insurer sends notice of termination to the enrolled customer.

28 ~~(e)~~ ***(f)*** Whenever notice is required pursuant to this section, it shall be
29 in writing and may be mailed or delivered to the vendor of portable
30 electronics devices at the vendor's mailing address and to its affected
31 enrolled customers' last known mailing addresses on file with the insurer.
32 The insurer or vendor of portable electronics, as the case may be, shall
33 maintain proof of mailing in a form authorized or accepted by the United
34 States postal service or other commercial mail delivery service.
35 Alternatively, an insurer or vendor policyholder may comply with any
36 notice required by this section by providing electronic notice to a vendor
37 or its affected enrolled customers, as the case may be, by electronic means.
38 If notice is accomplished through electronic means, the insurer or vendor
39 of portable electronics, as the case may be, shall maintain proof that the
40 notice was sent. Additionally, if an insurer or vendor policyholder
41 provides electronic notice to an affected enrolled customer and such
42 delivery by electronic means is not available or fails, the insurer or vendor
43 policyholder shall provide written notice to the enrolled customer by mail

1 in accordance with this section.

2 (†) (g) Regardless of whether the insurer or the enrolled customer
3 terminates the policy the insurer shall return any unearned premium to the
4 customer without requiring the consumer to request it. The unearned
5 premium shall be calculated on a pro rata basis such that the enrolled
6 customer pays for the actual number of days of coverage. No penalty for
7 early termination may be charged.

8 Sec. 8. If any provision of this act, or the application of such
9 provision to any person or circumstances, shall be held invalid, the
10 remainder of the act, and the application of such provision to persons or
11 circumstances other than those as to which it is held invalid, shall not be
12 affected thereby.

13 Sec. 9. The commissioner may adopt rules and regulations necessary
14 to implement this act.

15 Sec. 10. This act shall take effect and be in force from and after
16 **January 1, 2012, and** its publication in the statute book.

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