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2 88th General Assembly
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4

As Engrossed: S3/23/11

A Bill

SENATE BILL 938

5 By: Senator Teague
6

For An Act To Be Entitled

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

Subtitle

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11
12 *TO ESTABLISH A REGULATORY SCHEDULE FOR*
13 *THE SALE OF INSURANCE ON PORTABLE*
14 *ELECTRONICS.*
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 23, Chapter 88 is amended to add an
21 additional subchapter to read as follows:

22 Subchapter 5 - Portable Electronics Insurance

23 23-88-501. Definitions.

24 As used in this subchapter:

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

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

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

31 (A) A physical location in this state;

32 (B) A website; or

33 (C) A call center site or similar location;

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



1 (5)(A) “Portable electronics insurance” means insurance for the
2 repair or replacement of portable electronics that includes the following
3 causes of loss:

4 (i) Loss;

5 (ii) Theft; and

6 (iii) Inoperability due to mechanical failure,
7 malfunction, damage, or other similar causes of loss.

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

10 (6) “Portable electronics transaction” means:

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

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

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

18 (8) “Vendor” means a person that engages in the business of
19 portable electronics transactions.

20
21 23-88-502. Licensure of vendors.

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

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

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

33 (d) A license issued under this subchapter authorizes the licensee and
34 its employees or authorized representatives to engage in the activities
35 authorized by this subchapter.

36

1 23-88-503. Requirements for sale of portable electronics insurance.

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

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

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

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

12 (A) The identity of the insurer;

13 (B) The identity of the supervising entity;

14 (C) The amount of an applicable deductible;

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

17 (E) Benefits of the coverage; and

18 (F) Key terms and conditions of coverage, including
19 without limitation whether or not portable electronics may be repaired or
20 replaced with similar make and model reconditioned or nonoriginal
21 manufacturer parts or equipment;

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

23 (A) A description of how to return portable electronics;
24 and

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

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

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

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

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

1 insurance to a customer.

2
3 23-88-504. Authority of vendors to sell or offer portable electronics
4 insurance.

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

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

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

13 (ii) The training program for vendors shall:

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

17 (b) Provide basic instruction about the
18 portable electronics insurance offered to customers and the written
19 disclosures required under § 23-88-503.

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

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

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

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

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

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

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

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

4 (C) If portable electronics insurance is included with the
5 purchase or lease of portable electronics or related services, the vendor
6 shall clearly and conspicuously disclose to the enrolled customer that the
7 portable electronics insurance is included.

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

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

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

15 (B) The funds received by a vendor from an enrolled
16 customer for the sale of portable electronics insurance shall be considered
17 funds held in trust by the vendor acting in a fiduciary capacity for the
18 benefit of the insurer.

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

21
22 23-88-505. Suspension or revocation of license.

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

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

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

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

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

1
2 23-88-506. Termination of portable electronics insurance.

3 (a) Notwithstanding any other law:

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

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

11 (A) A revised policy or endorsement;

12 (B) A revised certificate or endorsement;

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

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

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

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

25 (1) For nonpayment of premium;

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

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

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

36 (d)(1) If a portable electronics insurance policy is terminated by a

1 policyholder, the policyholder shall mail or deliver written notice to the
2 enrolled customer to advise the enrolled customer of the termination of the
3 portable electronics insurance coverage and the effective date of
4 termination.

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

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

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

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

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

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

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

21
22 23-88-507. Application for license and fees.

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

26 (2) The application for licensure under this subchapter shall:

27 (A)(i) Provide the name, residence address, and other
28 information required by the commissioner for an employee or authorized
29 representative of the vendor designated by the applicant as the person
30 responsible for the vendor's compliance with the requirements of this
31 subchapter.

32 (ii) If the vendor derives more than fifty percent
33 (50%) of its revenue from the sale of portable electronics insurance, the
34 information required in subdivision (a)(2)(A) of this section shall be
35 provided for all officers, directors, and shareholders of record that have
36 beneficial ownership of ten percent (10%) or more of any class of securities

1 registered under the federal securities law;

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

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

9 (a) Be irrevocable;

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

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

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

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

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

21 (d)(1) A vendor of portable electronics applying for a limited lines
22 license under this subchapter shall pay to the commissioner:

23 (A) A nonrefundable application and license fee of one
24 thousand dollars (\$1,000); and

25 (B) A renewal license fee of five hundred dollars (\$500).

26 (2) However, a vendor that is engaged in portable electronics
27 transactions at ten (10) or fewer locations in the state applying for a
28 limited lines license under this subchapter shall pay to the commissioner:

29 (A) A nonrefundable application and license fee not to
30 exceed one hundred dollars (\$100); and

31 (B) A renewal license fee not to exceed one hundred
32 dollars (\$100).

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34 */s/Teague*