

SENATE BILL No. 170

AN ACT enacting the portable electronics insurance act.

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

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

Sec. 2. For purposes of this act:

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

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

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

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

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

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

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

(h) (1) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics devices which may provide coverage for portable electronics devices against any one or more of the following causes of loss: loss, theft, are inoperable due to mechanical failure, malfunction, damage or other similar causes of loss.

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

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

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

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

(i) "Portable electronics transaction" means:

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

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

(j) "Supervising entity" means a business entity that is a licensed insurance producer or insurer.

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

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

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

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

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

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

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

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

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

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

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

(A) The identity of the insurer;

(B) the identity of the supervising entity;

(C) the amount of any applicable deductible and how it is to be paid;

(D) benefits of the coverage; and

(E) key terms and conditions of coverage such as whether portable electronics devices may be repaired or replaced with similar make and model, reconditioned, or repaired with nonoriginal manufacturer parts or equipment.

(4) Summarizes the process for filing a claim, including a description of how to return portable electronics devices and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements.

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

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

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

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

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

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

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

(A) The training shall be delivered to employees and authorized representatives of a vendor who is directly engaged in the activity of selling or offering portable electronics insurance.

(B) The training may be provided in electronic form. However, if conducted in an electronic form, the supervising entity shall implement a program of in-person training conducted by licensed employees of the supervising entity to supplement the electronic training supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity.

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

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

(b) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics devices. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics devices or related services shall be separately itemized on the customer's bill. If the portable electronic insurance coverage is included in the cost associated with the purchase or lease of portable electronics devices or related services, the vendor shall clearly and conspicuously disclose to the customer that the portable electronics insurance coverage is included with the portable electronics or related services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided

that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from a customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

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

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

Sec. 7. Notwithstanding any other provision of law:

(a) An insurer may not change the terms and conditions of a policy of portable electronics insurance more than once in any six-month period.

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

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

(d) Notwithstanding subsection (a), an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days notice for:

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

(2) nonpayment of premium;

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

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

(2) 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 customer within 30 calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

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

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

Sec. 8. If any provision of this act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the

act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

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

I hereby certify that the above BILL originated in the
SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.