

CHAPTER 359
FORMERLY
HOUSE BILL NO. 335
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO PORTABLE ELECTRONIC LIMITED LINES PRODUCER AND ADJUSTER LICENSURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Section 1702, Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(p) "Person" means an individual or a business entity.

(q) 'Portable electronics insurance' has the meaning set forth in § 2051(5) of this title.

~~(r)~~ "Revocation" means recalling or taking back an insurance license or licenses for a minimum period of 12 months. Any insurer appointments of such license shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements of § 1706 of this title.

~~(s)~~ "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

~~(t)~~ "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

~~(u)~~ "Suspension" means to bar temporarily the privileges of an insurance license or licenses granted under Chapter 17 of this title, for a maximum of 12 months. A suspension shall also include a suspension of the appointment of such licensee. Upon the expiration of the suspension period and upon satisfactory completion of such terms and conditions as the Commissioner has imposed pursuant to the suspension, all licenses and appointments shall be reinstated.

~~(v)~~ "Termination" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

~~(w)~~ "Travel accident & baggage licensee" means a limited line producer of the Department who is a ticket-selling agent or other representative of a common carrier who solicits over-the-counter, short-term, nonrenewable travel accident ticket policies and baggage insurance.

~~(x)~~ "Uniform Business Entity Application" means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

~~(y)~~ "Uniform Application" means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

Section 2. Amend Section 1706, Title 18 of the Delaware Code by making insertions as shown by underlining:

(h) Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the Insurance Commissioner.

(i) No resident of Canada may be licensed as an adjuster pursuant to this section or may designate Delaware as the adjuster's home state, unless such person has successfully passed the adjuster examination and has complied with other applicable portions of this section.

(j) A business entity applying for a license as an adjuster for portable electronic insurance claims shall submit such application on a form as prescribed by the Commissioner. The Commissioner is authorized, at all times, to require the applicant to disclose the names and addresses of all executive officers and directors of the applicant and of all executive officers and directors of entities owning and any individuals owning, directly or indirectly, 51% or more of the outstanding voting securities of the applicant. The Commissioner is further authorized, at all times, to require the applicant to obtain their criminal histories from their state of residence. The Commissioner may, in the exercise of his or her discretion, refuse to issue a license to the applicant if not satisfied

that their conduct meets the standards of this chapter. Any nonresident business entity applicant whose home state requirements comply with all of these provisions of this paragraph shall not be required to submit this material.

Section 3. Amend Section 1707, Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(d) An adjuster's license shall convey authority to investigate and negotiate settlement of claims on behalf of licensed agents, brokers, self-insurers, or insurers in 1 or more of the following lines of insurance:

- (1) Property insurance.
- (2) Casualty insurance.
- (3) Fidelity and surety insurance.
- (4) Automobile insurance.
- (5) Marine and transportation insurance.

~~(e) No adjuster's license shall be required for any adjuster sent into this State on behalf of an insurer for the investigation or adjustment of a particularly unusual or extraordinary loss, or series of losses, resulting from a catastrophe common to all such losses; provided that such adjuster shall furnish to the Commissioner written notice within 10 calendar days of any such catastrophic insurance adjustment work.~~

(e) No adjuster's license shall be required for any of the following:

(1) An adjuster sent into this State on behalf of an insurer for the investigation of a particularly unusual or extraordinary loss, or series of losses, resulting from a catastrophe common to all such losses; provided that such adjuster shall furnish to the Commissioner written notice within 10 calendar days of any such catastrophic insurance adjustment work.

(2) An individual who, in regards to portable electronics insurance claims, collects claim information from, or furnishes claim information to, insureds or claimants, and who conducts data entry including entering data into an automated claims adjudication system, provided that the individual is an employee of a licensed independent adjuster or its affiliate where no more than 25 such persons are under the supervision of one licensed independent adjuster or licensed producer. A producer who is acting as a supervisor and adjusting claims pursuant to this paragraph is not required to be licensed as an adjuster. For purposes of this section, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation and final resolution of portable electronics insurance claims which:

a. is only utilized by a licensed independent adjuster, licensed producer, or supervised individuals operating pursuant to this paragraph;

b. complies with all claims payment requirements of the insurance code; and

c. is certified as compliant with this section by a licensed independent adjuster that is an officer of a licensed business entity under this chapter.

Section 4. Amend Section 1717, Title 18 of the Delaware Code by inserting a new subsection as shown by underlining as follows:

(c) No resident of Canada shall be granted reciprocity for purposes of obtaining a non-resident's adjuster license unless that individual has designated another state as his or her home state or obtained a resident adjuster's license in another state.

Section 5. Amend Title 18 of the Delaware Code by creating a new Chapter 20A as shown by underlining as follows:

§2050. Short title.

This chapter shall be known as the "Portable Electronic Device Insurance Producer Limited License Act."

§2051. 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 coverage under a portable electronics insurance policy issued to a vendor of portable electronics;

(3) "Location" means any physical location in the state or any website, call center site or similar location directed to residents of the state;

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

(5) (a) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics against any one or more of the following: loss, theft, inoperability due to mechanical failure, malfunction, damage, or other similar cause of need for repair or replacement..

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

(i) a service contract or extended warranty providing coverage limited to the repair, replacement or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling power surges, or normal wear and tear.

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

(iii) a homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

(6) "Portable electronics transaction" means:

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

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

(7) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is appointed by an insurer to supervise the administration of a portable electronics insurance program;

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

§2052. Licensure of vendors.

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

(2) A limited lines license issued under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) The supervising entity shall maintain a registry of vendor locations which are authorized to sell or solicit portable electronics insurance coverage in this state. Upon request by the Commissioner and with 10 days notice to the supervising entity, the registry shall be open to inspection and examination by the Commissioner during regular business hours of the supervising entity.

(4) Notwithstanding any other provision of law, a 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 section.

§2053. Requirements for sale of portable electronics insurance.

(1) At every location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer which:

(a) Disclose 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;

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

(c) Summarize the material terms of the insurance coverage, including:

(i) the identity of the insurer;

(ii) the identity of the supervising entity;

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

(iv) benefits of the coverage; and

(v) key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

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

(e) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund or credit of any applicable unearned premium.

(2) Portable electronics insurance may be offered on a month to month or other periodic basis as a group or master commercial inland marine policy issued to a vendor of portable electronics for its enrolled customers.

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

§2054. Authority of vendors of portable electronics.

(1) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this chapter provided that:

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

(b) 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:

(i) The training shall be delivered to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance.

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

(iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required by this section; and

(c) No employee or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself or herself out as a non-limited lines licensed insurance producer.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage 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 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 an enrolled 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.

§2055. Suspension or revocation of license.

(1) If a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the commissioner may do any of the following:

(a) After notice and hearing, impose fines not to exceed \$500 per violation or \$5,000 in the aggregate for such conduct.

(b) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this article, including:

(i) suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred; and

(ii) suspending or revoking the ability of individual employees or authorized representatives to act under the license.

§2056. Termination of portable electronics insurance.

Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least 30 days notice.

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor 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.

(3) Notwithstanding subsection (1) of this section, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim thereunder.

(4) Notwithstanding subsection (1) of this section, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(a) for nonpayment of premium;

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

(c) 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 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.

(5) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least 30 days prior to the termination.

(6) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section or is otherwise required by law, it shall be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this subparagraph. If the notice or correspondence is mailed, it shall be sent to the vendor of portable electronics at the vendor's mailing address specified for such purpose 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. If the notice or correspondence is sent by electronic means, it shall be sent to the vendor of portable electronics at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be. For purposes of this subparagraph, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice or correspondence was sent.

(7) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed by the insurer.

§2057. Application for license and fees.

(1) A person applying for a license under this chapter shall make application to the Insurance Commissioner on forms prescribed by the Commissioner and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the person's knowledge and belief.

(2) The application shall:

(a) Provide the name, residence address, and other information required by the Insurance Commissioner for an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this chapter. However, if the vendor derives more than 50% of its revenue from the sale of portable electronics insurance the information noted above shall be provided for all officers, directors, and shareholder of record having beneficial ownership of 10% or more of any class of securities registered under the federal securities law; and

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

(3) Any vendor engaging in portable electronics insurance transactions on or before the effective date of this Act must apply for licensure within 90 days of the application being made available by the Insurance Commissioner. Any applicant commencing operations after the effective date of this Act must obtain a license prior to offering portable electronics insurance.

(4) Initial licenses issued pursuant to this chapter shall be valid for a period of 24 months and expire on February 28th of the renewal year assigned by the Insurance Commissioner.

(5) Each vendor of portable electronics licensed under this chapter shall pay to the Insurance Commissioner a fee as prescribed by the Commissioner but in no event shall the fee exceed \$1,000 for an initial portable electronics limited lines license and \$500 for each renewal thereof.

Section 6. This Act shall take effect on January 1, 2013.

Approved July 23, 2012