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Chapter No. 449
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HOUSE BILL NO. 894

Originated in House _____ Clerk

HOUSE BILL NO. 894

AN ACT TO REQUIRE THE LICENSURE OF ANY VENDOR TO SELL, SOLICIT OR NEGOTIATE COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE; TO PROVIDE CERTAIN REQUIREMENTS FOR THE SALE OF PORTABLE ELECTRONICS INSURANCE; TO ALLOW EMPLOYEES, SUBSIDIARY CORPORATIONS AND AUTHORIZED REPRESENTATIVES OF VENDORS TO SELL PORTABLE ELECTRONICS INSURANCE TO CUSTOMERS WITHOUT LICENSURE UPON CERTAIN CONDITIONS; TO AUTHORIZE THE COMMISSIONER OF INSURANCE TO SUSPEND OR REVOKE A LICENSE; TO PROVIDE FOR THE TERMINATION OR MODIFICATION OF A POLICY OF PORTABLE ELECTRONICS INSURANCE; TO PROVIDE THAT APPLICATIONS FOR LICENSURE AND FEES SHALL BE SUBMITTED TO THE DEPARTMENT OF INSURANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Definitions. For purposes of Section 1 through 8 of this act, the following terms have the following meanings:

(a) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(b) "Commissioner" means the Commissioner of Insurance for the State of Mississippi.

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

(d) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(e) "Location" means any physical location in the State of Mississippi or any website, call center site or similar location directed to residents of the State of Mississippi.

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

(g) (i) "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 causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. The insurance shall not exceed Seven Thousand Five Hundred Dollars ($7,500.00).

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

1. A service contract governed by Section 75-24-91;

2. A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

3. A homeowner's, renter's, private passenger automobile, commercial multiperil or similar policy.

(h) "Portable electronics transaction" means:

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

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

(i) "Portable electronics insurance producer" means a business entity required to be licensed under the laws of this state to sell, solicit or negotiate portable electronics insurance.

(j) "Subsidiary corporation" means any corporation in which a majority of the voting stock is owned, directly or indirectly, by another corporation.

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

(l) "Vendor" means a business entity in the business of selling, soliciting or negotiating portable electronics transactions directly or indirectly.

SECTION 2. Licensure of vendors. (1) A vendor is required to hold a portable electronics insurance producer license to sell, solicit or negotiate coverage under a policy of portable electronics insurance.

(2) A portable electronics insurance producer license issued under this act shall authorize any employee, subsidiary corporation or authorized representative of the vendor to sell, solicit or negotiate coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(3) 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.

SECTION 3. Requirements for sale of portable electronics insurance. (1) At every location where portable electronics insurance is sold, solicited or negotiated to customers, brochures or other written materials shall 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 nonoriginal 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 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.

SECTION 4. Authority of vendors of portable electronics. (1) The employees, subsidiary corporations and authorized representatives of vendors may sell, solicit or negotiate portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this act provided that:

(a) The employee, subsidiary corporation or authorized representative is only engaged in the sale, solicitation or negotiation of portable electronics insurance;

(b) The vendor obtains a portable electronics insurance producer license to authorize its employees, subsidiary

corporations or authorized representatives to sell, solicit or negotiate portable electronics insurance pursuant to this act;

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

(i) The training shall be delivered to employees, subsidiary corporations and authorized representatives of vendors who are directly engaged in the activity of selling, soliciting or negotiating 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, subsidiary corporation and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under Section 3 of this act;

(d) No employee, subsidiary corporation or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself out as a licensed portable electronics insurance producer.

(2) Notwithstanding any other provision of law, employees, subsidiary corporation or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage, but may receive compensation for activities

under the portable electronics insurance producer license which is incidental to their overall compensation.

(3) 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 the funds in a segregated or trust account, provided that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits such amounts to the supervising entity within sixty (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.

SECTION 5. Suspension or revocation of license. (1) If a vendor of portable electronics or its employee, subsidiary corporation 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 One Thousand Dollars ($1,000.00) per violation or Thirty Thousand Dollars ($30,000.00) in the aggregate for such violations and such penalty shall be deposited into the special fund of the State Treasury designated as the "Insurance Department Fund."

(b) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this act, including, but not limited to:

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

(ii) Suspending or revoking the ability of individual employees, subsidiary corporations or authorized representatives to act under the license; and

(iii) Placing on probation, suspending or revoking the license of the portable electronics insurance producer.

SECTION 6. Termination of portable electronics insurance. (1) Notwithstanding any other provision of law, the terms for the termination or modification of a policy of portable electronics insurance shall be as follows:

(a) 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 thirty (30) days' notice.

(b) 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.

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

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

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

(ii) 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 thirty (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.

(e) 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 thirty (30) days prior to the termination.

(2) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to the policy 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 subsection. 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 subsection, 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.

(3) 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 authorized by the insurer.

SECTION 7. Application for license and fees. (1) A sworn application for a license under this act shall be filed with the Mississippi Insurance Department on forms prescribed and furnished by the department.

(2) Portable electronics insurance producer licenses issued pursuant to this act shall continue from the date of issuance until December 31 in the second year following issuance or renewal of the license, with a minimum term of thirteen (13) months.

(3) Each vendor of portable electronics licensed under this act shall pay to the Mississippi Insurance Department a fee of Five Thousand Dollars ($5,000.00).

SECTION 8. The commissioner may promulgate reasonable rules and regulations to implement Sections 1 through 7 of this act.

SECTION 9. This act shall take effect and be in force from and after January 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 8, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 4, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

4:25 pm