As Introduced

129th General Assembly
Regular Session
2011-2012

H. B. No. 250

Representative Hackett

Cosponsors: Representatives Grossman, Stebelton, Beck, Letson

A BILL

To amend section 3905.03 and to enact section 3905.96 of the Revised Code to establish requirements and procedures for issuing portable electronics insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3905.03 be amended and section 3905.96 of the Revised Code be enacted to read as follows:

Sec. 3905.03. (A) Section 3905.02 of the Revised Code does not apply to any of the following:

(1) Any insurer. For purposes of this division, "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.

(2) Any officer, director, or employee of an insurer or of an insurance agent, provided the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and any of the following applies:

(a) The activities of the officer, director, or employee are executive, administrative, managerial, clerical, or any combination thereof, and are only indirectly related to the sale, solicitation, or negotiation of insurance.

(b) The function of the officer, director, or employee relates to underwriting, loss control, inspection, or the processing, adjusting, investigation, or settling of a claim on a contract of insurance.

(c) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, provided the activities of the officer, director, or employee are limited to providing technical advice and assistance to licensed insurance agents and do not include the sale, solicitation, or negotiation of insurance.

(3) Any person who secures and furnishes information for purposes of group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance, or for purposes of enrolling individuals under plans, issuing certificates under plans, or otherwise assisting in administering plans, or who performs administrative services related to mass marketed property and casualty insurance, provided that no commission is paid to the person for any of the services described in this division;

(4) Any employer or association, any officer, director, or employee of an employer or association, or any trustee of an employee trust plan, to the extent that any such person is engaged in the administration or operation of an employee benefits program for the employer's or association's own employees or for the employees of its subsidiaries or affiliates, if both of the following apply:

(a) The employee benefits program involves the use of insurance contracts issued by an insurer.

(b) The employer, association, officer, director, employee, or trustee is not in any manner compensated, either directly or indirectly, by the insurer issuing the insurance contracts.

(5) Any employee of an insurer or of an organization employed by an insurer, if the employee is engaged in the inspection, rating, or classification of risks or in the supervision of the training of insurance agents, and is not individually engaged in the sale, solicitation, or negotiation of insurance;

(6) Any person whose activities in this state are limited to advertising through communications in printed publications or in the electronic mass media, the distribution of which is not limited to residents of this state, if the person does not sell, solicit, or negotiate insurance covering risks residing, located, or to be performed in this state;

(7) Any person who is not a resident of this state and who sells, solicits, or negotiates a contract of insurance covering commercial property and casualty risks located in more than one state, if the person is licensed as an insurance agent to sell, solicit, or negotiate that insurance contract in the state where the insured maintains its principal place of business and the contract insures risks located in that state;

(8) Any salaried full-time employee who counsels or advises the employee's employer with respect to the insurance interests of the employer or of the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission;

(9) Any employee of an insurer or of an insurance agent who, at the direction of the insurer or agent, performs any of the following activities:

(a) The acceptance of premiums other than the initial premium;

(b) The gathering of information, such as names, addresses, expiration dates of current insurance, and names of current insurers;

(c) The setting of appointments for insurance agents, provided that the individual setting the appointment does not communicate any information about insurance;

(d) The servicing of existing insurance policies issued by or through the employee's employer, provided the servicing is not part of a solicitation;

(e) The performance of clerical or ministerial duties.

(10) Any employee of a creditor with respect to limited line credit insurance products, as long as the employee of the creditor is not paid by, and does not receive a fee, commission, or any other form of compensation from, an insurance agent or insurance company.

(11) Any vendor or endorsee of a vendor who sells or offers to sell portable electronics insurance under a limited lines license pursuant to section 3905.96 of the Revised Code, as long as the vendor or endorsee of the vendor only acts within the limitations provided for in that section.

(B) The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code to set forth the specific acts the performance of which either require or do not require licensure as an insurance agent.

Sec. 3905.96. (A) As used in this section:

(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 by an insurer.

(3) "Endorsee" means an employee or authorized representative of a vendor authorized to sell or offer portable electronics insurance.

(4) "Location" means any physical location in this state or any web site, call center site, or similar location directed to residents of this state.

(5) "Portable electronics" means an electronic device that is portable in nature, an accessory of such a device, and any service related to the use of the device.

(6) "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics, which 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 by an insurer, and may cover portable electronics against loss, theft, inoperability due to mechanical failure, malfunction, damage, or other applicable perils. "Portable electronics insurance" does not mean any of the following:

(a) A consumer goods service contract governed by section 3905.423 of the Revised Code;

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

(c) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar insurance policy.

(7) "Portable electronics transaction" means the sale or lease of portable electronics by a vendor to a customer or the sale of a service related to the use of portable electronics by a vendor to a customer.

(8) "Supervising entity" means an insurer or a business entity licensed as an insurance agent under section 3905.06 of the

Revised Code that is appointed by an insurer to supervise the administration of a portable electronics insurance program.

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

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

(2) The superintendent shall designate portable electronics insurance as a limited line of insurance pursuant to division (I) of section 3905.01 of the Revised Code. The superintendent of insurance shall issue a limited lines insurance agent license to a vendor applicant upon submission of a completed application and payment of any applicable fee required under this chapter. The application shall be made on forms prescribed and furnished by the superintendent and shall contain all of the following:

(a) The name, residence address, and other information required by the superintendent for an employee or officer of the vendor who is responsible for the vendor's compliance with the requirements of this section. If the vendor derives more than fifty per cent of its revenue from the sale of portable electronics insurance, the vendor shall provide the name, residence address, and other information required by the superintendent for all officers, directors, and shareholders of record who have beneficial ownership of ten per cent or more of any class of securities registered under the federal securities laws;

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

(c) A list of all locations in this state at which the vendor offers coverage.

(3) Any vendor offering or selling portable electronics insurance on or before the effective date of this section shall

apply for licensure within ninety days of the application being made available by the superintendent of insurance. Any vendor not offering or selling portable electronics insurance on or before the effective date of this section must apply for and obtain a license prior to offering or selling portable electronics insurance.

(4) Licenses issued pursuant to this section shall be valid for a period of twenty-four months.

(5) Each vendor licensed under this section that is engaged in portable electronics transactions in this state shall pay to the superintendent a filing fee prescribed by the superintendent. For vendors engaged in portable electronic transactions at more than ten locations in this state, the fee shall not exceed one thousand dollars for an initial license, and five hundred dollars for each renewal thereafter. For vendors engaged in portable electronics transactions at ten or fewer locations in this state, the fee shall not exceed one hundred dollars for an initial license and for each renewal thereafter.

(C)(1) A vendor may authorize any endorsee of the vendor to sell or offer portable electronics insurance to a customer at any location at which the vendor engages in portable electronics transactions.

(2) An endorsee is not required to be licensed as an insurance agent under this chapter if the vendor is licensed under this section and the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the portable electronics insurance program including development of a training program for endorsees in accordance with division (D) of this section.

(3) No endorsee shall advertise, represent, or otherwise represent the endorsee's self as an insurance agent licensed under

section 3905.06 of the Revised Code.

(D) Each vendor, or the supervising entity to that vendor, shall provide a training and education program for all endorsees who sell or offer portable electronics insurance. The program may be provided as a web-based training module or in any other electronic or recorded video form. The training and education program shall meet all of the following minimum standards:

(1) The training shall be delivered to each endorsee of each vendor who sells or offers portable electronics insurance and the endorsee shall complete the training;

(2) If the training is conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by employees of the supervising entity who are licensed as insurance agents under section 3905.06 of the Revised Code;

(3) The training and education program must include basic information about portable electronics insurance.

(E) At every location where a vendor offers portable electronics insurance to customers, the vendor shall provide brochures or other written materials to prospective customers that include all of the following:

(1) A summary of the material terms of the insurance coverage, including all of the following:

(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;

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

(2) A summary of the process for filing a claim, including a description of how to return portable electronics equipment and the maximum fee applicable if a customer fails to comply with any equipment return requirements;

(3) A disclosure 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;

(4) A disclosure that the enrollment by the customer in a portable electronics insurance program is not required to purchase or lease portable electronics or services;

(5) A disclosure that neither the endorsee nor the vendor is qualified to evaluate the adequacy of the customer's existing insurance coverage;

(6) A disclosure that the customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and receive a refund of any applicable premium.

(F)(1) The charges for portable electronics insurance may be billed and collected by the vendor of portable electronics, and the vendor may receive compensation for performing billing and collection services, if either of the following conditions are met:

(a) If the charge to the customer for coverage is not included in the cost associated with the purchase or lease of portable electronics or related services, the charge for coverage is separately itemized on the customer's bill.

(b) If the charge to the customer for coverage is included in the cost associated with the purchase or lease of portable electronics or related services, the vendor clearly and conspicuously discloses to the customer that the charge for portable electronics insurance coverage is included with the charge for portable electronics or related services.

(2) 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 that bill and collect such charges are not required to maintain those funds in a segregated account if the vendor is authorized by the insurer to hold those funds in an alternate manner and the vendor remits the amount of the charges to the supervising entity within sixty days after receiving the charges.

(G) If the superintendent has reason to believe that a vendor or its endorsee has violated this section, the superintendent shall schedule a hearing on the potential violation and provide notification of the nature of the potential violation and the date, time, and place of the hearing to the vendor or endorsee. If after the hearing the superintendent determines that a vendor or its endorsee has violated this section, the superintendent may do either of the following:

(1) Impose a fine not to exceed five hundred dollars per violation or five thousand dollars in the aggregate for multiple violations.

(2) Impose any other penalty that the superintendent considers necessary and reasonable, including either of the following:

(a) Suspending the vendor's privilege of selling or offering portable electronics insurance pursuant to this section at specific location or locations where the violation or violations occurred;

(b) Suspending or revoking the ability of an endorsee to act under the license of the vendor.

(H)(1) Except as otherwise provided in divisions (H)(2) and (3) of this section, an insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the vendor policyholder and enrolled customers with at least sixty days' prior notice. If the insurer changes the terms and conditions, the insurer shall promptly 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 that a change in the terms and conditions has occurred and a summary of material changes.

(2) An insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon fifteen days' prior notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

(3) An insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy for any of the following reasons:

(a) The enrolled customer fails to pay the required premium;

(b) The enrolled customer ceases to have an active service plan, if applicable, with the vendor of portable electronics;

(c) The 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 thirty calendar days after exhaustion of the limit. However, if the insurer does not send the notice within the thirty-day time frame, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(4) If a portable electronics insurance policy is terminated by a vendor policyholder, the vendor policyholder shall provide notice to each enrolled customer advising the customer of the termination of the policy and the effective date of the termination. The written notice shall be mailed or delivered to the customer at least thirty days prior to the termination.

(5) Notice required pursuant to this section shall be provided in writing, either via mail or by electronic means.

(a) If notice is provided via mail, it shall be mailed or delivered to the vendor at the vendor's mailing address and to all affected enrolled customers at the last known mailing addresses of those customers on file with the insurer. The insurer or vendor of portable electronics shall maintain proof of mailing in a form authorized or accepted by the United States postal service or other commercial mail delivery service.

(b) If notice is provided electronically, it shall be transmitted via facsimile or electronic mail to the vendor at the vendor's facsimile number or electronic mail address and to all affected enrolled customers at the last known facsimile numbers or electronic mail addresses of those customers on file with the insurer. The insurer or vendor shall maintain proof that the notice was sent.

(I) An enrolled customer may cancel the enrolled customer's coverage under a portable electronics insurance policy at any time. Upon cancellation, the insurer shall refund any applicable unearned premium.

(J) A license issued pursuant to this section shall authorize the vendor and its endorsees to engage only in those activities that are expressly permitted by this section.

(K) The superintendent may adopt rules implementing this section.

Section 2. That existing section 3905.03 of the Revised Code is hereby repealed.