WEST VIRGINIA CODE: §33-12-32A

§33-12-32a. Exemption for Portable Electronics.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) "Authorized Representative" means any individual who is authorized by a vendor to engage in portable electronic transactions on behalf of the vendor and who conducts such transactions under the direction and authority of such vendor;

(2) "Customer" means a person who purchases portable electronics or services;

(3) "Enrolled Customer" means a customer who elects coverage under a portable electronics insurance policy and issued to a vendor of portable electronics;

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

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

(6) (A) "Portable Electronic Insurance" means insurance providing coverage for the repair or replacement of portable electronics which may cover portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage or other applicable perils.

(B) "Portable Electronics Insurance" does not include:

(i) A service contract or extended warranty providing coverage limited solely 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 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.

(7) "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.

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(8) "Supervising Entity" means a business entity that is a licensed insurance producer or an insurer;

(9) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly, whether through an entity that is a corporate affiliate or an entity with which it has a contractual relationship to market portable electronics.

(b) Exemption from licensing.

(1) A vendor that complies with the provisions of this section is deemed to be in compliance with the requirements of this article regarding producer licensing not only for the vendor, but also for any employee or authorized representative of the vendor selling or offering coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(2) A vendor shall maintain, and share with its supervising entity, a list of all locations in this state that offer portable electronics insurance on its behalf. The supervising entity shall submit the list to the Insurance Commissioner within thirty days upon request.

(c) 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 any requirements:

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(i) To return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements; and

(ii) Proof of loss requirements.

(E) State that the 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 insurance policy issued to a vendor of portable electronics under which individual customers may elect to enroll for coverage.

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

(d) 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 article provided that:

(A) The vendor complies with the provisions of this section;

(B) The insurer issuing the portable electronics insurance 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 all employees and authorized representatives of the vendors who sell or offer 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 portable electronics insurance 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 under subsection (C);

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

(D) No employee or authorized representative of a vendor of portable electronics is

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compensated based primarily on the number of customers enrolled for portable electronics insurance coverage but may receive compensation for enrolling customers for portable electronics insurance coverage so long as the compensation for those activities is incidental to their overall compensation.

(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 coverage is included in 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. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or 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 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.

(e) Suspension of Privileges.

(1) If a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the Insurance 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 section.

(f) Termination of Portable Electronics Insurance.

(1) Notwithstanding any other provision of law:

(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.

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(B) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy of 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.

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

(3) Notwithstanding subdivision (2) of this subsection, 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 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.

(4) 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. The written notice shall be mailed or delivered to the enrolled customer at least (30) days prior to the termination.

(5) 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 at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, 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.

(g) If a supervising entity is determined by the Insurance Commissioner to have not performed its required duties under this section or has otherwise violated any provision of this section, it shall be subject to the administrative actions set forth in section twenty-four of this article.

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