Ohio Legislative Service Commission

Bill Analysis

Nick Thomas

S.B. 246

129th General Assembly
(As Introduced)

Sen. Bacon

BILL SUMMARY

- Requires vendors to hold a limited lines license to offer, sell, or solicit coverage under a policy of portable electronics insurance.
- Requires the Superintendent to issue a license to a vendor that meets the current law requirements for resident or nonresident insurance agents, as applicable, and certain additional requirements.
- Allows the Superintendent to collect a filing fee from all vendors that engage in portable electronics transactions.
- Requires each vendor or supervising entity to provide a training and education program for all endorsees who sell or offer portable electronics insurance.
- Requires vendors to provide to customers specified information and disclosures.
- Regulates the allotment of proceeds from the sale of portable electronics insurance.
- Requires notice for changing or terminating a contract for portable electronics insurance except when the contract is terminated by the customer.
- Allows the Superintendent of Insurance to adopt rules to implement the bill's provisions.
- Authorizes the Superintendent take administrative or other action as provided in the bill and current law, including a hearing process, with regard to any violation and provides penalties for violations.

CONTENT AND OPERATION

Licensure requirement

The bill establishes requirements and procedures for issuing portable electronics insurance, insurance that provides coverage for the repair or replacement of portable electronics. Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy (a policy that indemnifies loss to moving or movable property) 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.[1] As used in the bill, "portable electronics" means a personal, self-contained, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning device that is easily carried by an individual.[2]

The bill requires persons that are in the business of engaging in portable electronics transactions directly or indirectly (vendors) to hold a limited lines license in order to offer, sell, or solicit coverage under a policy of portable electronics insurance. The bill requires any vendor that offers or sells portable electronics insurance on or before the bill's effective date to apply for licensure within 90 days of the application being made available by the Superintendent.[3] However, the bill does not require an employee or authorized representative of a vendor (endorsee) to be licensed if the vendor is licensed 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. 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.[4]

A license issued under the bill authorizes the vendor and its endorsees to engage only in those activities that are expressly permitted under the bill, and a vendor must be appointed to represent an insurer before selling, soliciting, or offering insurance on behalf of that insurer.[5] A portable electronics insurance vendor's license is either a

---

[1] R.C. 3905.062(A)(6).

[2] R.C. 3905.062(A)(5).

[3] R.C. 3905.062(A)(9) and (B), 3905.01(I), and 3905.06(B)(10).

[4] R.C. 3905.062(A)(3), (F)(1), and (F)(2).

[5] R.C. 3905.062(D) and (M).

resident or nonresident insurance agent license, depending on the domicile of the vendor. However, an endorsee is prohibited from doing all of the following:

- Advertising, representing, or otherwise representing the endorsee's self as a licensed insurance agent;
- Offering, selling, or soliciting the purchase of portable electronics insurance without an associated sale or lease of portable electronics;
- Making any statement or engaging in any conduct that would lead a customer to believe that portable electronics insurance offers coverage not available through any other insurance product or is required alongside the purchase of portable electronics, or that the vendor or the endorsee is qualified to evaluate the adequacy of the customer's existing additional insurance coverage.[6]

The bill exempts vendors and vendor's endorsees from the current law prohibition against using an insurance agent license for the principal purpose of procuring, receiving, or forwarding applications for insurance of kind, other than life. The bill also exempts vendors and vendor's endorsees from the current law prohibition against soliciting, placing, or effecting any kind of insurance, other than life, in connection with the property of an individual with whom the vendor or vendor's endorsee has a familial or financial relationship.[7]

Application for licensure

The bill requires the Superintendent to issue a resident business entity license to a vendor if the vendor satisfies current law requirements for a resident insurance agent license and the application for a portable electronics insurance vendor's license contains all of the following additional information:

- The location of the applicant's home office;
- A designated agent who is responsible for the vendor's compliance with Ohio law, but need not be an employee of the vendor and may be the supervising entity or an individual agent employed by the supervising entity.

---

[6] R.C. 3905.062(C) and (F)(3).

[7] R.C. 3905.062(E).

If a resident vendor derives 50% or more of its revenue from the sale of portable electronics insurance, the vendor may also be required to provide the name, residence address, and other information required by the Superintendent for all owners with at least 10% interest or voting interest, partners, officers, and directors of the vendor, or members or managers if the vendor is a limited liability company.

If a resident vendor derives less than 50% of its revenue from the sale of portable electronics insurance, the vendor may be required to provide the name, residence address, and other information required by the Superintendent for one employee or officer of the vendor who is designated by the vendor as the individual responsible for the vendor's compliance with Ohio law.

The bill requires the Superintendent to issue a nonresident business entity license to a vendor if the vendor satisfies current law requirements for a nonresident insurance license. If the vendor's home state does not issue limited lines licenses for portable electronics insurance, the nonresident vendor may apply for a resident license. In such a case, the requirements for a resident license, both in current law and as modified for portable electronics insurance in the bill, apply.[8]

Licensure fee

Under the bill, each licensed vendor that is engaged in portable electronics transactions in Ohio must pay to the Superintendent a filing fee prescribed by the Superintendent. However, the bill limits the amount the Superintendent may prescribe. The fees may not exceed the following amounts:

- For vendors engaged in portable electronic transactions at more than ten locations in Ohio, $5,000 for an initial license and $2,500 for a license renewal, to occur on a biennial basis;

- For vendors engaged in portable electronics transactions at ten or fewer locations in Ohio, $3,000 for an initial license and $1,000 for a license renewal, to occur on a biennial basis.[9]

Supervising entity responsibility

The bill requires each vendor to appoint an insurer or a business entity licensed as an insurance agent to be a supervising entity charged with supervising the administration of a portable electronics insurance program. The supervising entity is

---

[8] R.C. 3905.062(C) and 3905.06(A)(2).

[9] R.C. 3905.40(E)(4) and (F).

required to maintain a registry of all locations in Ohio supervised by that entity that are authorized to sell or offer portable electronics insurance. The supervising entity is required to make that registry available to the Superintendent upon request if the Superintendent provides ten days' notice to the vendor or the supervising entity.[10]

Training and education program

The bill requires each vendor, or supervising entity (the insurer or a business entity licensed as an insurance agent that is appointed by an insurer to supervise the administration of a portable electronics insurance program), to 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. Under the bill, the training and education program must meet all of the following minimum standards:

- The training is delivered to each endorsee of each vendor who sells or offers portable electronics insurance, and each endorsee completes the training.
- If the training is conducted in an electronic form, the supervising entity implements a supplemental education program regarding portable electronics insurance that is conducted and overseen by employees of the supervising entity who are licensed insurance agents.
- The training and education program includes basic information about portable electronics insurance, including information regarding the prohibited actions of endorsees.[11]

Disclosure requirements

The bill requires vendors to provide to customers certain information and disclosures. At every location, including any physical location in Ohio or any web site, call center site, or similar location directed to Ohio residents, where a vendor offers portable electronics insurance to customers, the vendor must provide brochures or other written materials to prospective customers that include all of the following information:

- A summary of the material terms of the insurance coverage, including the identity of the insurer and supervising entity, the amount of any

[10] R.C. 3905.062(A)(8) and (H).

[11] R.C. 3905.062(A)(8) and (G).

applicable deductible and how it is to be paid, the benefits of the coverage, and 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;

- 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;
- 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;
- 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;
- A disclosure that neither the endorsee nor the vendor is qualified to evaluate the adequacy of the customer's existing insurance coverage;
- 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.[12]

Proceeds from the sale of portable electronics insurance

Under the bill, the charges for portable electronics insurance may be billed and collected by the vendor of portable electronics. However, all funds received by a vendor from a customer for the sale of portable electronics insurance must be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. The bill does not require vendors that bill and collect those charges 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 60 days after receiving the charges.

The bill does allow the vendor to receive compensation for performing billing and collection services, if either of the following conditions are met:

[12] R.C. 3905.062(A)(4) and (I).

- 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.

- 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.[13]

Terminating or changing the terms of the contract

Under the bill, an insurer generally 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 60 days' prior notice. If the insurer changes the terms and conditions, the insurer must 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.[14]

Termination of a customer's enrollment

If the insurer discovers fraud or material misrepresentation in how the coverage was obtained or in the presentation of a claim under the policy, the bill allows an insurer to terminate a customer's enrollment under a portable electronics insurance policy upon 15 days' prior notice.

Additionally, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy for any of the following reasons:

- The enrolled customer fails to pay the required premium;

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

---

[13] R.C. 3905.062(J).

[14] R.C. 3905.062(K)(1).

- 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 30 calendar days after exhaustion of the limit.

However, if the enrolled customer exhausts the aggregate limit of liability and the insurer does not send the notice within the required 30-day time frame, enrollment must continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.[15]

Termination of contract by vendor

If a portable electronics insurance policy is terminated by a vendor policyholder, the bill requires the vendor policyholder to 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 must be mailed or delivered to the customer at least 30 days prior to the termination.[16]

Coverage cancelled by customer

The bill allows an enrolled customer to cancel the enrolled customer's coverage under a portable electronics insurance policy at any time. Upon cancellation, the insurer must refund any applicable unearned premium.[17]

Notice requirements

Whenever the bill requires notice, the notice must be provided in writing, either via mail or by electronic means.

If notice is provided via mail, it must 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 must maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service.

If notice is provided electronically, it must be transmitted via fax or e-mail to the vendor at the vendor's fax number or e-mail address and to all affected enrolled

---

[15] R.C. 3905.062(K)(2) and (3).

[16] R.C. 3905.062(K)(4).

[17] R.C. 3905.062(L).

customers at the last known fax numbers or e-mail addresses of those customers on file with the insurer. The insurer or vendor must maintain proof that the notice was sent.[18]

Rules

The bill allows the Superintendent to adopt rules to implement its provisions.[19]

Enforcement

If the Superintendent determines that a vendor or a vendor's endorsee has violated any provision of the bill, the Superintendent may revoke or suspend the vendor's license or impose any other sanctions as provided in current law with respect to insurance agents.

If the Superintendent determines that any provision of the bill has been violated by a vendor or a vendor's endorsee at a particular location, the Superintendent may issue a cease and desist order to that location, or take other administrative action authorized in current law, including the use of a hearing process. If an endorsee acts in a manner expressly prohibited by the bill for endorsees, the Superintendent may issue a cease and desist order to that individual, but this is addition to administrative action authorized in current law, including the use of a hearing process.

If the Superintendent determines that a vendor or a vendor's endorsee has violated any provision of the bill or acted in violation of any current law prohibition with respect to insurance agents, the Superintendent may assess a civil penalty of up to $25,000 per violation. In addition, the Superintendent may assess an administrative fee to cover the costs associated with the investigation and hearing process.[20]

Exclusions

The bill's requirements for portable electronics insurance do not apply to any of the following:

- A consumer goods service contract (a contract or agreement to perform or pay for repairs, replacement, or maintenance of consumer goods due to a defect in materials or workmanship, normal wear and tear, power surges, or accidental damage from handling, that is effective for a specified

[18] R.C. 3905.062(K)(5).

[19] R.C. 3905.062(O).

[20] R.C. 3965.062(N).

duration and paid for by means other than the purchase of the consumer goods), which are regulated under current law).

- A policy of insurance covering a seller's or a manufacturer's obligations under a warranty;
- A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar insurance policy.[21]

HISTORY

ACTION	DATE
Introduced	10-31-11

S0246-I-129.docx/jc

[21] R.C. 3905.062(A)(6).