

SENATE BILL 861

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CF 2lr1590

By: **Senator Klausmeier**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Portable Electronics Insurance**

3 FOR the purpose of repealing a certain limitation on the authority of a vendor of
4 portable electronics insurance to sell coverage under a policy of portable
5 electronics insurance; altering the circumstances under which a vendor that
6 collects premiums for portable electronics insurance need not keep the
7 premiums in a segregated account; providing an exception under certain
8 circumstances to a certain requirement to itemize premiums and charges and
9 requiring a vendor to provide certain notice to a customer relating to those
10 circumstances; authorizing an employee or authorized representative of a
11 vendor to receive certain compensation under certain circumstances; altering
12 certain information that must be submitted to the Maryland Insurance
13 Commissioner in an application for a limited lines license to sell portable
14 electronics insurance; requiring an applicant to provide certain information
15 about certain individuals under certain circumstances; requiring a certain
16 supervising entity to maintain a certain registry; requiring the registry to be
17 open for inspection and examination after a certain period of time under certain
18 circumstances; clarifying that, if a customer cancels coverage, any unearned
19 premiums will be refunded to the person paying the premium; providing for a
20 certain supplemental education program under certain circumstances;
21 authorizing the Commissioner to impose a certain penalty under certain
22 circumstances; altering the methods by which certain required notice may be
23 sent to covered customers and vendors under certain circumstances; defining
24 certain terms; altering a certain definition; providing for the application of this
25 Act; and generally relating to portable electronics insurance.

26 BY repealing and reenacting, with amendments,
27 Article – Insurance
28 Section 10–701, 10–703 through 10–707, and 19–903
29 Annotated Code of Maryland
30 (2011 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Insurance**

4 10–701.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Covered customer” means a customer who elects to purchase coverage
7 under a policy of portable electronics insurance issued to a vendor.

8 (c) “Customer” means a person who purchases or leases portable electronics
9 or purchases service related to the use of portable electronics.

10 **(D) “LOCATION” MEANS:**

11 **(1) A PHYSICAL LOCATION IN THE STATE; OR**

12 **(2) A WEB SITE, CALL CENTER SITE, OR SIMILAR LOCATION**
13 **WHERE COVERAGE UNDER A POLICY OF PORTABLE ELECTRONICS INSURANCE IS**
14 **OFFERED OR SOLD TO RESIDENTS OF THE STATE.**

15 **[(d)] (E) (1) “Portable electronics” means:**

16 (i) [handsets, pagers, personal digital assistants, portable
17 computers, cellular telephones, batteries, and other devices or accessories used to
18 originate or receive communications signals or services] **AN ELECTRONIC DEVICE,**
19 **INCLUDING ITS ACCESSORIES, THAT:**

20 **1. IS EASILY OR CONVENIENTLY TRANSPORTED BY**
21 **HAND BY AN INDIVIDUAL; AND**

22 **2. IS USED FOR COMMUNICATION, VIEWING,**
23 **LISTENING, RECORDING, GAMING, COMPUTING, OR GLOBAL POSITIONING; and**

24 (ii) any other electronic device that is portable in nature that
25 the Commissioner approves.

26 **(2) “PORTABLE ELECTRONICS” INCLUDES:**

27 **(I) CELLULAR OR SATELLITE PHONES;**

28 **(II) PAGERS;**

- 1 (III) PERSONAL GLOBAL POSITIONING SATELLITE UNITS;
2 (IV) PORTABLE COMPUTERS;
3 (V) PORTABLE AUDIO LISTENING, VIDEO VIEWING, OR
4 RECORDING DEVICES;
5 (VI) DIGITAL CAMERAS;
6 (VII) VIDEO CAMCORDERS;
7 (VIII) PORTABLE GAMING SYSTEMS;
8 (IX) DOCKING STATIONS; AND
9 (X) AUTOMATIC ANSWERING DEVICES.

10 [(2)] (3) “Portable electronics” does not include telecommunications
11 switching equipment, transmission wires, cell site transceiver equipment, or other
12 equipment and systems used by telecommunications companies to provide
13 telecommunications service to consumers.

14 [(e)] (F) (1) “Portable electronics insurance” means insurance that
15 provides coverage for the repair or replacement of portable electronics, including
16 coverage against one or more of the following causes of loss:

- 17 (i) loss by disappearance;
18 (ii) theft;
19 (iii) mechanical failure;
20 (iv) malfunction;
21 (v) damage; and
22 (vi) any other applicable peril, as approved by the
23 Commissioner.

24 (2) “Portable electronics insurance” does not include:

- 25 (i) a service contract governed by Title 14, Subtitle 4 of the
26 Commercial Law Article that does not include coverage for loss by disappearance or
27 theft;

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

3 (iii) a homeowner's, renter's, private passenger automobile, or
4 similar policy that covers loss or theft of portable electronics.

5 **[(f)] (G)** "Portable electronics transaction" means:

6 (1) the sale or lease of portable electronics by a vendor to a customer;
7 or

8 (2) the sale of service related to the use of portable electronics by a
9 vendor to a customer.

10 **(H) "SUPERVISING ENTITY" MEANS A BUSINESS ENTITY THAT IS:**

11 **(1) AN AUTHORIZED INSURER; OR**

12 **(2) A LICENSED INSURANCE PRODUCER THAT IS APPOINTED BY**
13 **AN INSURER TO SUPERVISE THE ADMINISTRATION OF A PORTABLE**
14 **ELECTRONICS INSURANCE PROGRAM.**

15 **[(g)] (I)** "Vendor" means a person in the business of leasing, selling, or
16 providing portable electronics, or selling or providing service related to the use of
17 portable electronics, to customers in the State.

18 10-703.

19 (a) A vendor shall hold a limited lines license to sell coverage under a policy
20 of portable electronics insurance [in connection with, and incidental to, a portable
21 electronics transaction with a customer] before the vendor or the employees of or
22 authorized representatives of the vendor may sell or offer to sell coverage under a
23 policy of portable electronics insurance to a customer.

24 (b) A limited lines license issued under this subtitle shall also authorize any
25 salaried or hourly employee or authorized representative of the vendor to sell coverage
26 under a policy of portable electronics insurance to a customer [in connection with, and
27 incidental to, a portable electronics transaction] only if the employee or authorized
28 representative is:

29 (1) trained under § 10-705 of this subtitle to act on behalf of the
30 vendor; and

31 (2) acting under the supervision of the vendor.

1 (c) The acts of an employee or authorized representative offering to sell or
2 selling coverage under a policy of portable electronics insurance shall be deemed the
3 acts of the vendor for the purposes of this subtitle.

4 (d) (1) A vendor may bill and collect premiums from covered customers for
5 coverage under a policy of portable electronics insurance.

6 (2) A vendor that bills and collects premiums under this section is not
7 required to maintain the premiums collected in a segregated account if:

8 (i) the vendor's appointing insurer agrees in writing that
9 segregation of funds is not required; [and]

10 (ii) the vendor remits the funds collected to the appointing
11 insurer or that insurer's appointed insurance producer within 60 days after receipt;
12 **AND**

13 **(III) THE FUNDS RECEIVED BY THE VENDOR FROM A**
14 **COVERED CUSTOMER FOR THE SALE OF PORTABLE ELECTRONICS INSURANCE**
15 **ARE HELD IN TRUST BY THE VENDOR IN A FIDUCIARY CAPACITY FOR THE**
16 **BENEFIT OF THE VENDOR'S APPOINTING INSURER.**

17 (3) **(I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**
18 **THIS PARAGRAPH, THE** premiums for coverage under a policy of portable electronics
19 insurance shall be separately itemized from the charges for the purchase or lease of
20 the portable electronics.

21 **(II) IF PORTABLE ELECTRONICS INSURANCE COVERAGE IS**
22 **INCLUDED IN THE PRICE OF THE PURCHASE OR LEASE OF PORTABLE**
23 **ELECTRONICS OR RELATED SERVICES, THE VENDOR SHALL PROVIDE CLEAR**
24 **AND CONSPICUOUS WRITTEN NOTICE TO THE CUSTOMER THAT THE PORTABLE**
25 **ELECTRONICS INSURANCE COVERAGE IS INCLUDED WITH THE PORTABLE**
26 **ELECTRONICS OR RELATED SERVICES.**

27 (e) (1) Except as provided in paragraph (2) of this subsection, a vendor
28 and the employees or authorized representatives of the vendor may not receive
29 compensation for the sale of coverage under a policy of portable electronics insurance.

30 (2) **(I)** A vendor may receive compensation for billing and collection
31 services under a policy of portable electronics insurance.

32 **(II) AN EMPLOYEE OR AUTHORIZED REPRESENTATIVE OF A**
33 **VENDOR MAY RECEIVE COMPENSATION FOR ACTIVITIES IN CONNECTION WITH**
34 **THE SALE OF PORTABLE ELECTRONICS INSURANCE IF THE COMPENSATION:**

1 **1. IS INCIDENTAL TO THE EMPLOYEE'S OR**
2 **AUTHORIZED REPRESENTATIVE'S OVERALL COMPENSATION; AND**

3 **2. DOES NOT EXCEED \$10 FOR EACH CUSTOMER**
4 **WHO PURCHASES PORTABLE ELECTRONICS INSURANCE.**

5 (3) Nothing in this subsection shall affect the ability of a vendor or an
6 authorized representative of the vendor to compensate the employees of the vendor or
7 of the authorized representative in a manner that does not depend on the sale of
8 portable electronics insurance.

9 10-704.

10 (a) The Commissioner shall issue to a vendor a limited lines license
11 authorizing the vendor to sell or offer to sell coverage under a policy of portable
12 electronics insurance to a customer [in connection with, and incidental to, a portable
13 electronics transaction] if the vendor:

14 (1) meets the requirements of § 10-705 of this subtitle;

15 (2) pays the fees for insurance producers required under § 2-112 of
16 this article that are applicable to an insurance producer license; and

17 (3) submits to the Commissioner [any additional information or
18 documentation that the Commissioner requires, including any information or
19 documentation needed to determine the professional competence, good character, and
20 trustworthiness of the vendor] **A SWORN APPLICATION FOR A LIMITED LINES**
21 **LICENSE UNDER THIS SUBTITLE ON THE FORM REQUIRED BY THE**
22 **COMMISSIONER.**

23 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A VENDOR**
24 **SHALL PROVIDE THE NAME, RESIDENCE ADDRESS, AND ANY OTHER**
25 **INFORMATION REQUIRED BY THE COMMISSIONER FOR AN OFFICER OR**
26 **EMPLOYEE OF THE VENDOR WHO IS DESIGNATED BY THE VENDOR AS THE**
27 **PERSON RESPONSIBLE FOR THE VENDOR'S COMPLIANCE WITH THE**
28 **REQUIREMENTS OF THIS SUBTITLE.**

29 **(2) IF THE VENDOR DERIVED MORE THE 25% OF ITS TOTAL**
30 **REVENUE IN THE PRECEDING YEAR FROM THE SALE OF PORTABLE**
31 **ELECTRONICS INSURANCE, THE VENDOR SHALL PROVIDE THE INFORMATION**
32 **REQUIRED IN PARAGRAPH (1) OF THIS SUBSECTION FOR ALL OFFICERS,**
33 **DIRECTORS, AND SHAREHOLDERS OF RECORD UNDER THE FEDERAL**
34 **SECURITIES LAW.**

1 **(C) (1) THE SUPERVISING ENTITY SHALL MAINTAIN A REGISTRY OF**
2 **ALL VENDOR LOCATIONS THAT ARE AUTHORIZED TO SELL OR OFFER PORTABLE**
3 **ELECTRONICS INSURANCE COVERAGE IN THE STATE.**

4 **(2) ON REQUEST BY THE COMMISSIONER, THE REGISTRY SHALL**
5 **BE OPEN TO INSPECTION AND EXAMINATION NO LATER THAN 10 DAYS AFTER**
6 **THE REQUEST.**

7 **[(b)] (D)** A limited lines license under this subtitle is subject to the same
8 term and renewal conditions that are specified for an insurance producer license under
9 § 10–115 of this title.

10 10–705.

11 (a) A limited lines license to **OFFER OR** sell coverage under a policy of
12 portable electronics insurance to a customer issued under this subtitle authorizes a
13 vendor or an authorized representative of the vendor to sell coverage under a policy of
14 portable electronics insurance to customers [in connection with, and incidental to, a
15 portable electronics transaction] at each location at which the vendor engages in
16 portable electronics transactions in the State if:

17 (1) the portable electronics insurance policies have been filed with and
18 approved by the Commissioner;

19 (2) the vendor holds an appointment under § 10–118 of this title with
20 each authorized insurer that the vendor intends to represent;

21 (3) at each location where coverage under a policy of portable
22 electronics insurance is offered or sold to customers, the vendor provides to the
23 customers disclosures approved by the Commissioner that:

24 (i) summarize the material terms of the coverage under the
25 policy of portable electronics insurance including:

26 1. the identity of the insurer;

27 2. the premium to be paid;

28 3. any applicable deductible;

29 4. the major features of the benefits of the coverage; and

30 5. the major features of any exclusions, conditions, or
31 other limitations of coverage including whether the portable electronics may be
32 repaired or replaced with similar make and model reconditioned or nonoriginal
33 manufacturer parts or equipment;

1 (ii) 1. state that portable electronics insurance may
2 duplicate insurance coverage already provided by a customer's homeowner's insurance
3 policy, renter's insurance policy, or other source of insurance coverage; and

4 2. state that the purchase of coverage under a policy of
5 portable electronics insurance would make this coverage primary to any other
6 coverage, including duplicate coverage;

7 (iii) state that the purchase of coverage under a policy of
8 portable electronics insurance is not required in order to enter into the portable
9 electronics transaction;

10 (iv) describe the process for filing a claim if the customer elects
11 to purchase coverage under a policy of portable electronics insurance including a
12 description of:

13 1. any requirement to pay a deductible;

14 2. any requirement to return portable electronics;

15 3. the maximum fee applicable if the customer fails to
16 comply with a return requirement; and

17 4. any requirement to file a proof of loss;

18 (v) state that:

19 1. the customer may cancel coverage under the portable
20 electronics insurance at any time; and

21 2. if the customer cancels coverage under the portable
22 electronics insurance, any unearned premium will be refunded **TO THE PERSON**
23 **PAYING THE PREMIUM** in accordance with applicable law; and

24 (vi) provide the toll-free consumer hotline telephone number of
25 the Administration; and

26 (4) the vendor provides a training program, approved by the
27 Commissioner, for any employee or authorized representative who sells coverage
28 under a policy of portable electronics insurance to customers under this subtitle that
29 includes instruction:

30 (i) about the portable electronics insurance offered to customers
31 of the vendor;

1 (ii) that the employee or authorized representative may not
2 represent or imply to a customer that purchase of coverage under a policy of portable
3 electronics insurance is required in order to purchase portable electronics;

4 (iii) that portable electronics insurance may duplicate insurance
5 coverage already provided by a customer's homeowner's insurance policy, renter's
6 insurance policy, or other source of insurance coverage; and

7 (iv) about the other disclosures required by item (3) of this
8 subsection.

9 (b) (1) The training required under subsection (a)(4) of this section may be
10 provided in electronic form.

11 (2) IF TRAINING IS CONDUCTED IN ELECTRONIC FORM, THE
12 SUPERVISING ENTITY SHALL IMPLEMENT A SUPPLEMENTAL EDUCATION
13 PROGRAM ABOUT THE PORTABLE ELECTRONICS INSURANCE PRODUCT THAT IS
14 CONDUCTED AND OVERSEEN BY LICENSED INSURANCE PRODUCERS EMPLOYED
15 BY THE SUPERVISING ENTITY.

16 10-706.

17 Coverage under a policy of portable electronics insurance sold [in connection
18 with a portable electronics transaction] under this subtitle is primary to any other
19 valid and collectible coverage.

20 10-707.

21 (a) The Commissioner may suspend, revoke, or refuse to renew a limited
22 lines license issued under this subtitle after notice and opportunity for a hearing
23 under Title 2, Subtitle 2 of this article if the vendor or an employee or authorized
24 representative of the vendor has:

25 (1) willfully violated this article or another law of the State that
26 relates to insurance;

27 (2) operated without a limited lines license as required under this
28 subtitle;

29 (3) failed to provide the disclosures required under § 10-705 of this
30 subtitle;

31 (4) offered or sold unapproved insurance products;

32 (5) failed to hold an appointment with an insurer;

1 (6) failed to train employees or authorized representatives as required
2 under § 10–705 of this subtitle; or

3 (7) misrepresented pertinent facts or policy provisions concerning a
4 policy of portable electronics insurance.

5 (b) A vendor and the employees and authorized representatives of the vendor
6 may not advertise, represent, or otherwise hold themselves out as an authorized
7 insurer or as an insurance producer for any kind or subdivision of insurance, except as
8 provided in this subtitle.

9 (c) Instead of, or in addition to, suspending or revoking a limited lines
10 license issued under this subtitle, the Commissioner may:

11 (1) **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,**
12 impose on the vendor a penalty of not more than \$2,500 for each violation of this
13 subtitle; and

14 (2) require that restitution be made to any person who has suffered
15 financial injury because of a violation of this subtitle.

16 **(D) IF A SERIES OF THE SAME VIOLATIONS OCCUR THAT ARE NEAR IN**
17 **TIME AND ARISE FROM THE SAME SOURCE, THE COMMISSIONER MAY IMPOSE A**
18 **PENALTY OF NOT MORE THAN \$50,000 FOR THE SERIES OF VIOLATIONS.**

19 19–903.

20 (a) Notwithstanding any other provision of law and except as otherwise
21 provided in this section, an insurer may not terminate or otherwise change the terms
22 and conditions of a policy of portable electronics insurance unless the insurer provides
23 the policyholder and covered customers with at least 60 days' notice.

24 (b) If the insurer changes the terms and conditions of a policy of portable
25 electronics insurance in accordance with subsection (a) of this section, the insurer
26 shall:

27 (1) provide the policyholder with a revised policy or endorsement; and

28 (2) provide each covered customer with:

29 (i) a revised certificate, endorsement, updated brochure, or
30 other evidence that indicates that a change in the terms and conditions of the policy
31 has occurred; and

32 (ii) a summary of material changes.

1 (c) An insurer may terminate coverage of a covered customer under a policy
2 of portable electronics insurance:

3 (1) after 45 days' notice for discovery of fraud or material
4 misrepresentation in obtaining coverage or in the presentation of a claim under the
5 policy; or

6 (2) after 10 days' notice for nonpayment of premium.

7 (d) (1) An insurer may automatically terminate coverage of a covered
8 customer under a policy of portable electronics insurance:

9 (i) if the covered customer ceases to have active service related
10 to the use of portable electronics with the vendor; or

11 (ii) if:

12 1. the covered customer exhausts the aggregate limit of
13 liability, if any, under the terms of the policy of portable electronics insurance; and

14 2. the insurer sends notice of termination to the covered
15 customer within 15 business days after exhaustion of the limit, subject to paragraph
16 (2) of this subsection.

17 (2) If the insurer does not send timely notice in accordance with
18 paragraph (1)(ii) of this subsection, coverage shall continue under the policy of
19 portable electronics insurance notwithstanding the aggregate limit of liability until
20 the insurer sends notice of termination to the covered customer.

21 (e) Notwithstanding subsection (d)(1)(ii) of this section, on request of a
22 covered customer, the covered customer shall be eligible for reinstatement of coverage
23 not more than 12 months after the date of exhaustion of the coverage limit in
24 accordance with the terms of the policy and subject to the enrollment criteria then
25 applicable to prospective customers generally.

26 (f) If a vendor terminates a policy of portable electronics insurance, the
27 vendor shall mail or deliver, at least 45 days before termination, written notice to each
28 covered customer that advises the covered customer of the termination of the policy
29 and the effective date of termination.

30 (g) (1) An insurer is not required to give notice of termination to a covered
31 customer if the insurer has been advised by either the vendor or another insurer that
32 substantially similar coverage under a policy of portable electronics insurance has
33 been obtained from another insurer without lapse of coverage.

1 (2) A vendor is not required to give notice of termination to a covered
2 customer if substantially similar coverage under a policy of portable electronics
3 insurance has been obtained from another insurer without lapse of coverage.

4 (h) (1) Whenever notice is required in accordance with this section, the
5 notice shall be in writing and sent by [certificate of mail to the vendor at the vendor's
6 mailing address and its affected customers' last known mailing addresses on file with
7 the insurer] **MAIL OR ELECTRONIC MEANS AS SPECIFIED IN THIS SUBSECTION.**

8 **(2) (I) UNLESS NOTICE BY ELECTRONIC MEANS IS**
9 **AUTHORIZED UNDER PARAGRAPH (3) OR (4) OF THIS SUBSECTION, NOTICE**
10 **UNDER THIS SECTION SHALL BE PROVIDED BY MAIL IN ACCORDANCE WITH**
11 **SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH.**

12 **(II) NOTICE SHALL BE MAILED TO THE VENDOR AT THE**
13 **VENDOR'S LAST KNOWN MAILING ADDRESS ON FILE WITH THE INSURER.**

14 **(III) NOTICE SHALL BE MAILED TO A COVERED CUSTOMER**
15 **AT THE COVERED CUSTOMER'S LAST KNOWN MAILING ADDRESS ON FILE WITH**
16 **THE INSURER OR VENDOR.**

17 **(IV) THE INSURER OR VENDOR RESPONSIBLE FOR MAILING**
18 **THE NOTICE UNDER THIS SECTION SHALL MAINTAIN PROOF OF MAILING.**

19 **(3) AN INSURER RESPONSIBLE FOR PROVIDING NOTICE TO A**
20 **COVERED CUSTOMER UNDER THIS SECTION MAY PROVIDE NOTICE BY**
21 **ELECTRONIC MEANS IF:**

22 **(I) THE COVERED CUSTOMER HAS PROVIDED AN**
23 **ELECTRONIC MAIL ADDRESS TO THE INSURER OR VENDOR TO RECEIVE NOTICES**
24 **ABOUT COVERAGE;**

25 **(II) NOTICE IS SENT TO THE ELECTRONIC MAIL ADDRESS**
26 **PROVIDED BY THE COVERED CUSTOMER; AND**

27 **(III) THE INSURER OR VENDOR MAINTAINS PROOF THAT THE**
28 **NOTICE WAS SENT TO THE COVERED CUSTOMER AT THE COVERED CUSTOMER'S**
29 **ELECTRONIC MAIL ADDRESS.**

30 **(4) AN INSURER RESPONSIBLE FOR PROVIDING NOTICE TO A**
31 **VENDOR UNDER THIS SECTION MAY PROVIDE NOTICE BY ELECTRONIC MEANS**
32 **IF:**

1 **(I) THE VENDOR HAS PROVIDED AN ELECTRONIC MAIL**
2 **ADDRESS TO THE INSURER AT WHICH THE VENDOR CONSENTS TO RECEIVE**
3 **NOTICES ABOUT THE POLICY;**

4 **(II) NOTICE IS SENT TO THE ELECTRONIC MAIL ADDRESS**
5 **PROVIDED BY THE VENDOR; AND**

6 **(III) THE INSURER MAINTAINS PROOF THAT THE NOTICE WAS**
7 **SENT TO THE VENDOR AT THE VENDOR'S ELECTRONIC MAIL ADDRESS.**

8 **[(2) The insurer or vendor, as the case may be, shall maintain proof of**
9 **mailing in a form authorized or accepted by the United States Postal Service.]**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to all
11 policies of portable electronics insurance issued, delivered, or renewed in the State on
12 or after October 1, 2012.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2012.