

Chapter 602

(House Bill 1093)

AN ACT concerning

Portable Electronics Insurance

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

BY repealing and reenacting, without amendments,

Article – Insurance
Section 10–130 and 10–707
Annotated Code of Maryland
(2011 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – Insurance
Section 10–701, 10–703 through ~~10–707~~ 10–706, and 19–903
Annotated Code of Maryland
(2011 Replacement Volume)

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

Article – Insurance

10–130.

(a) Except as otherwise provided in §§ 10–102 and 10–119 of this subtitle, a commission, fee, reward, rebate, or other consideration for selling, soliciting, or negotiating insurance may not be paid, directly or indirectly, to a person other than a licensed insurance producer.

(b) Except as otherwise provided in this article, for life insurance or health insurance this section does not prohibit payment to or receipt by a person who formerly held a license and, if the person acted on behalf of an insurer, an appointment of:

- (1) commissions on renewal premiums on existing policies; or
- (2) other deferred commissions.

(c) Unless the payment would violate § 27–209 or § 27–212 of this article, an insurer or insurance producer may pay or assign commissions, service fees, or other valuable consideration to an insurance agency or to persons who do not sell, solicit, or negotiate insurance in the State.

10–701.

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

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

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

(D) “LOCATION” MEANS:

(1) A PHYSICAL LOCATION IN THE STATE; OR

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

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

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

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

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

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

(2) "PORTABLE ELECTRONICS" INCLUDES:

(I) CELLULAR OR SATELLITE PHONES;

(II) PAGERS;

(III) PERSONAL GLOBAL POSITIONING SATELLITE UNITS;

(IV) PORTABLE COMPUTERS;

(V) PORTABLE AUDIO LISTENING, VIDEO VIEWING, OR RECORDING DEVICES;

(VI) DIGITAL CAMERAS;

(VII) VIDEO CAMCORDERS;

(VIII) PORTABLE GAMING SYSTEMS;

(IX) DOCKING STATIONS; AND

(X) AUTOMATIC ANSWERING DEVICES.

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

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

(i) loss by disappearance;
(ii) theft;
(iii) mechanical failure;
(iv) malfunction;
(v) damage; and
(vi) any other applicable peril, as approved by the Commissioner.

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

(i) a service contract governed by Title 14, Subtitle 4 of the Commercial Law Article that does not include coverage for loss by disappearance or theft;
(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, or similar policy that covers loss or theft of portable electronics.

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

(1) the sale or lease of portable electronics by a vendor to a customer; or
(2) the sale of service related to the use of portable electronics by a vendor to a customer.

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

(1) AN AUTHORIZED INSURER; OR

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

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

10-703.

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

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

- (1) trained under § 10-705 of this subtitle to act on behalf of the vendor; and
- (2) acting under the supervision of the vendor.

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

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

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

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

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

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

(3) (I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE premiums for coverage under a policy of portable electronics

insurance shall be separately itemized from the charges for the purchase or lease of the portable electronics.

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

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

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

~~(III) AN EMPLOYEE OR AUTHORIZED REPRESENTATIVE OF A VENDOR MAY RECEIVE COMPENSATION FOR ACTIVITIES IN CONNECTION WITH THE SALE OF PORTABLE ELECTRONICS INSURANCE IF THE COMPENSATION:~~

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

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

~~(2) Nothing in this subsection shall affect the ability of a vendor or an authorized representative of the vendor to MAY compensate the employees of the vendor or of the authorized representative in a manner that does not depend on the sale of portable electronics insurance.~~

10-704.

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

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

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

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

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

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

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

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

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

10-705.

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

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

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

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

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

1. the identity of the insurer;
2. the premium to be paid;
3. any applicable deductible;
4. the major features of the benefits of the coverage; and
5. the major features of any exclusions, conditions, or other limitations of coverage including whether the portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

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

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

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

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

1. any requirement to pay a deductible;
2. any requirement to return portable electronics;
3. the maximum fee applicable if the customer fails to comply with a return requirement; and

4. any requirement to file a proof of loss;

(v) state that:

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

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

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

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

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

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

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

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

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

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

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

10-707.

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

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

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

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

(4) offered or sold unapproved insurance products;

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

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

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

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

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

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

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

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

19-903.

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

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

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

(2) provide each covered customer with:

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

(ii) a summary of material changes.

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

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

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

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

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

(ii) if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 22, 2012.