COMMITTEE AMENDMENT ADOPTED AND AMENDED

March 28, 2012

**S. 781**

Introduced by Senator Thomas

S. Printed 3/28/12--S.

Read the first time April 6, 2011.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 97 TO TITLE 38 SO AS TO ENACT THE “PORTABLE ELECTRONICS INSURANCE ACT”, TO PROVIDE CERTAIN DEFINITIONS RELATED TO PORTABLE ELECTRONICS INSURANCE, TO PROVIDE REQUIREMENTS RELATING TO THE SALE OF PORTABLE ELECTRONICS INSURANCE, TO PROVIDE CERTAIN DISCLOSURE REQUIREMENTS OF A VENDOR OF PORTABLE ELECTRONICS INSURANCE TO THE PROSPECTIVE CONSUMER OF THIS INSURANCE, TO PROVIDE PENALTIES FOR A VIOLATION, AND TO PROVIDE LICENSURE FEES AND SURCHARGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 38 of the 1976 Code is amended by adding:

“CHAPTER 97

Portable Electronics Insurance

Section 38‑97‑10. This chapter may be cited as the ‘Portable Electronics Insurance Act’.

Section 38‑97‑20. For the purposes of this section:

(1) ‘Customer’ means a person who purchases portable electronics or related services.

(2) ‘Enrolled customer’ means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(3) ‘Location’ means any physical location in this State or any website, call center site, or similar location directed to residents of this State.

(4) ‘Portable electronics’ means electronic devices that are portable in nature, their accessories, and services related to the use of the device.

(5) ‘Portable electronics insurance’ means insurance covering the repair or replacement of portable electronics. This insurance may provide coverage for portable electronics against loss, theft, and inoperability due to mechanical failure, malfunction, damage, and other similar loss. Portable electronics insurance does not include:

(a) a service contract governed by Section 38‑78‑20(12);

(b) an insurance policy covering the obligation of a seller or manufacturer under a warranty; and

(c) a homeowner’s, renter’s, private passenger automobile, commercial multiperil, or similar policies.

(6) ‘Portable electronics transaction’ means:

(a) the sale or lease of portable electronics by a vendor to a customer; and

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

(7) ‘Supervising entity’ means a business entity licensed as a property and casualty insurer or insurance producer with a property and casualty line of authority.

(8) ‘Vendor’ means a person directly or indirectly engaged in the business of portable electronics transactions.

Section 38‑97‑30. (A) A vendor must hold a portable electronics insurance license to sell or offer coverage under a policy of portable electronics insurance.

(B) A portable electronics insurance license issued under this section authorizes any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions. Both an employee and an authorized representative of a vendor must have completed the training required by Section 38‑97‑50.

(C) The supervising entity shall maintain a registry of vendor locations which are authorized to sell or solicit portable electronics insurance coverage in this State. Upon request by the director or his designee and with ten day’s notice to the supervising entity, the registry must be open to inspection and examination by the director or his designee during regular business hours of the supervising entity.

(D) Notwithstanding another provision of law, a license issued pursuant to this section authorizes the licensee and its employees or authorized representatives to engage in those activities that are permitted in this section.

Section 38‑97‑40. (A) A vendor of portable electronics insurance must make certain brochures or other written materials available to its customers in a location where the vendor sells this insurance. The brochures or written materials must:

(1) disclose that portable electronics insurance may provide a duplication of coverage already provided by a homeowner’s policy, renter’s insurance policy, or other source of insurance coverage of the customer;

(2) state that the enrollment in a portable electronics insurance program is not required for the customer to purchase or lease portable electronics or services from the vendor; and

(3) summarize the material terms of the insurance coverage, including:

(a) the identity of the insurer;

(b) the identity of the supervising entity;

(c) the amount of any applicable deductible and how this deductible must be paid;

(d) benefits of the coverage;

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

(f) a summary of the process for filing a claim under the policy, including a description of how to return portable electronics and the maximum fee applicable if an enrolled customer fails to comply with an equipment return requirement; and

(g) a statement that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person who pays the premium must receive a refund of any applicable unearned premium.

(B) Portable electronics insurance 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 of portable electronics for its enrolled customers.

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

Section 38‑97‑50. (A) The employees and authorized representatives of a vendor may sell or offer portable electronics insurance to customers and may not be subject to licensure as an insurance producer under this title if:

(1) the vendor obtains a portable electronics insurance license to authorize its employees or authorized representatives to sell or offer portable electronics insurance pursuant to this section;

(2) the employee or authorized representative of a vendor of public electronics does not advertise, represent, or otherwise hold himself out as a non‑portable electronics insurance licensed insurance producer; and

(3) the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program, including development of a training program for employees and authorized representatives of the vendor. An outline of the training materials required by this section must be maintained by the supervising entity and provided to the department upon request. 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 the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity. Training required by this item must:

(a) be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance; and

(b) include basic instruction to each employee and authorized representative about the portable electronics insurance offered and the disclosures required under Section 38‑97‑40.

(B) The charges for portable electronics insurance coverage may be billed and collected by a vendor of portable electronics. A 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 must be separately itemized on the enrolled customer’s bill. If the portable electronics insurance coverage is included with 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 purchase of the portable electronics or related services. Vendors billing and collecting these charges must not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold these funds in an alternative manner and remits these amounts to the supervising entity within sixty days following receipt of these amounts. Funds received by a vendor from an enrolled customer for the sale of portable electronics must be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. A vendor may receive compensation for billing and collection services provided by it.

Section 38‑97‑60. (A) A vendor of portable electronics, its employee, or its authorized representative who violates a provision of this chapter may after proper notice and an opportunity for a hearing be subject by the department to:

(1) administrative penalties as provided in Section 38‑2‑10. However, administrative penalties shall not exceed $30,000 in the aggregate for violations of a similar nature; and

(2) other penalties the department considers necessary and reasonable to effectuate the purposes of this chapter, including:

(a) suspending the privilege of transacting portable electronics insurance pursuant to this chapter at specific locations where a violation has occurred;

(b) suspending or revoking the ability of an individual employee or authorized representative to act under the license; and

(c) suspending or revoking the license of the vendor.

Section 38‑97‑70. (A) Notwithstanding another provision of law, an insurer may terminate coverage or otherwise change the terms and conditions of a policy of portable electronics insurance only as provided in the policy between the insurer and the policyholder and enrolled customers and only upon providing the policyholder and enrolled customers with at least thirty days notice.

(B) If an insurer changes these terms and conditions, the insurer shall provide:

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

(2) 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 made.

(C) Notwithstanding subsection (A) of this section, an insurer may:

(1) terminate a customer’s enrollment under a portable electronics insurance policy upon fifteen day’s notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the coverage; and

(2) immediately terminate a 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 individual 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 days after the exhaustion of this limit. If this notice is not timely sent, enrollment must continue regardless of the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(D) When 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 of the policy and the effective date of termination. This written notice must be mailed or delivered to the enrolled customer at least thirty days before termination.

(E) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section or is otherwise required by law, this notice or correspondence must be in writing. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this section. If the notice or correspondence is mailed, it must be sent to the vendor of portable electronics at the vendor’s mailing address specified for such purpose and to its affected enrolled customers’ last known mailing addresses on file with the insurer. 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. If the notice or correspondence is sent by electronic means, it must be sent to the vendor of portable electronics at the vendor’s electronic mail address specified for such purpose and to its affected enrolled customers’ last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be. For purposes of this subsection, an enrolled customer’s provision of an electronic mail address to the insurer or vendor of portable electronics, as the case may be, must be considered consent to receive notices and correspondence by electronic means. An insurer or vendor of portable electronics shall maintain proof that the notice or correspondence was sent.

(F) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor by the supervising entity appointed by the insurer.

Section 38‑97‑80. (A) A sworn application for a license under this chapter must be made to and filed with the department on forms prescribed by the department.

(B) An application required under subsection (A) must provide the:

(1) location of the home office of the applicant; and

(2) name, residential address, and other information required by the department for:

(a) an employee or officer of the vendor who is designated by the applicant as the person responsible for the compliance of the vendor with the requirements of this chapter; and

(b) all of its officers, directors, and shareholders of record having a beneficial ownership of ten percent or more of any class of securities registered under federal securities law, but only if the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance.

(3) Any changes to information provided to the department under this section, must be provided to the department within 30 days of that change being made.

(C) Any vendor engaging in portable electronics insurance transactions on or before the effective date of this act must apply for licensure within ninety days after the application being made available by the department. Any applicant commencing operations after the effective date of this act must obtain a license prior to offering portable electronics insurance.

(D) A licensee must renew a license issued pursuant to this chapter biennially before August first of every odd‑numbered year. If a license is not renewed as required by this section, the license must be canceled. A licensee may reinstate the same license within six months after the compliance deadline by paying the renewal fee and a reinstatement fee equal to the renewal fee.

(E)(1) A vendor of portable electronics insurance licensed under this chapter shall pay to the department a fee of one thousand dollars for an initial portable electronics insurance license and five hundred dollars for a renewal.

(2) The department shall retain any fee or surcharge imposed by this section to use for the administration of Title 38.

Section 38‑97‑90. The director of the department:

(1) may, by order, require policy forms, rates, and rules concerning portable electronics insurance be filed with, and approved by, the director or his designee before use if considered necessary for the protection of the public, notwithstanding another provision of law; and

(2) may promulgate regulations necessary to implement the provisions of this chapter.”

SECTION 2. The provisions of this act take effect January 1, 2013.

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