

State of Wisconsin



2011 Senate Bill 429

Date of enactment: **April 6, 2012**
Date of publication*: **April 19, 2012**

2011 WISCONSIN ACT 225

AN ACT to create 628.02 (1) (b) 9. and 632.975 of the statutes; **relating to:** portable electronics insurance and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 628.02 (1) (b) 9. of the statutes is created to read:

628.02 (1) (b) 9. A vendor, as defined in s. 632.975 (1) (i), or an employee or authorized representative of a vendor selling or offering portable electronics insurance under s. 632.975.

SECTION 2. 632.975 of the statutes is created to read:
632.975 Portable electronics insurance. (1) DEFINITIONS. In this section:

(a) "Customer" means a person who purchases or leases a portable electronic device.

(b) "Enrolled customer" means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(c) "Location" means any physical location in the state or any Internet site, call center site, or similar location directed to residents of the state.

(d) "Portable electronics" or "portable electronic devices" means electronic devices that are portable in nature, including accessories and services related to the use of the device, and that have an insured value of less than \$5,000.

(e) 1. "Portable electronics insurance" means insurance providing coverage for the repair or replacement of portable electronics that may provide coverage for a por-

table electronic device against any of the following causes of loss:

- a. Loss.
- b. Theft.
- c. Inoperability due to mechanical failure.
- d. Malfunction.
- e. Damage.
- f. Other similar causes of loss.

2. "Portable electronics insurance" does not include any of the following:

a. A service contract or extended warranty providing coverage limited 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, power surges, or normal wear and tear.

b. A policy of insurance covering a vendor's or a manufacturer's obligations under a warranty.

c. A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar insurance policy.

(f) "Portable electronics insurance program" means the coverage options made available to customers of a vendor who elect to enroll for coverage of a portable electronic device under a policy of portable electronics insurance.

(g) "Portable electronics transaction" means the sale or lease of a portable electronic device to a customer.

* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(h) "Supervising entity" means a business entity that is a licensed insurer or licensed intermediary that is appointed by an insurer to supervise the administration of a portable electronics insurance program offered by a vendor to its customers.

(i) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

(2) **AUTHORITY.** (a) *Requirements.* A vendor or an employee or authorized representative of a vendor may sell or offer portable electronics insurance to customers without holding a certificate of authority under s. 601.04 or a license as an intermediary only if all of the following apply:

1. The vendor complies with the requirements of this section.

2. The insurer issuing the portable electronics insurance either directly supervises, or appoints a supervising entity to supervise, the administration of the sale of portable electronics insurance, including development of a training program, as described under sub. (4), for employees and authorized representatives of the vendors.

3. The supervising entity, if any, maintains a registry of vendor locations at which an employee or authorized representative is authorized to sell or offer portable electronics insurance in this state. Upon request by the commissioner after providing 10 days' notice to the supervising entity, the supervising entity shall make available the registry for inspection and examination by the commissioner.

4. Any employee or authorized representative who intends to sell or offer portable electronics insurance to customers shall complete a training program under sub. (4).

(b) *Prohibited representations.* No employee or authorized representative of a vendor of portable electronics may advertise, represent, or otherwise hold himself or herself out as a licensed insurance intermediary, if the employee or authorized representative does not hold a license as an intermediary in this state.

(c) *Scope.* Compliance by a vendor with this section shall authorize any employee or authorized representative of a 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.

(d) *Applicability of existing law.* A vendor selling or offering portable electronics insurance is subject to ss. 601.41, 601.42, 601.61, 601.63, and 601.64, except that any forfeitures or penalties shall be in the amounts specified in sub. (3).

(3) **PENALTIES.** If a vendor of portable electronics or an employee or authorized representative of a vendor violates any provision of this section, the commissioner may do any of the following:

(a) After notice and hearing conducted in accordance with s. 601.62, impose forfeitures not to exceed \$500 per violation.

(b) Order, under s. 601.41 (4), any of the following:

1. Suspension of the selling or offering of portable electronics insurance at the specific business location where the violation occurred.

2. Suspension of the selling or offering of portable electronics insurance by an employee or authorized representative of a vendor.

3. Suspension or revocation of the selling or offering of portable electronics insurance by a vendor in this state.

(4) **TRAINING.** The insurer or supervising entity shall develop and administer the training program required under sub. (2) (a) 4. that complies with all of the following:

(a) The insurer or supervising entity shall deliver training to employees and authorized representatives of a vendor who are directly engaged in selling or offering portable electronics insurance.

(b) The insurer or supervising entity may provide the training in electronic form. If the training is in electronic form, the insurer or supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the insurer or supervising entity.

(c) The insurer or supervising entity shall provide to every employee and authorized representative of a vendor basic instruction about the portable electronics insurance offered to customers and the disclosures required under sub. (6).

(5) **COMPENSATION.** (a) A vendor of portable electronics may not compensate an employee or authorized representative based primarily on the number of customers enrolled in portable electronics insurance coverage but the vendor may compensate an employee or authorized representative, in a manner that is incidental to his or her overall compensation, for activities related to the sale or offering of portable electronics insurance.

(b) 1. A vendor of portable electronics may bill and collect the charges for portable electronics insurance coverage.

2. The vendor shall separately itemize on the enrolled customer's bill any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of the portable electronics.

3. If the portable electronics insurance coverage is included with the purchase or lease of a portable electronic device, the vendor shall clearly and conspicuously disclose to the enrolled customer that the coverage is included with the purchase or lease of the portable electronic device.

4. A vendor that bills and collects charges from an enrolled customer is not required to maintain those monies in a segregated account if the insurer authorizes the

vendor to hold those moneys in a manner other than a segregated account and if the vendor remits the moneys to the insurer or supervising entity within 60 days of receiving those moneys. The vendor shall consider all moneys received by that vendor from an enrolled customer for the sale of portable electronics insurance to be held in trust by that vendor in a fiduciary capacity for the benefit of the insurer.

5. The insurer or supervising entity may compensate the vendor for billing and collection services.

(6) **DISCLOSURES.** At every location where portable electronics insurance is offered to customers, a vendor shall make available to prospective customers brochures or other written materials that contain all of the following:

(a) 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 insurance coverage.

(b) A statement that a customer is not required to enroll in portable electronics insurance as a condition of purchasing or leasing a portable electronic device.

(c) A summary of the material terms of the portable electronics insurance coverage including all of the following:

1. The identity of the insurer.
2. The identity of the supervising entity, if any.
3. The amount of any applicable deductible and how to pay that deductible.
4. The benefits of coverage.
5. The key terms and conditions of coverage such as whether a portable electronic device covered under the policy may be repaired or replaced with parts or equipment of a similar make and model that are reconditioned or are nonoriginal manufacturer parts or equipment.

(d) A summary of the process for filing a claim, including a description of how to return a portable electronic device and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirement.

(e) A statement that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and that upon cancellation the person paying the premium receives a refund of any applicable unearned premium.

(7) **PERMITTED OFFERING.** A vendor may offer portable electronics insurance on a month to month or other periodic basis as a group or master commercial inland marine policy that is issued to a vendor of portable electronics for its enrolled customers.

(8) **UNDERWRITING.** An insurer shall establish eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program offered by a vendor to its customers.

(9) **TERMINATION OF INSURANCE; CHANGES TO POLICY.**

(a) Except as provided in par. (c), an insurer may termi-

nate or otherwise change the terms and conditions of a policy of portable electronics insurance only after providing the policyholder and all enrolled customers at least 30 days' notice before terminating the coverage or making the change.

(b) If the insurer changes the terms and conditions in accordance with par. (a), the insurer shall provide the vendor policyholder with a revised policy or endorsement and shall provide each enrolled customer a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred and a summary of the material changes.

(c) 1. An insurer may terminate the enrollment of an enrolled customer under a portable electronics insurance policy after providing 15 days' notice if the insurer discovers that the enrolled customer committed fraud or made a material misrepresentation in obtaining coverage or in the presentation of a claim under the portable electronics insurance policy.

2. An insurer may immediately terminate the enrollment of an enrolled customer under a portable electronics insurance policy for any of the following reasons:

- a. The enrolled customer fails to pay the premium for the portable electronics insurance policy.
- b. The enrolled customer ceases to have an active service with the vendor of portable electronics.

3. An insurer may terminate the enrollment of an enrolled customer under a portable electronics insurance policy if the enrolled customer exhausts any aggregate limit of liability under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within 30 days after exhaustion of the limit. If the insurer does not send the notice within 30 days after exhaustion of the limit, the insurer shall continue the coverage notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(d) If a portable electronics insurance policy is terminated by a vendor that owns the policy, the vendor shall mail or deliver, at least 30 days before the termination, written notice to each enrolled customer advising of the termination of the portable electronics insurance policy and the effective date of termination.

(e) Any notice or correspondence with respect to coverage under a policy of portable electronics insurance that is required under this section or is otherwise required by law shall be in writing and may be mailed to the vendor at the mailing address of the vendor and to the enrolled customers at their last known mailing addresses on file with the insurer or delivered by electronics means to the vendor and enrolled customers. If the notice or correspondence is mailed, the insurer, or vendor, that mailed the notice or correspondence, shall maintain proof of mailing in a form authorized or accepted by the U.S. postal service or other commercial mail delivery service. If delivery of the notice or correspondence is by elec-

tronic means, the insurer shall use the electronic mail address specified by the vendor for that purpose and the insurer, or vendor, shall use the last known electronic mail address provided by each enrolled customer. An enrolled customer who provides an electronic mail address to the insurer or vendor consents to receive notices and correspondence by electronic means. If delivery is by electronic means, the insurer or vendor,

whichever delivers the notice or correspondence, shall maintain proof of delivery.

(f) A supervising entity may send any notice or correspondence required by this section or otherwise required by law. An insurer or vendor is not required to provide the notice or correspondence if it is provided by a supervising entity in a manner that complies with this section.

