

STATE OF NEW YORK

6612--A

2017-2018 Regular Sessions

IN SENATE

June 7, 2017

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to wireless communications equipment insurance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 2101 of the insurance law is amended by adding a
2 new subsection (z) to read as follows:

3 (z) For purposes of section two thousand one hundred thirty-one of
4 this article, with respect to wireless communications equipment insur-
5 ance:

6 (1) "Customer" means a person who purchases wireless communications
7 equipment or service;

8 (2) "Enrolled customer" means a customer who elects coverage under a
9 wireless communications equipment insurance policy issued to a vendor of
10 wireless communications equipment;

11 (3) "Location" means any physical location in the state of New York or
12 any website, call center site or similar location directed to residents
13 of the state of New York;

14 (4) "Wireless communications equipment" shall mean electronic devices
15 that are portable in nature and their accessories;

16 (5)(A) "Wireless communications equipment insurance" means insurance
17 providing coverage for the repair or replacement of wireless communi-
18 cations equipment which may provide coverage for wireless communications
19 equipment against any one or more of the following causes of loss: loss,
20 theft, inoperability due to mechanical failure, malfunction, damage or
21 other similar causes of loss.

22 (B) "Wireless communications equipment insurance" does not include:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (i) A service contract as that term is defined by article seventy-nine
2 of this chapter;

3 (ii) A policy of insurance covering a seller's or a manufacturer's
4 obligations under a warranty; or

5 (iii) A homeowners', renters', private passenger automobile, commer-
6 cial multi-peril, or similar policy.

7 (6) "Wireless communications equipment transaction" means:

8 (A) The sale or lease of wireless communications equipment by a vendor
9 to a customer; or

10 (B) The sale of a service related to the use of wireless communi-
11 cations equipment by a vendor to a customer.

12 (7) "Supervising entity" means a business entity that is a licensed
13 insurer or insurance producer that is authorized by an insurer to super-
14 visize the administration of a wireless communications equipment insurance
15 program.

16 (8) "Vendor" means a person in the business of engaging in wireless
17 communications equipment transactions directly or indirectly.

18 (9) "Wireless communications service" means telephonic and/or data
19 transmission service over a wireless network through wireless communi-
20 cations equipment.

21 § 2. Section 2131 of the insurance law, as amended by chapter 582 of
22 the laws of 2003, the section heading and subsections (a), (d), (e),
23 (f), (h) and (i) as amended by chapter 368 of the laws of 2010, and
24 subsection (g) as amended by chapter 426 of the laws of 2005, is amended
25 to read as follows:

26 § 2131. Limited license for rental vehicle companies, wireless commu-
27 nications equipment vendors and self-service storage companies. (a) The
28 superintendent may issue to a rental vehicle company, a wireless commu-
29 nications equipment vendor, a self-service storage company or to a fran-
30 chisee of a rental vehicle company, [~~a wireless communications equipment~~
31 ~~vendor,~~] or a self-service storage company which has complied with the
32 requirements of this section, a limited license authorizing the licen-
33 see, known as a "limited licensee" for the purpose of this article, to
34 act as agent, with reference to the kinds of insurance specified in this
35 section, of any insurer authorized to write such kinds of insurance in
36 this state.

37 (b) [~~The~~] Except as contained in paragraph three of this subsection
38 regarding wireless communications equipment vendors, the prerequisites
39 for issuance of a limited license under this section shall be the filing
40 with the superintendent of the following:

41 (1) an application, signed by an officer of the applicant, for the
42 limited license in such form or forms, and supplements thereto, and
43 containing such information, as the superintendent may prescribe; [~~and~~]

44 (2) an appointment of a limited licensee by the appointing insurer, in
45 a format approved by the superintendent, no more than fifteen days after
46 the date the agency contract is executed or the first insurance contract
47 is submitted, whichever is later, stating that it has satisfied itself
48 that the named applicant is trustworthy and competent to act as its
49 insurance agent for this limited purpose and that the insurer will
50 appoint such applicant to act as the agent in reference to the doing of
51 such kind or kinds of insurance which are permitted by this section, if
52 the limited license applied for is issued by the superintendent. Such
53 appointment shall be subscribed by an officer or managing agent of such
54 insurer and affirmed as true under the penalties of perjury;

55 (3) the prerequisites for issuance of a limited license under this
56 section for a wireless communications equipment vendor shall be the

1 filing of a sworn application with the superintendent on forms
2 prescribed and furnished by the superintendent which shall:

3 (A) provide the name, residence address, and other information
4 required by the superintendent for an employee or officer of the vendor
5 that is designated by the applicant as the person responsible for the
6 vendor's compliance with the requirements of this chapter. However, if
7 the vendor derives more than fifty percent of its revenue from the sale
8 of wireless communications equipment insurance the information noted
9 above shall be provided for all officers, directors, and shareholders of
10 record having beneficial ownership of ten percent or more of any class
11 of securities registered under the federal securities law; and

12 (B) the location of the applicant's home office; and

13 (4) any vendor engaging in wireless communications equipment insurance
14 transactions must obtain a license prior to offering wireless communi-
15 cations equipment insurance.

16 (c) In the event that any provision of this chapter is violated, the
17 superintendent may:

18 (1) revoke or suspend a limited license issued under this section in
19 accordance with the provisions of section two thousand one hundred ten
20 of this article; or

21 (2) after notice and hearing impose such other penalties, including
22 suspending the transaction of insurance at specific locations where
23 violations of this article have occurred, as the superintendent deems
24 necessary or convenient to carry out the purposes of this section.

25 (d) The rental vehicle company, wireless communications equipment
26 vendor, or self-service storage company, or franchisee licensed pursuant
27 to subsection (a) of this section may act as agent for an authorized
28 insurer only in connection with the rental of motor vehicles, the sale
29 or offering for sale of wireless communications equipment, or the rental
30 of storage space, respectively, and only with respect to the following
31 kinds of insurance:

32 (1) with respect to rental vehicle companies:

33 (A) excess liability insurance that provides coverage to the rental
34 car company or franchisee and renters and other authorized drivers of
35 rental vehicles, in excess of the standard liability limits provided by
36 the rental vehicle company in its rental agreement, for liability aris-
37 ing from the negligent operation of the rental vehicle;

38 (B) accident and health insurance that provides coverage to renters
39 and other vehicle occupants, in excess to the standard first party bene-
40 fits provided pursuant to article fifty-one of this chapter, for acci-
41 dental death and/or dismemberment and for medical expenses resulting
42 from an accident that occurs during the rental period;

43 (C) personal effects insurance that provides coverage to renters and
44 other vehicle occupants for the loss of, or damage to, personal effects
45 that occurs during the rental period;

46 (D) any other coverage which the superintendent may approve as mean-
47 ingful and appropriate in connection with the rental of motor vehicles;
48 or

49 (2) with respect to wireless communications equipment vendors, [~~insur-~~
50 ~~ance issued to cover the loss, theft, mechanical failure, or malfunction~~
51 ~~of, or damage to, wireless communications equipment offered]~~ wireless
52 communications equipment insurance as either an individual policy issued
53 to the consumer or as a group or master commercial inland marine policy
54 under which certificates or other evidence of coverage are issued to
55 individual consumers who enroll in the program[~~, provided however, that~~

1 ~~said insurance shall not extend to wireless services or service~~
2 ~~contracts governed by article seventy nine of this chapter~~; or

3 (3) with respect to self-service storage companies, the following
4 coverages offered as either an individual policy issued to the consumer
5 or as a group policy:

6 (A) personal effects insurance that provides coverage to renters of
7 storage spaces at the self-service storage company's facility for the
8 loss of, or damage to, personal property stored at the facility, where
9 the loss or damage occurs at the same facility during the rental period;

10 (B) any other coverage that the superintendent may approve as meaning-
11 ful and appropriate in connection with the rental of storage space.

12 (e) No insurance may be issued pursuant to this section unless:

13 (1) with regard to the rental of vehicles only, the rental period of
14 the rental agreement does not exceed thirty consecutive days; and

15 (2) at every location where rental vehicle agreements, wireless commu-
16 nications equipment agreements, or self-service storage agreements are
17 executed, brochures or other written materials are readily available to
18 the prospective consumer that:

19 (A) summarize, clearly and correctly, the material terms of insurance
20 coverage, including the identity of the insurer and, with regard to
21 wireless communications equipment insurance, the agent licensed under
22 subsection (b) of section two thousand one hundred three of this
23 article, the identity of the supervising entity, the amount of any
24 applicable deductible and how it is to be paid, benefits of the cover-
25 age, and key terms and conditions of coverage such as whether wireless
26 communications equipment may be repaired or replaced with similar make
27 and model reconditioned or non-original manufacturer parts or equipment;

28 (B) disclose that these policies may provide a duplication of coverage
29 already provided by a renter's personal automobile insurance policy,
30 homeowner's insurance policy, personal liability insurance policy, or
31 other source of coverage;

32 (C) state that the purchase by the consumer of the kinds of insurance
33 specified in this section is not required in order to rent a vehicle, to
34 purchase or lease wireless communications equipment, or to rent storage
35 space;

36 (D) describe the process for filing a claim in the event the consumer
37 elects to purchase coverage, and with regard to wireless communications
38 equipment insurance, describe how to return wireless communications
39 equipment and the maximum fee or fees applicable in the event the
40 customer fails to comply with any equipment return requirements;

41 (E) the price, deductible, benefits, exclusions and conditions or
42 other limitations of such policies;

43 (F) disclose that the employee of the rental vehicle company, wireless
44 communications equipment vendor or self-storage company is not qualified
45 or authorized to evaluate the adequacy of the purchaser's existing
46 coverages, unless otherwise licensed; ~~and~~

47 (G) notwithstanding any law, rule or regulation a wireless communi-
48 cations equipment insurance vendor shall state whether an employee may
49 earn compensation under the vendor's limited lines license as allowed
50 under subsection (g) of this section and that part of the premium paid
51 by the purchaser may be paid by the vendor to an administrator; and

52 (H) state that the customer may cancel the insurance at any time and
53 any unearned premium will be refunded in accordance with applicable law.

54 (3) with respect to wireless communications equipment insurance, the
55 written materials required by paragraph two of this subsection shall not

1 be subject to filing or approval requirements with the superintendent
2 pursuant to subsection (f) of this section.

3 (4) evidence of coverage is provided to every consumer who elects to
4 purchase such coverage.

5 (f) Rates and forms for insurance under this section shall be subject
6 to article twenty-three of this chapter. Any brochures used in
7 connection with insurance under this section shall be filed with the
8 superintendent for review and shall include disclosure of the claims
9 filing process, premium, deductible amounts and limits and shall be
10 prominently displayed in the brochure with at least twelve-point type
11 bold headings. Any such brochures shall also be subject to section
12 three thousand one hundred two of this chapter, provided, however, that
13 any policy, certificate or other evidence of insurance coverage, whether
14 or not contained in such brochure, shall not be subject to section three
15 thousand one hundred two of this chapter, but shall be written in a
16 clear and coherent manner and whenever practicable shall use words with
17 common and everyday meaning to facilitate readability and to aid the
18 policyholder in understanding the coverage provided.

19 (g) Any limited license issued under this section shall also authorize
20 any salaried employee or any sales representative authorized by the
21 licensee who, pursuant to subsection (h) of this section, is trained to
22 act individually on behalf, and under the supervision, of the licensee
23 with respect to the kinds of insurance specified in this section.
24 Notwithstanding any other provision of law, employees or authorized
25 representatives of a vendor of wireless communications equipment shall
26 not be compensated based on the number of customers enrolled for wire-
27 less communications equipment insurance coverage but may be eligible to
28 receive compensation for activities under the limited lines license
29 which is incidental to their overall compensation.

30 (h) Each company or franchisee licensed pursuant to this section shall
31 conduct a training program, which shall be submitted to the superinten-
32 dent for approval prior to use, and which shall meet the following mini-
33 mum standards:

34 (1) each trainee shall receive basic instruction about the kinds of
35 insurance specified in this section offered for purchase by prospective
36 renters of rental vehicles, purchasers or lessors of wireless communi-
37 cations equipment, or renters of storage space;

38 (2) each trainee shall be instructed with respect to the disclosures
39 required under subsection (e) of this section and to acknowledge to a
40 prospective renter of a rental vehicle, purchaser or lessor of wireless
41 communications equipment, or renter of storage space that purchase of
42 any such insurance specified in this section is not required in order
43 for the consumer to rent a motor vehicle, purchase or lease wireless
44 communications equipment, or rent storage space;

45 (3) each trainee shall be instructed to acknowledge to a prospective
46 consumer of the kinds of insurance specified in this section that the
47 consumer may have insurance policies that already provide the coverage
48 being offered by the rental vehicle company, the wireless communications
49 equipment vendor, or self-service storage company pursuant to this
50 section; and

51 (4) with regard to wireless communications equipment insurance and
52 self-service storage company insurance, training materials may be devel-
53 oped and provided by an agent licensed pursuant to subsection (b) of
54 section two thousand one hundred three of this article.

55 (i) Limited licensees acting pursuant to and under the authority of
56 this section shall comply with all applicable provisions of this arti-

1 cle, except that notwithstanding section two thousand one hundred twenty
2 of this article, a limited licensee pursuant to this section shall not
3 be required to treat premiums collected from consumers [~~purchasing such~~
4 ~~insurance when renting motor vehicles, purchasing or leasing wireless~~
5 ~~communications equipment,~~] or renting storage space as funds received in
6 a fiduciary capacity, provided that:

7 (1) the insurer represented by the limited licensee has consented in
8 writing, signed by the insurer's officer, that premiums need not be
9 segregated from funds received by the rental vehicle company, [~~wireless~~
10 ~~communications equipment vendor,~~] or self-storage company on account of
11 vehicle rental, [~~wireless communications equipment purchase or lease,~~]
12 or storage space rental; ~~and~~

13 (2) the charges for insurance coverage are itemized but not billed to
14 the consumer separately from the charges for rental vehicles, [~~purchase~~
15 ~~or lease of wireless communications equipment,~~] or storage space rental;
16 ~~and~~

17 (3) with respect to wireless communications equipment insurance premi-
18 ums, vendors billing and collecting such charges shall not be required
19 to maintain such funds in a segregated account provided that the vendor
20 is authorized by the insurer to hold such funds in an alternative manner
21 and remits such amounts to the supervising entity within sixty days of
22 receipt. All funds received by a vendor from an enrolled customer for
23 the sale of wireless communications equipment insurance shall be consid-
24 ered funds held in trust by the vendor in a fiduciary capacity for the
25 benefit of the insurer. Any charge to the enrolled customer for coverage
26 that is not included in the cost associated with the purchase or lease
27 of wireless communications equipment or related services shall be sepa-
28 rately itemized on the enrolled customer's bill. If the insurance cover-
29 age is included with the purchase or lease of wireless communications
30 equipment or related services the vendor shall clearly and conspicuously
31 disclose to the enrolled customer that the coverage is included with the
32 wireless communications equipment or related services. Vendors may
33 receive compensation for billing and collection services.

34 (j) No limited licensees under this section shall advertise, represent
35 or otherwise hold itself or any of its employees themselves out as
36 licensed insurance agents or brokers.

37 (k) The superintendent may issue a replacement for a currently in
38 force license which has been lost or destroyed. Before such replacement
39 license shall be issued, there shall be on file in the office of the
40 superintendent a written application for such replacement license,
41 affirming under penalty of perjury that the original license has been
42 lost or destroyed, together with a fee of fifteen dollars.

43 (1) [~~For purposes of this section "wireless communications equipment"~~
44 ~~shall mean wireless handsets, pagers, personal digital assistants, wire-~~
45 ~~less telephones or wireless telephone batteries and other wireless~~
46 ~~devices and accessories related to such devices that are used to access~~
47 ~~wireless communications services and includes wireless services]~~
48 Notwithstanding any law, rule, or regulation to the contrary, with
49 respect to wireless communications equipment insurance, the only disclo-
50 tures and materials required in the provision of such insurance shall be
51 the items required by this section.

52 § 3. Section 3449 of the insurance law, as added by chapter 426 of the
53 laws of 2005, is amended to read as follows:

54 § 3449. Wireless communications equipment insurance policies. (a) In
55 this section, the term "policy of wireless communications equipment
56 insurance" means an insurance policy covering the kind of insurance

1 described in subsection [~~(1)~~] (z) of section two thousand one hundred
2 [~~thirty-one~~] one of this chapter.

3 (b) (1) A group policy, and certificates issued thereunder, of wire-
4 less communications equipment insurance shall not be subject to the
5 provisions of section three thousand four hundred twenty-five or three
6 thousand four hundred twenty-six of this article.

7 (2) An insurer shall not terminate or otherwise change the terms and
8 conditions of a group policy of wireless communications equipment insur-
9 ance, and certificates issued thereunder, except upon providing the
10 policyholder and certificate holders with at least [~~sixty~~] thirty days
11 notice. If the insurer changes the terms and conditions, then the insur-
12 er shall provide the policyholder with a letter notifying them of the
13 changes, a revised policy or endorsement and each certificate holder
14 with a revised certificate or endorsement, an updated brochure or
15 facsimile thereof, or other evidence indicating a change in the terms
16 and conditions has occurred, and an explanation of the changes.

17 (3) Notwithstanding paragraph two of this subsection, an insurer may
18 terminate a certificate upon fifteen days notice for:

19 (A) nonpayment of premium; or

20 (B) discovery of fraud or material misrepresentation in obtaining the
21 certificate or in the presentation of a claim thereunder.

22 (4) Notwithstanding paragraph two of this subsection, an insurer may
23 automatically terminate a certificate if the certificate holder:

24 (A) ceases to have active telecommunications service with the wireless
25 communications equipment vendor; or

26 (B) exhausts the aggregate limit of liability, if any, under the
27 certificate and the insurer sends notice of termination to the certif-
28 icate holder within fifteen business days after exhaustion of the limit.
29 However, if notice is not timely sent, coverage shall continue notwith-
30 standing the aggregate limit of liability until the insurer sends notice
31 of termination to the certificate holder.

32 (5) Notwithstanding the provisions of subparagraph (B) of paragraph
33 four of this subsection, upon the request of a certificate holder, the
34 certificate holder's coverage shall be eligible for reinstatement not
35 more than twelve months following the date of exhaustion of the coverage
36 limit in accordance with the terms of the policy and subject to the
37 enrollment criteria then applicable to prospective certificate holders
38 generally.

39 (6) Where the group policy is terminated by the policyholder, the
40 policyholder shall mail or deliver written notice to each certificate
41 holder advising the certificate holder of the termination of the group
42 policy and the effective date of termination. The written notice shall
43 be mailed or delivered to the certificate holder at least thirty days
44 prior to the termination.

45 (c) Whenever notice is required pursuant to this section, it shall be
46 in writing and mailed or delivered to the policyholder at the
47 policyholder's mailing address and to affected certificate holders at
48 the certificate holders' last known mailing addresses on file with the
49 insurer. Every notice of termination shall specify the reason or reasons
50 for termination.

51 (d) (1) Notwithstanding subsection (c) of this section, an insurer
52 shall not be required to give notice of termination to the certificate
53 holder if the insurer has been advised by either the policyholder or
54 another insurer that substantially similar coverage has been obtained
55 from the other insurer without lapse of coverage.

1 (2) A policyholder shall not be required to give notice of termination
2 to a certificate holder if substantially similar coverage has been
3 obtained from another insurer without lapse of coverage.

4 (e) Notice or correspondence required by this section or otherwise
5 required by law may be sent on behalf of an insurer or vendor, as the
6 case may be, by the supervising entity appointed by the insurer.

7 (f) Notwithstanding any other provision of the law, wireless communi-
8 cations equipment insurance may be offered on a month to month or other
9 periodic basis as a group or master commercial inland marine policy
10 issued to a vendor of portable electronics for its enrolled customers.

11 (g) The superintendent may promulgate regulations regarding policies
12 of wireless communications equipment insurance, including, but not
13 limited to, regulations governing policy terms and conditions, and may
14 establish other reasonable limitations.

15 § 4. This act shall take effect on the one hundred twentieth day after
16 it shall have become a law.