

STATE OF NEW YORK

6612

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

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. Wireless communications equipment insur-
22 ance also includes any agreement whereby a person or any legal entity,
23 in exchange for consideration paid, agrees to provide for the future
24 repair, replacement or provision of wireless communications equipment.
25 It includes any arrangement that seeks to provide substantially similar

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

LBD13079-01-7

1 benefits through other means including arrangements that confer benefits
2 upon consumers that purchase, including installment sale purchases, or
3 lease wireless communications equipment or wireless services, regardless
4 of whether the benefits are provided directly or indirectly to the
5 consumer, where the benefits include the repair or replacement of the
6 covered device, the provision of a loaner or rental device, or the
7 payment of indemnification in the event of a loss of a covered device,
8 and where the benefits are expressly or impliedly conditioned on the
9 happening of some fortuitous event such as the loss, theft or physical
10 damage of the covered device, or is structured as a remedy in the event
11 of such perils without expressly stating those perils as a condition of
12 coverage.

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

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

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

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

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

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

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

25 (7) "Supervising entity" means a business entity that is a licensed
26 insurer or insurance producer that is authorized by an insurer to super-
27 vising the administration of a wireless communications equipment insurance
28 program.

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

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

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

39 § 2131. Limited license for rental vehicle companies, wireless commu-
40 nications equipment vendors and self-service storage companies. (a) The
41 superintendent may issue to a rental vehicle company, a wireless commu-
42 nications equipment vendor, a self-service storage company or to a fran-
43 chisee of a rental vehicle company, [~~a wireless communications equipment~~
44 ~~vendor,~~] or a self-service storage company which has complied with the
45 requirements of this section, a limited license authorizing the licen-
46 see, known as a "limited licensee" for the purpose of this article, to
47 act as agent, with reference to the kinds of insurance specified in this
48 section, of any insurer authorized to write such kinds of insurance in
49 this state.

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

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

1 (2) an appointment of a limited licensee by the appointing insurer, in
2 a format approved by the superintendent, no more than fifteen days after
3 the date the agency contract is executed or the first insurance contract
4 is submitted, whichever is later, stating that it has satisfied itself
5 that the named applicant is trustworthy and competent to act as its
6 insurance agent for this limited purpose and that the insurer will
7 appoint such applicant to act as the agent in reference to the doing of
8 such kind or kinds of insurance which are permitted by this section, if
9 the limited license applied for is issued by the superintendent. Such
10 appointment shall be subscribed by an officer or managing agent of such
11 insurer and affirmed as true under the penalties of perjury;

12 (3) the prerequisites for issuance of a limited license under this
13 section for a wireless communications equipment vendor shall be the
14 filing of a sworn application with the superintendent on forms
15 prescribed and furnished by the superintendent which shall:

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

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

26 (4) any vendor engaging in wireless communications equipment insurance
27 transactions must obtain a license prior to offering wireless communi-
28 cations equipment insurance.

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

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

34 (2) after notice and hearing impose such other penalties, including
35 suspending the transaction of insurance at specific locations where
36 violations of this article have occurred, or require the vendor or
37 license holder to identify and suspend or revoke the ability of individ-
38 ual employees or authorized representatives to act under the license, as
39 the superintendent deems necessary or convenient to carry out the
40 purposes of this section.

41 (d) The rental vehicle company, wireless communications equipment
42 vendor, or self-service storage company, or franchisee licensed pursuant
43 to subsection (a) of this section may act as agent for an authorized
44 insurer only in connection with the rental of motor vehicles, the sale
45 or offering for sale of wireless communications equipment, or the rental
46 of storage space, respectively, and only with respect to the following
47 kinds of insurance:

48 (1) with respect to rental vehicle companies:

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

54 (B) accident and health insurance that provides coverage to renters
55 and other vehicle occupants, in excess to the standard first party bene-
56 fits provided pursuant to article fifty-one of this chapter, for acci-

1 dental death and/or dismemberment and for medical expenses resulting
2 from an accident that occurs during the rental period;

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

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

9 (2) with respect to wireless communications equipment vendors, [~~insur-
10 ance issued to cover the loss, theft, mechanical failure, or malfunction
11 of, or damage to, wireless communications equipment offered~~] wireless
12 communications equipment insurance as either an individual policy issued
13 to the consumer or as a group or master commercial inland marine policy
14 under which certificates or other evidence of coverage are issued to
15 individual consumers who enroll in the program[~~, provided however, that
16 said insurance shall not extend to wireless services or service
17 contracts governed by article seventy nine of this chapter~~]; or

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

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

25 (B) any other coverage that the superintendent may approve as mean-
26 ingful and appropriate in connection with the rental of storage space.

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

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

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

34 (A) summarize, clearly and correctly, the material terms of insurance
35 coverage, including the identity of the insurer and, with regard to
36 wireless communications equipment insurance, the agent licensed under
37 subsection (b) of section two thousand one hundred three of this
38 article, the identity of the supervising entity, the amount of any
39 applicable deductible and how it is to be paid, benefits of the cover-
40 age, and key terms and conditions of coverage such as whether wireless
41 communications equipment may be repaired or replaced with similar make
42 and model reconditioned or non-original manufacturer parts or equipment;

43 (B) disclose that these policies may provide a duplication of coverage
44 already provided by a renter's personal automobile insurance policy,
45 homeowner's insurance policy, personal liability insurance policy, or
46 other source of coverage;

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

51 (D) describe the process for filing a claim in the event the consumer
52 elects to purchase coverage, and with regard to wireless communications
53 equipment insurance, describe how to return wireless communications
54 equipment and the maximum fee or fees applicable in the event the
55 customer fails to comply with any equipment return requirements;

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

3 (F) disclose that the employee of the rental vehicle company, wireless
4 communications equipment vendor or self-storage company is not qualified
5 or authorized to evaluate the adequacy of the purchaser's existing
6 coverages, unless otherwise licensed; [~~and~~]

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

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

14 (3) with respect to wireless communications equipment insurance, the
15 written materials required by paragraph two of this subsection shall not
16 be subject to filing or approval requirements with the superintendent
17 pursuant to subsection (f) of this section.

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

20 (f) Rates and forms for insurance under this section shall be subject
21 to article twenty-three of this chapter. Any brochures used in
22 connection with insurance under this section shall be filed with the
23 superintendent for review and shall include disclosure of the claims
24 filing process, premium, deductible amounts and limits and shall be
25 prominently displayed in the brochure with at least twelve-point type
26 bold headings. Any such brochures shall also be subject to section
27 three thousand one hundred two of this chapter, provided, however, that
28 any policy, certificate or other evidence of insurance coverage, whether
29 or not contained in such brochure, shall not be subject to section three
30 thousand one hundred two of this chapter, but shall be written in a
31 clear and coherent manner and whenever practicable shall use words with
32 common and everyday meaning to facilitate readability and to aid the
33 policyholder in understanding the coverage provided.

34 (g) Any limited license issued under this section shall also authorize
35 any salaried employee or any sales representative authorized by the
36 licensee who, pursuant to subsection (h) of this section, is trained to
37 act individually on behalf, and under the supervision, of the licensee
38 with respect to the kinds of insurance specified in this section.
39 Notwithstanding any other provision of law, employees or authorized
40 representatives of a vendor of wireless communications equipment shall
41 not be compensated based primarily on the number of customers enrolled
42 for wireless communications equipment insurance coverage but may receive
43 compensation for activities under the limited lines license which is
44 incidental to their overall compensation.

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

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

53 (2) each trainee shall be instructed with respect to the disclosures
54 required under subsection (e) of this section and to acknowledge to a
55 prospective renter of a rental vehicle, purchaser or lessor of wireless
56 communications equipment, or renter of storage space that purchase of

1 any such insurance specified in this section is not required in order
2 for the consumer to rent a motor vehicle, purchase or lease wireless
3 communications equipment, or rent storage space;

4 (3) each trainee shall be instructed to acknowledge to a prospective
5 consumer of the kinds of insurance specified in this section that the
6 consumer may have insurance policies that already provide the coverage
7 being offered by the rental vehicle company, the wireless communications
8 equipment vendor, or self-service storage company pursuant to this
9 section; and

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

14 (i) Limited licensees acting pursuant to and under the authority of
15 this section shall comply with all applicable provisions of this arti-
16 cle, except that notwithstanding section two thousand one hundred twenty
17 of this article, a limited licensee pursuant to this section shall not
18 be required to treat premiums collected from consumers [~~purchasing such~~
19 ~~insurance when renting motor vehicles, purchasing or leasing wireless~~
20 ~~communications equipment,~~] or renting storage space as funds received in
21 a fiduciary capacity, provided that:

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

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

32 (3) with respect to wireless communications equipment insurance premi-
33 ums, vendors billing and collecting such charges shall not be required
34 to maintain such funds in a segregated account provided that the vendor
35 is authorized by the insurer to hold such funds in an alternative manner
36 and remits such amounts to the supervising entity within sixty days of
37 receipt. All funds received by a vendor from an enrolled customer for
38 the sale of wireless communications equipment insurance shall be consid-
39 ered funds held in trust by the vendor in a fiduciary capacity for the
40 benefit of the insurer. Any charge to the enrolled customer for coverage
41 that is not included in the cost associated with the purchase or lease
42 of wireless communications equipment or related services shall be sepa-
43 rately itemized on the enrolled customer's bill. If the insurance cover-
44 age is included with the purchase or lease of wireless communications
45 equipment or related services the vendor shall clearly and conspicuously
46 disclose to the enrolled customer that the coverage is included with the
47 wireless communications equipment or related services. Vendors may
48 receive compensation for billing and collection services.

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

52 (k) The superintendent may issue a replacement for a currently in
53 force license which has been lost or destroyed. Before such replacement
54 license shall be issued, there shall be on file in the office of the
55 superintendent a written application for such replacement license,

1 affirming under penalty of perjury that the original license has been
2 lost or destroyed, together with a fee of fifteen dollars.

3 (1) [~~For purposes of this section "wireless communications equipment"~~
4 ~~shall mean wireless handsets, pagers, personal digital assistants, wire-~~
5 ~~less telephones or wireless telephone batteries and other wireless~~
6 ~~devices and accessories related to such devices that are used to access~~
7 ~~wireless communications services and includes wireless services]~~
8 Notwithstanding any law, rule, or regulation to the contrary, with
9 respect to wireless communications equipment insurance, the only disclo-
10 sures and materials required in the provision of such insurance shall be
11 the items required by this section.

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

14 § 3449. Wireless communications equipment insurance policies. (a) In
15 this section, the term "policy of wireless communications equipment
16 insurance" means an insurance policy covering the kind of insurance
17 described in subsection [~~(1)~~] (z) of section two thousand one hundred
18 [~~thirty-one~~] one of this chapter.

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

23 (2) An insurer shall not terminate or otherwise change the terms and
24 conditions of a group policy of wireless communications equipment insur-
25 ance, and certificates issued thereunder, except upon providing the
26 policyholder and certificate holders with at least [~~sixty~~] thirty days
27 notice. If the insurer changes the terms and conditions, then the insur-
28 er shall provide the policyholder with a letter notifying them of the
29 changes, a revised policy or endorsement and each certificate holder
30 with a revised certificate or endorsement, an updated brochure or
31 facsimile thereof, or other evidence indicating a change in the terms
32 and conditions has occurred, and an explanation of the changes.

33 (3) Notwithstanding paragraph two of this subsection, an insurer may
34 terminate a certificate upon fifteen days notice for[+

35 ~~(A) nonpayment of premium; or~~

36 ~~(B)]~~ discovery of fraud or material misrepresentation in obtaining the
37 certificate or in the presentation of a claim thereunder.

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

40 (A) ceases to have active telecommunications service with the wireless
41 communications equipment vendor; [~~or~~]

42 (B) nonpayment of premium; or

43 (C) exhausts the aggregate limit of liability, if any, under the
44 certificate and the insurer sends notice of termination to the certif-
45 icate holder within [~~fifteen~~] thirty business days after exhaustion of
46 the limit. However, if notice is not timely sent, coverage shall contin-
47 ue notwithstanding the aggregate limit of liability until the insurer
48 sends notice of termination to the certificate holder.

49 (5) Notwithstanding the provisions of subparagraph [~~(B)~~] (C) of para-
50 graph four of this subsection, upon the request of a certificate holder,
51 the certificate holder's coverage shall be eligible for reinstatement
52 not more than twelve months following the date of exhaustion of the
53 coverage limit in accordance with the terms of the policy and subject to
54 the enrollment criteria then applicable to prospective certificate hold-
55 ers generally.

1 (6) Where the group policy is terminated by the policyholder, the
2 policyholder shall mail or deliver written notice to each certificate
3 holder advising the certificate holder of the termination of the group
4 policy and the effective date of termination. The written notice shall
5 be mailed or delivered to the certificate holder at least thirty days
6 prior to the termination.

7 (c) Whenever notice is required pursuant to this section, it shall be
8 in writing and mailed or delivered to the policyholder at the
9 policyholder's mailing address and to affected certificate holders at
10 the certificate holders' last known mailing addresses on file with the
11 insurer. Every notice of termination shall specify the reason or reasons
12 for termination.

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

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

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

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

28 (g) The superintendent may promulgate regulations regarding policies
29 of wireless communications equipment insurance, including, but not
30 limited to, regulations governing policy terms and conditions, and may
31 establish other reasonable limitations.

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