

STATE OF NEW YORK

6872

2019-2020 Regular Sessions

IN ASSEMBLY

March 25, 2019

Introduced by M. of A. COOK -- read once and referred to the Committee on Insurance

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:

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

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

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

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

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

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

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

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

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

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

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

24 § 2131. Limited license for rental vehicle companies, wireless commu-
25 nications equipment vendors and self-service storage companies. (a) The
26 superintendent may issue to a rental vehicle company, a wireless commu-
27 nications equipment vendor, a self-service storage company or to a fran-
28 chisee of a rental vehicle company, [~~a wireless communications equipment~~
29 ~~vendor,~~] or a self-service storage company which has complied with the
30 requirements of this section, a limited license authorizing the licen-
31 see, known as a "limited licensee" for the purpose of this article, to
32 act as agent, with reference to the kinds of insurance specified in this
33 section, of any insurer authorized to write such kinds of insurance in
34 this state.

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

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

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

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

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

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

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

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

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

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

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

30 (1) with respect to rental vehicle companies:

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

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

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

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

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

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

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

(B) any other coverage that the superintendent may approve as meaningful and appropriate in connection with the rental of storage space.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (i) Limited licensees acting pursuant to and under the authority of
54 this section shall comply with all applicable provisions of this arti-
55 cle, except that notwithstanding section two thousand one hundred twenty
56 of this article, a limited licensee pursuant to this section shall not

1 be required to treat premiums collected from consumers [~~purchasing such~~
2 ~~insurance when renting motor vehicles, purchasing or leasing wireless~~
3 ~~communications equipment,~~] or renting storage space as funds received in
4 a fiduciary capacity, provided that:

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

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

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

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

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

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

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

52 § 3449. Wireless communications equipment insurance policies. (a) In
53 this section, the term "policy of wireless communications equipment
54 insurance" means an insurance policy covering the kind of insurance
55 described in subsection [~~(1)~~] (z) of section two thousand one hundred
56 [~~thirty-one~~] one of this chapter.

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

(2) An insurer shall not terminate or otherwise change the terms and conditions of a group policy of wireless communications equipment insurance, and certificates issued thereunder, except upon providing the policyholder and certificate holders with at least ~~sixty~~ thirty days notice. If the insurer changes the terms and conditions, then the insurer shall provide the policyholder with a letter notifying them of the changes, a revised policy or endorsement and each certificate holder with a revised certificate or endorsement, an updated brochure or facsimile thereof, or other evidence indicating a change in the terms and conditions has occurred, and an explanation of the changes.

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

(A) nonpayment of premium; or

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

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

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

(B) exhausts the aggregate limit of liability, if any, under the certificate and the insurer sends notice of termination to the certificate holder within fifteen business days after exhaustion of the limit. However, if notice is not timely sent, coverage shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the certificate holder.

(5) Notwithstanding the provisions of subparagraph (B) of paragraph four of this subsection, upon the request of a certificate holder, the certificate holder's coverage shall be eligible for reinstatement not more than twelve months following 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 certificate holders generally.

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

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

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

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

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

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

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

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