STATE OF NEW YORK

207

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL -- 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:

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

(z) For purposes of section two thousand one hundred thirty-one of this article, with respect to wireless communications equipment insurance:

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

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

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

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

(5)(A) "Wireless communications equipment insurance" means insurance providing coverage for the repair or replacement of wireless communications equipment which may provide coverage for wireless communications equipment against any one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar causes of loss. Wireless communications equipment insurance also includes any agreement whereby a person or any legal entity, in exchange for consideration paid, agrees to provide for the future repair, replacement or provision of wireless communications equipment.

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

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It includes any arrangement that seeks to provide substantially similar benefits through other means including arrangements that confer benefits upon consumers that purchase, including installment sale purchases, or lease wireless communications equipment or wireless services, regardless of whether the benefits are provided directly or indirectly to the consumer, where the benefits include the repair or replacement of the covered device, the provision of a loaner or rental device, or the payment of indemnification in the event of a loss of a covered device, and where the benefits are expressly or impliedly conditioned on the happening of some fortuitous event such as the loss, theft or physical damage of the covered device, or is structured as a remedy in the event of such perils without expressly stating those perils as a condition of coverage.

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

(i) a service contract pursuant to article seventy-nine of this chapter 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;

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

(iii) a homeowners', renters', private passenger automobile, commercial multi-peril, or similar policy.

(6) "Wireless communications equipment transaction" means:

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

(B) the sale of a service related to the use of wireless communications equipment by a vendor to a customer.

(7) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is authorized by an insurer to supervise the administration of a wireless communications equipment insurance program.

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

(9) "Wireless communications service" means telephonic and/or data transmission service over a wireless network through wireless communications equipment.

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

§ 2131. Limited license for rental vehicle companies, wireless communications equipment vendors and self-service storage companies. (a) The superintendent may issue to a rental vehicle company, a wireless communications equipment vendor, a self-service storage company or to a franchisee of a rental vehicle company, [~~a wireless communications equipment vendor,~~] or a self-service storage company which has complied with the requirements of this section, a limited license authorizing the licensee, known as a "limited licensee" for the purpose of this article, to act as agent, with reference to the kinds of insurance specified in this section, of any insurer authorized to write such kinds of insurance in this state.

(b) [~~The~~] Except as contained in paragraph three of this subsection regarding wireless communications equipment vendors the prerequisites

for issuance of a limited license under this section shall be the filing with the superintendent of the following:

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

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

(3) For a wireless communications equipment vendor:

(A) A sworn application for a license under this chapter with the superintendent on forms prescribed and furnished by the superintendent.

(B) The application shall:

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

(ii) the location of the applicant's home office.

(C) Any vendor engaging in wireless communications equipment insurance transactions must obtain a license prior to offering wireless communications equipment insurance.

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

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

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

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

(1) with respect to rental vehicle companies:

(A) excess liability insurance that provides coverage to the rental car company or franchisee and renters and other authorized drivers of rental vehicles, in excess of the standard liability limits provided by

the rental vehicle company in its rental agreement, for liability arising from the negligent operation of the rental vehicle;

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

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

(D) any other coverage which the superintendent may approve as meaningful and appropriate in connection with the rental of motor vehicles; or

(2) with respect to wireless communications equipment vendors, [~~insurance issued to cover the loss, theft, mechanical failure, or malfunction of, or damage to, wireless communications equipment offered~~] **wireless communications equipment insurance** as either an individual policy issued to the consumer or as a group **or master commercial inland marine** policy under which certificates or other evidence of coverage are issued to individual consumers who enroll in the program[~~, provided however, that said insurance shall not extend to wireless services or service 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

[~~(G)~~] **(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.

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

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

(g) Any limited license issued under this section shall also authorize any salaried employee or any sales representative authorized by the licensee who, pursuant to subsection (h) of this section, is trained to act individually on behalf, and under the supervision, of the licensee with respect to the kinds of insurance specified in this section.

Notwithstanding any other provision of law, employees or authorized representatives of a vendor of wireless communications equipment shall not be compensated based primarily on the number of customers enrolled for wireless communications equipment insurance coverage but may receive compensation for activities under the limited lines license which is incidental to their overall compensation.

(h) Each company or franchisee licensed pursuant to this section shall conduct a training program, which shall be submitted to the superintendent for approval prior to use, and which shall meet the following minimum standards:

(1) each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective

renters of rental vehicles, purchasers or lessors of wireless communications equipment, or renters of storage space;

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

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

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

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

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

(2) the charges for insurance coverage are itemized but not billed to the consumer separately from the charges for rental vehicles, purchase or lease of wireless communications equipment, or storage space rental**; and**

(3) with respect to wireless communications equipment insurance premiums, vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days of receipt. All funds received by a vendor from an enrolled customer for the sale of wireless communications equipment insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

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

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

[~~(l) For purposes of this section "wireless communications equipment" shall mean wireless handsets, pagers, personal digital assistants, wireless telephones or wireless telephone batteries and other wireless devices and accessories related to such devices that are used to access wireless communications services and includes wireless services.~~]

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

§ 3449. Wireless communications equipment insurance policies. (a) In this section, the term "policy of wireless communications equipment insurance" means an insurance policy covering the kind of insurance described in subsection [~~(1)~~] **(z)** of section two thousand one hundred [~~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) **nonpayment of premium; or**

(C) exhausts the aggregate limit of liability, if any, under the certificate and the insurer sends notice of termination to the certificate holder within [~~fifteen~~] **thirty** 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)~~] **(C)** 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.~~] Whenever notice or correspondence with respect to a policy of wireless communications equipment insurance is required pursuant to this section or is otherwise required by law, it shall be in writing and sent within the time prescribed by law, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection. If the notice or correspondence is mailed, it shall be sent to the vendor of wireless communications equipment at the vendor's mailing address specified for such purpose and to its affected enrolled customers' last known mailing address on file with the insurer. The insurer or vendor of wireless communications equipment, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. If the notice or correspondence is sent by electronic means, it shall be sent to the vendor of wireless communications equipment at the vendor's electronic mail address specified for such purpose and to its affected enrolled customers' last known electronic mail address as provided by each enrolled customer to the insurer or vendor of wireless communications equipment, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor or wireless communications equipment, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means. The insurer or vendor of wireless communications equipment, as the case my be, shall maintain proof that the notice or correspondence was sent. 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.

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

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

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

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