

FIRST REGULAR SESSION

HOUSE BILL NO. 523

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MOLENDORP.

1529L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 385, RSMo, by adding thereto eleven new sections relating to portable electronics insurance, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 385, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 385.500, 385.502, 385.504, 385.506, 385.508, 385.510, 385.512, 385.514,
3 385.516, 385.518, and 385.520, to read as follows:

385.500. As used in sections 385.500 to 385.520, the following terms shall mean:

- 2 (1) **"Covered customer", a customer who elects coverage under a portable**
3 **electronics insurance policy issued to a vendor of portable electronics;**
- 4 (2) **"Customer", a person who purchases portable electronics or services;**
- 5 (3) **"Director", the director of the department of insurance, financial institutions**
6 **and professional registration;**
- 7 (4) **"Portable electronics", electronic devices that are portable in nature, their**
8 **accessories, and services related to the use of the device;**
- 9 (5) **"Portable electronics insurance", insurance providing coverage for the repair**
10 **or replacement of portable electronics which may cover portable electronics against any**
11 **one or more of the following causes of loss: loss, theft, mechanical failure, malfunction,**
12 **damage, or other applicable perils, but does not include:**
 - 13 (a) **A service contract governed by sections 385.300 to 385.321;**
 - 14 (b) **A policy of insurance covering a seller's or manufacturer's obligations under**
15 **a warranty; or**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (c) A homeowner's, renter's, private passenger automobile, commercial multiperil,
17 or similar policy;

18 (6) "Portable electronics transaction":

19 (a) The sale or lease of portable electronics by a vendor to a customer;

20 (b) The sale of a service related to the use of portable electronics by a vendor to a
21 customer;

22 (7) "Supervising agency", a business entity that is a licensed insurance producer;

23 (8) "Vendor", a person in the business of engaging in portable electronics
24 transactions directly or indirectly.

385.502. No person or entity shall issue, sell, or offer for sale in this state any
2 portable electronics insurance unless such person or entity has complied with the licensure
3 requirements in sections 385.500 to 385.520.

385.504. 1. A sworn application for a license under sections 385.500 to 385.520
2 shall be made to and filed with the director on forms prescribed and furnished by the
3 director.

4 2. In addition to other information required by the director, the application shall:

5 (1) Provide the name, residence address, and other information required by the
6 director for an employee or officer of the vendor that is designated by the applicant as the
7 person responsible for the vendor's compliance with the requirements of sections 385.500
8 to 385.520. However, if the vendor derives more than fifty percent of its revenue from the
9 sale of portable electronics insurance, the information listed in this subdivision shall be
10 provided for all officers, directors, and shareholders of record having beneficial ownership
11 of ten percent or more of any class of securities registered under the federal securities law;

12 (2) Appoint the director as the applicant's attorney to receive service of all legal
13 process issued against it in any civil action or proceeding in this state and agreeing that
14 process so served shall be valid and binding against the applicant. The appointment shall
15 be irrevocable, shall bind the company and any successor in interest as the assets or
16 liabilities of the applicant, and shall remain in effect as long as the applicant's license
17 remains in force in this state; and

18 (3) The location of the applicant's home office.

19 3. Applications for licensure under sections 385.500 to 385.520 shall be made by
20 vendors currently engaged in the offering or sale of portable electronics insurance within
21 ninety days of the application being made available to the director.

22 4. Initial licenses issued under sections 385.500 to 385.520 shall be valid for a period
23 of twenty-four months and expire on December thirty-first of the renewal year assigned
24 by the director.

385.506. 1. A license issued under sections 385.500 to 385.520 shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

2. In connection with a vendor's application for licensure and quarterly thereafter, the vendor shall provide a list to the director of all locations in this state at which it offers coverage.

3. Notwithstanding any other provision of law, a license issued under this section shall authorize the licensee and its employees or authorized representatives to engage only in those activities that are expressly permitted in this section.

385.508. 1. At every location where portable electronics insurance is offered to customers, brochures or other written material shall be made available to a prospective customer which:

(1) Discloses that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(a) The identity of the insurer;

(b) The identity of the supervising agency;

(c) The amount of any applicable deductible and how it is to be paid;

(d) Benefits of the coverage; and

(e) Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including a description of the following:

(a) Any requirement to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(b) Proof of loss requirements;

(5) State that the customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and receive a refund of any applicable premium.

2. Portable electronics 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 under which individual customers may elect to enroll for coverage.

27 **3. Eligibility and underwriting standards for customers electing to enroll in**
28 **coverage shall be established for each portable electronics insurance program.**

385.510. 1. The employees and authorized representatives of vendors may sell or
2 **offer for sale portable electronics insurance to customers and shall not be subject to**
3 **licensure as an insurance producer under this chapter, provided that:**

4 **(1) The vendor obtains a license under sections 385.500 to 385.520 to authorize its**
5 **employees or authorized representatives to sell or offer portable electronics insurance**
6 **under this section;**

7 **(2) The insurer issuing the portable electronics insurance appoints a supervising**
8 **agency to supervise the administration of the program, including development of a training**
9 **program for employees and authorized representatives of the vendors, and shall include**
10 **basic instruction about the portable electronics insurance offered to customers and the**
11 **disclosures required under section 385.508; and**

12 **(3) No employee or authorized representative of a vendor of portable electronics**
13 **shall advertise, represent, or otherwise hold himself or herself out as a nonlimited lines**
14 **licensed insurance producer.**

15 **2. The training required in subsection 1 of this section shall be delivered to all**
16 **employees and authorized representatives of the vendors who sell or offer for sale portable**
17 **electronics insurance. The training may be provided in electronic form. However, if**
18 **conducted in an electronic form, the supervising agency shall implement a program of in-**
19 **person training conducted by licensed employees of the supervising agency to supplement**
20 **the electronic training.**

21 **3. The charges for portable electronics insurance coverage may be billed and**
22 **collected by the vendor of portable electronics. Any charge to the customer for coverage**
23 **that is not included in the cost associated with the purchase or lease of portable electronics**
24 **or related services shall be separately itemized on the customer's bill. If the charge for**
25 **coverage is included in the cost associated with the purchase or lease of portable electronics**
26 **or related services, the vendor shall clearly and conspicuously disclose to the customer that**
27 **the charge for the portable electronics or related services includes the charge for coverage.**
28 **Vendors billing and collecting such charges shall not be required to maintain such funds**
29 **in a segregated account, provided that the vendor is authorized by the insurer to hold such**
30 **funds in an alternative manner and remits such amounts to the supervising agency within**
31 **sixty days of receipt. All funds received by a vendor from a customer for the sale of**
32 **portable electronics insurance shall be considered funds held in trust by the vendor in a**
33 **fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for**
34 **billing and collection services.**

385.512. 1. The director may refuse to issue any license or renew any license required by the provisions of sections 385.500 to 385.520 for one or any combination of reasons stated in subsection 2 of this section. The director shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of the right to file a complaint with the administrative hearing commission as provided in chapter 621.

2. The director may cause a complaint to be filed with the administrative hearing commission as provided in chapter 621 against the holder of any license required by sections 385.500 to 385.520 or any entity which has failed to renew or has surrendered a license for any one or any combination of the following causes:

(1) Use of fraud, deception, misrepresentation, or bribery in securing a license issued under sections 385.500 to 385.520;

(2) Impersonation of any entity holding a license or allowing any person or entity to use its license;

(3) Disciplinary action against the holder of a license by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized in this state;

(4) Issuance of a license based upon a material mistake of fact;

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of the profession that is regulated by sections 385.500 to 385.520;

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 385.500 to 385.520, or any lawful rule adopted under such sections;

(7) Use of any advertisement or solicitation that is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(8) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(9) Violation of any professional trust or confidence.

3. In addition to the actions specified in subsections 2 and 5 of this section and in chapter 621, if a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the director may do any of the following:

(1) After notice and hearing, impose fines not to exceed five hundred dollars per violation or five thousand dollars in the aggregate for such conduct;

(2) After notice and hearing, impose other penalties that the director deems necessary and reasonable to carry out the purpose of sections 385.500 to 385.520, including:

37 (a) Suspending the privilege of transacting portable electronics insurance under
38 this section at specific business locations where violations have occurred; and

39 (b) Suspending or revoking the ability of individual employees or authorized
40 representatives to act under the license.

41 4. Any person, organization, association, or corporation who reports or provides
42 information to the director under sections 385.500 to 385.520 and who does so in good faith
43 shall not be subject to an action for civil damages as a result thereof.

44 5. After the filing of a complaint under subsection 2 of this section, the proceedings
45 shall be conducted in accordance with chapter 621. Upon a finding by the administrative
46 hearing commission that the grounds provided in subsection 2 of this section for
47 disciplinary action are met, the director may, singly or in combination, censure or place
48 the entity named in the complaint on probation on such terms and conditions as the
49 director deems appropriate for a period not to exceed five years, or may suspend for a
50 period not to exceed three years, or revoke the license of the entity. An entity whose license
51 has been revoked shall wait one year from the date of revocation to apply for relicensure.
52 Relicensure shall be at the discretion of the director after compliance with all requirements
53 of sections 385.500 to 385.520 relative to the licensing of an applicant for the first time.

54 6. The director shall maintain an information file containing each complaint filed
55 with the director relating to a holder of a license.

385.514. Notwithstanding any other provision of law:

2 (1) An insurer may terminate or otherwise change the terms and conditions of a
3 policy of portable electronics insurance only upon providing the policyholder and enrolled
4 customers with at least thirty days' notice;

5 (2) If the insurer changes the terms and conditions, the insurer shall provide the
6 vendor policyholder with a revised policy or endorsement and each enrolled customer with
7 a revised certificate, endorsement, updated brochure, or other evidence indicating a change
8 in the terms and conditions has occurred and a summary of material changes;

9 (3) Notwithstanding subdivision (1) of this section, an insurer may terminate an
10 enrolled customer's enrollment under a portable electronics insurance policy upon fifteen
11 days' notice for discovery of fraud or material misrepresentation in obtaining coverage or
12 in the presentation of a claim thereunder;

13 (4) Notwithstanding subdivision (1) of this section, an insurer may immediately
14 terminate an enrolled customer's enrollment under a portable electronics insurance policy:

15 (a) For nonpayment of premium;

16 (b) If the enrolled customer ceases to have an active service with the vendor of
17 portable electronics; or

18 (c) If an enrolled customer exhausts the aggregate limit of liability, if any, under
19 the terms of the portable electronics insurance policy and the insurer sends notice of
20 termination to the customer within thirty calendar days after exhaustion of the limit.
21 However, if the notice is not timely sent, enrollment shall continue notwithstanding the
22 aggregate limit of liability until the insurer sends notice of termination to the enrolled
23 customer;

24 (5) Where a portable electronics insurance policy is terminated by a policyholder,
25 the policyholder shall mail or deliver written notice to each enrolled customer advising the
26 customer of the termination of the policy and the effective date of termination. The written
27 notice shall be mailed or delivered to the customer at least thirty days prior to the
28 termination;

29 (6) Whenever notice is required under this section, it shall be in writing and may
30 be mailed or delivered to the vendor of portable electronics at the vendor's mailing address
31 and to its affected enrolled customers' last known mailing addresses on file with the
32 insurer. If notice is mailed, the insurer or vendor of portable electronics, as the case may
33 be, shall maintain proof of mailing in a form authorized or accepted by the U.S. Postal
34 Service or other commercial mail delivery service. Alternatively, an insurer or vendor
35 policyholder may comply with any notice required by this section by providing electronic
36 notice to a vendor or its affected enrolled customers, as the case may be, by electronic
37 means. If notice is accomplished through electronic means, the insurer or vendor of
38 portable electronics, as the case may be, shall maintain proof that the notice was sent.

385.516. The director shall set out by rule the amount of fees which sections 385.500
2 to 385.520 authorize. The fees shall be set at a level to produce revenue which shall not
3 substantially exceed the cost and expense of administering sections 385.500 to 385.520.

385.518. 1. There is hereby created in the state treasury the "Portable Electronics
2 Insurance Fund", which shall consist of money collected under sections 385.500 to 385.520.
3 The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and
4 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund
5 and, upon appropriation, money in the fund shall be used solely for the administration of
6 sections 385.500 to 385.520.

7 2. Notwithstanding the provisions of section 33.080 to the contrary, moneys in the
8 fund shall not be transferred and placed to the credit of the general revenue fund until the
9 amount in the fund at the end of the biennium exceeds three times the appropriation from
10 the fund for the preceding fiscal year. The amount, if any, in the fund which shall lapse
11 is that amount in the fund which exceeds the appropriate multiple of the appropriations
12 from the fund for the preceding fiscal year.

13 **3. The state treasurer shall invest moneys in the fund in the same manner as other**
14 **funds are invested. Any interest and moneys earned on such investments shall be credited**
15 **to the fund.**

385.520. 1. The director may promulgate rules to implement the provisions of
2 **sections 385.500 to 385.520. Any rule or portion of a rule, as that term is defined in**
3 **section 536.010, that is created under the authority delegated in sections 385.500 to 385.520**
4 **shall become effective only if it complies with and is subject to all of the provisions of**
5 **chapter 536 and, if applicable, section 536.028. Sections 385.500 to 385.520 and chapter**
6 **536 are nonseverable and if any of the powers vested with the general assembly pursuant**
7 **to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
8 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
9 **proposed or adopted after the effective date of this section shall be invalid and void.**

10 **2. The provisions of sections 385.500 to 385.520 shall become effective January 1,**
11 **2012.**

T