

CHAPTER 87

SALE OF PORTABLE ELECTRONICS INSURANCE — REGULATION AND LICENSURE

S.F. 487

AN ACT regulating the sale of portable electronics insurance, including requiring licensure, providing for fees and penalties, and including effective date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 522E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Commissioner*” means the commissioner of insurance.
2. “*Consumer*” means a person who purchases portable electronics in a retail transaction.
3. “*Endorsee*” means an unlicensed employee or authorized representative of a licensed portable electronics vendor.
4. “*Enrollment*” means the process of soliciting or accepting enrollments or applications from a consumer under a portable electronics insurance policy, which includes informing the consumer of the availability of coverage, preparing and delivery of the certificate of insurance or notice of proposed insurance, or otherwise assisting the consumer in making an informed decision whether or not to elect to purchase portable electronics insurance.
5. “*Free-trial offer*” means an offer to a consumer under which portable electronics insurance is provided free of charge for a limited time period subsequent to which a charge is made to the consumer for the insurance.
6. *a.* “*License period*” means all of that three-year period beginning as described in paragraph “*b*”, subparagraph (1) or (2), as applicable, and ending the second succeeding year on the last calendar day of the month in which the initial license was issued.
 - b.* A license period shall be determined for each person as follows:
 - (1) Upon initial licensing, the license period shall start on the date the license is issued.
 - (2) For a subsequent license, the license period shall start on the first day following the month in which the initial license was issued.
 - c.* A license shall be renewed on or before the expiration date of the license period.
7. *a.* “*Portable electronics*” means any of the following devices:
 - (1) Personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing, or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, and automatic answering devices, including their accessories and service related to the use of the devices.
 - (2) Any other electronic device that is portable in nature that the commissioner approves.*b.* “*Portable electronics*” does not include telecommunications switching equipment, transmission wires, cell site transceiver equipment, or other equipment and systems used by telecommunications companies to provide telecommunications service to consumers.
8. *a.* “*Portable electronics insurance*” means a contract providing coverage for the repair or replacement of portable electronics against any one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage, or other applicable perils.
 - b.* “*Portable electronics insurance*” does not include any of the following:
 - (1) A service contract 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.
 - (2) A policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty.
 - (3) A homeowner’s, renter’s, private passenger automobile, commercial multiperil, or similar policy.
9. “*Portable electronics insurance license*” means a document issued by the commissioner pursuant to this chapter authorizing a portable electronics vendor to offer or sell portable electronics insurance in this state.

10. “*Portable electronics vendor*” means any person in the business, directly or indirectly, of selling, reselling, soliciting, or leasing portable electronics, their accessories, and related services to consumers.

Sec. 2. NEW SECTION. 522E.2 Licensure required.

A person shall not offer or sell any form of portable electronics insurance in this state unless the person is licensed as an insurance producer pursuant to chapter 522B, is issued a portable electronics insurance license pursuant to this chapter, or is an endorsee who is in compliance with section 522E.6.

Sec. 3. NEW SECTION. 522E.3 Portable electronics insurance license.

A portable electronics vendor that applies for a license and complies with the requirements of this chapter shall be issued a portable electronics insurance license by the commissioner that authorizes the licensee and the licensee’s endorsees to offer or sell portable electronics insurance to a consumer in connection with, and incidental to, the sale of portable electronics or the sale and provision of accessories or services related to the use of portable electronics.

Sec. 4. NEW SECTION. 522E.4 Application and fees.

1. A portable electronics vendor applying for a portable electronics insurance license under this chapter shall submit all of the following to the commissioner:

a. A written application for licensure, signed by the applicant or an officer of the applicant, in the form prescribed by the commissioner.

b. A certificate by the insurer that is to be named in the portable electronics insurance license, stating that the insurer is satisfied that the named applicant is trustworthy and competent to act as a portable electronics insurance licensee limited to this purpose and that the insurer will appoint the applicant to act as its agent to transact the kind or kinds of insurance that are permitted by this chapter if the portable electronics insurance license applied for is issued by the commissioner. The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the commissioner.

c. An application fee of the lesser of fifty dollars per each endorsee at a location of the vendor or five hundred dollars per location valid for a three-year period and, for each three-year period thereafter, a renewal fee in the same amount. A maximum fee of five thousand dollars shall apply for licensure of a portable electronics vendor with multiple locations. The fees collected shall be deposited as provided in section 505.7.

2. Costs associated with any enforcement action against or investigation of a portable electronics vendor licensed under this chapter shall be paid for by the portable electronics vendor.

Sec. 5. NEW SECTION. 522E.5 License renewal.

1. Not less than sixty days before a portable electronics insurance license will expire, the commissioner may use an electronic delivery method, including electronic mail or other similar electronic method of delivery, to deliver, or may mail, to the latest electronic mail or mailing address appearing in the commissioner’s records, an application to the licensee to renew a portable electronics insurance license for the appropriate succeeding license term. It is the licensee’s responsibility to renew the license, whether or not a renewal notice is received.

2. The commissioner may accept a late renewal without penalty, provided that the licensee’s failure to comply is due to a clerical error or inadvertence.

3. An application for renewal of a portable electronics insurance license may be filed on or before the expiration date of the license. An application for renewal of an expired license may be filed after the expiration date and until that same month and date of the next succeeding year.

4. The commissioner shall impose a penalty fee equal to one-half of the renewal fee for the portable electronics insurance license for any application for renewal that is filed after the expiration date of the license.

Sec. 6. NEW SECTION. 522E.6 Endorsee requirements.

An endorsee of a portable electronics vendor that has been issued a portable electronics insurance license pursuant to this chapter may sell or offer insurance products under the authority of the vendor's portable electronics insurance license if all of the following conditions have been met:

1. The endorsee is eighteen years of age or older.
2. The portable electronics vendor, at the time of submission of an application for a portable electronics insurance license pursuant to section 522E.4, includes a list of all locations in this state at which the vendor intends to offer coverage under a policy of portable electronics insurance. The list shall be maintained by the portable electronics vendor in a form prescribed by, or format acceptable to, the commissioner, shall be updated annually, and shall be made available to the commissioner for review and inspection upon request.
3. The portable electronics vendor provides for the training of its endorsees under a program developed by a licensed property and casualty insurance producer prior to allowing its endorsees to offer or sell portable electronics insurance. The training shall meet the following minimum standards:
 - a. Each endorsee shall receive instruction about the applicable kinds or types of portable electronics insurance authorized for sale to prospective consumers in this state as provided in section 522E.9, subsection 5.
 - b. Each endorsee shall receive training about ethical sales practices.
 - c. Each endorsee shall receive training about the disclosures to be given to prospective consumers pursuant to section 522E.9.
 - d. The retraining of endorsees shall be conducted whenever there is a material change in the insurance products sold that requires modification of the training materials, but in no event less frequently than every three years for each endorsee.
 - e. The portable electronics vendor shall maintain a list of its endorsees who have completed the required training, and make the list available to the commissioner upon request.

Sec. 7. NEW SECTION. 522E.7 Endorsee conduct.

An endorsee may act on behalf of and under the supervision of a licensed portable electronics vendor in matters relating to transacting portable electronics insurance under that vendor's license. The conduct of an endorsee acting within the scope of the endorsee's employment or agency shall be deemed the conduct of the licensed portable electronics vendor for purposes of this chapter.

Sec. 8. NEW SECTION. 522E.8 Violations and penalties.

1. If a licensed portable electronics vendor or endorsee violates any provision of this chapter or any other provision of this title, the commissioner may do any of the following:

- a. After notice and hearing, suspend or revoke the license of the portable electronics vendor.
- b. After notice and hearing, impose penalties on the portable electronics vendor for its conduct or that of its endorsees.
- c. After notice and hearing, impose other penalties that the commissioner deems necessary and convenient to carry out the purposes of this chapter, including suspending the privilege of transacting portable electronics insurance pursuant to this chapter at specific business locations of the portable electronics vendor where violations have occurred, imposing penalties on the portable electronics vendor, and suspending or revoking the ability of individual endorsees to act under the vendor's license.

2. If any person sells insurance in connection with, or incidental to, the sale of portable electronics or the sale or provision of accessories or services related thereto, or holds oneself or an organization out as a licensed portable electronics vendor without obtaining the license required by this chapter, or as being an insurance producer licensed pursuant to chapter 522B without obtaining that license, the commissioner may issue a cease and desist order.

Sec. 9. NEW SECTION. 522E.9 Requirements at time of sale.

A licensed portable electronics vendor shall not sell portable electronics insurance pursuant to this chapter unless, at the time of sale, or reasonably thereafter with respect to a sale or enrollment occurring by telephone, all of the following conditions are satisfied:

1. The portable electronics vendor provides brochures or other written materials to the prospective consumer that do all of the following:

a. Summarize the material terms and conditions of coverage offered, including the identity of the insurer.

b. Describe the process for filing a claim, including a toll-free telephone number to report a claim.

c. Disclose any additional information on the price, benefits, exclusions, conditions, or other limitations of those policies that the commissioner may, by rule, prescribe.

d. Provide the name, address, telephone number, and license number of the portable electronics vendor or the property and casualty insurance broker-agent appointed by the insurer issuing portable electronics insurance coverage to the portable electronics vendor.

2. The portable electronics vendor or its endorsees make all of the following disclosures, which shall either be acknowledged in writing by the consumer, be provided in writing to the consumer, or, for sales made in person, shall be displayed by clear and conspicuous signs that are posted at every location where portable electronics insurance contracts are executed, such as the counter where the consumer signs the portable electronics insurance contract:

a. That the purchase by the consumer of the kinds of insurance prescribed in this chapter is not required in order to purchase portable electronics, accessories, or related services.

b. That the insurance policies offered by the portable electronics vendor may provide a duplication of coverage already provided by other insurance policies covering the consumer.

c. That the vendor or endorsee of the portable electronics vendor is not qualified or authorized to evaluate the adequacy of the consumer's existing insurance coverages, unless that person is licensed pursuant to chapter 522B.

d. That the consumer may cancel the insurance at any time. If the consumer cancels, any unearned premium will be refunded in accordance with applicable law.

3. The material terms and conditions of coverage are provided to every person who elects to purchase the coverage.

4. Costs for the insurance are separately itemized in any billing statement for the insurance. However, if the portable electronics insurance is included with the purchase or lease of portable electronics and accessories or related services, the portable electronics vendor shall clearly and conspicuously disclose to the consumer that the insurance coverage is included with the purchase of the portable electronics or related services and shall disclose the stand-alone cost of the premium for the same or similar insurance, if any, on the consumer's bill and in any marketing materials made available at the point of sale.

5. The portable electronics insurance is provided under an individual policy issued to the consumer, or under a group or master policy issued to an organization through a licensed insurance producer or through a licensed portable electronics vendor by an insurer authorized to transact the applicable kinds or types of insurance in this state.

6. Portable electronics insurance shall not be sold through a free-trial offer.

Sec. 10. NEW SECTION. 522E.10 Charges and collection of moneys.

1. Charges for portable electronics insurance may be billed and collected by a licensed portable electronics vendor. A licensed vendor shall not be required to maintain those moneys in a segregated account if the insurer represented by the vendor has provided in writing that the moneys need not be segregated from moneys received by the portable electronics vendor on account of the sale or lease of portable electronics or related services or accessories.

2. All moneys received by a licensed portable electronics vendor from a consumer for the sale of portable electronics insurance shall be considered moneys held in trust by the portable electronics vendor in a fiduciary capacity for the benefit of the insurer. A licensed portable electronics vendor may receive compensation for billing and collection services.

Sec. 11. NEW SECTION. 522E.11 Other restrictions.

1. Under the authority of a portable electronics insurance license, a portable electronics vendor shall not do any of the following:

a. Offer to sell insurance except in conjunction with, and incidental to, the business of selling portable electronics, their accessories, or related services.

b. Advertise, represent, or otherwise portray itself or its endorsees as licensed insurers or property and casualty insurance broker-agents.

c. Pay an endorsee compensation based primarily on the number of consumers electing coverage under the portable electronics vendor's license. However, this chapter does not prohibit the payment of compensation to an endorsee of a portable electronics vendor for activities under the vendor's license that is incidental to the endorsee's overall compensation. The incidental compensation shall not exceed fifteen dollars per transaction for portable electronics insurance coverage.

2. Unless lawfully transacting the business of insurance pursuant to a certificate of authority issued for the appropriate class of insurance, a person obligated to perform under a contract offered in or from this state that meets the definition of portable electronics insurance shall be deemed to be unlawfully transacting the business of insurance.

Sec. 12. NEW SECTION. 522E.12 Policy forms.

An insurer that provides insurance to be sold by a licensed portable electronics vendor shall file a copy of the policy form issued to a consumer, or of any policy or certificate issued under a group or master policy to an organization through an insurance producer licensed under chapter 522B or through a licensed portable electronics vendor, with the commissioner, who shall make the policy form available to the public.

Sec. 13. NEW SECTION. 522E.13 Portable electronics insurance policy changes.

1. An insurer may terminate a portable electronics insurance policy or otherwise change the terms and conditions of a portable electronics insurance policy only upon providing the licensed portable electronics vendor that is the policyholder and enrolled consumers with at least thirty calendar days' written notice.

2. If the insurer changes the terms and conditions of a policy of portable electronics insurance, the insurer shall provide the licensed portable electronics vendor that is the policyholder with a revised policy or endorsement and each enrolled consumer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions of the policy has occurred and a summary of those changes.

3. Notwithstanding subsection 1, an insurer may terminate an enrolled consumer's enrollment under a portable electronics insurance policy upon fifteen calendar days' notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

4. Notwithstanding subsection 1, an insurer may immediately terminate an enrolled consumer's enrollment under a portable electronics insurance policy without prior notice for any of the following reasons:

a. Nonpayment of premium.

b. If the enrolled consumer ceases to have an active service with the licensed portable electronics vendor that is the policyholder.

c. If the enrolled consumer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled consumer within thirty calendar days after exhaustion of the limit. However, if notice is not sent within thirty calendar days, enrollment shall continue notwithstanding the aggregate limit of liability until thirty calendar days from the date the insurer sends notice of termination to the enrolled consumer.

5. If a portable electronics insurance policy is terminated by the licensed portable electronics vendor that is the policyholder, the portable electronics vendor shall mail or deliver a written notice to each enrolled consumer advising the enrolled consumer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered by the portable electronics vendor to the enrolled consumer at least thirty calendar days prior to the termination. However, if the notice is not sent within thirty calendar days, enrollment shall continue until thirty calendar days from the date the portable electronics vendor sends notice of termination to the enrolled consumer or until a new portable electronics insurance policy is in effect.

6. Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section, it shall be in writing and sent within the

notice period required pursuant to this section. Notices and correspondence shall be sent to the licensed portable electronics vendor that is the policyholder at the portable electronics vendor's mailing address specified for that purpose and to its affected enrolled consumers' last known mailing addresses on file with the insurer or the portable electronics vendor. The insurer or portable electronics vendor shall maintain proof that the notice or correspondence was sent for not less than three years after that notice or correspondence was sent.

Sec. 14. NEW SECTION. 522E.14 **Rules.**

The commissioner may adopt rules pursuant to chapter 17A to implement and administer this chapter.

Sec. 15. NEW SECTION. 522E.15 **Other law.**

Nothing in this chapter regulating the sale of portable electronics insurance shall be construed to impair or impede the application of any other law regulating the sale of portable electronics insurance.

Sec. 16. EFFECTIVE DATE. This Act takes effect January 1, 2016.

Approved May 1, 2015