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BILL ANALYSIS

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Senate Bill 859 (as introduced 12-1-11)
Sponsor: Senator Dave Hildenbrand
Committee: Insurance

Date Completed: 5-21-12

CONTENT

The bill would add Chapter 29A (Portable Electronics Insurance) to the Insurance Code to do the following:

- **-- Prohibit a vendor from selling or offering portable electronics insurance without a limited lines producer license.**
- **-- Require a vendor to maintain a registry of Michigan locations authorized to sell or solicit portable electronics insurance, and open the registry to inspection by the Commissioner of the Office of Financial and Insurance Regulation (OFIR).**
- **-- Require a vendor to make available to prospective customers brochures or other materials summarizing the terms of the coverage and disclosing specific information.**
- **-- Require an insurer issuing a portable electronics insurance policy to establish eligibility and underwriting standards for customers.**
- **-- Allow a vendor's employees and authorized representatives to sell portable electronics insurance without a limited lines license if certain conditions were met.**
- **-- Allow a vendor to bill and collect the charges for portable electronics insurance coverage for the insurer's benefit and receive compensation for these services.**
- **-- Authorize the Commissioner to impose an administrative fine and suspend or revoke transaction privileges for a violation of Part 29A.**
- **-- Prescribe conditions for the termination of a portable electronics insurance policy, including customer notice requirements.**
- **-- Require an application for a license under Chapter 29A to be made within 90 days after OFIR made the application available.**
- **-- Establish fees for the issuance and renewal of a portable electronics limited lines license.**

The bill also would amend Chapter 12 (Agents, Solicitors, Adjustors, and Counselors) of the Code to add portable electronics insurance to the definition of "limited lines insurance".

Proposed Chapter 29A is described below in further detail.

Vendor License

The bill would prohibit a vendor from selling or offering coverage under a policy of portable electronics insurance to a customer unless the vendor were licensed as a limited lines producer under Chapter 12. The license would 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 any location at which the vendor engaged in portable electronics transactions.

"Vendor" would mean a person in the business of directly or indirectly engaging in portable electronic device transactions. "Portable electronic device" would mean an electronic device that is portable in nature and any accessories or services related to the use of the device.

"Portable electronics insurance" would mean insurance that provides coverage for the repair or replacement of a portable electronic device, including coverage against loss, theft, inoperability because of mechanical failure, malfunction, damage, or other similar causes of loss. The term would not include any of the following:

- A service contract or extended warranty that provides coverage limited to the repair, replacement, or maintenance of a portable electronic device if there is an operational or structural failure caused by a defect in materials or workmanship, accidental damage from handling, or normal wear and tear.
- An insurance policy covering a seller's or manufacturer's obligations under a warranty.
- A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar insurance policy.

"Portable electronics transaction" would mean any of the following:

- A sale or lease of a portable electronic device by a vendor to a customer.
- A sale of a service related to the use of a portable electronic device by a vendor to a customer.

Registry

A vendor would have to maintain a registry of locations that were authorized to sell or solicit portable electronics insurance in Michigan. Upon the Commissioner's request and within 10 days' notice to the vendor, the registry would have to be open to inspection and examination by the Commissioner during the vendor's regular business hours.

Customer Brochures & Materials

At every location where a vendor offered portable electronics insurance to customers, the vendor would have to make brochures or other written materials available to a prospective customer. The brochures or materials would have to do all of the following:

- Disclose that portable electronics insurance could provide a duplication of coverage already provided by the customer's homeowner's insurance policy, renter's insurance policy, or other insurance coverage.
- State that the customer's enrollment in a portable electronics insurance program was not required to purchase or lease a portable electronics device or services for it.
- Summarize the process for filing a claim, including a description of how to return a device and the maximum fee applicable if the customer failed to comply with any equipment return requirements.
- State that the customer could cancel enrollment for coverage at any time and that the person paying the premium would receive a refund of any applicable unearned premium.

In addition, the brochures or materials would have to summarize the material terms of the insurance coverage, including all of the following:

- The insurer's identity.
- The identity of the supervising entity (an insurance producer or insurer licensed under the Code).
- The amount of an applicable deductible and how it was to be paid.
- Benefits of the coverage.
- Key terms and conditions of the coverage, such as whether portable electronics could be repaired or replaced with similar make and model reconditioned or nonoriginal manufacturer parts or equipment.

Inland Marine Policy

A vendor could offer portable electronics insurance on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to the vendor for its enrolled customers.

Eligibility & Underwriting Standards

An insurer issuing a policy of portable electronics insurance would have to establish eligibility and underwriting standards for customers electing to enroll in coverage for each portable electronics insurance program.

Sales by Vendor Employees & Representatives

The employees and authorized representatives of a vendor could sell or offer portable electronics insurance to customers without a limited lines producer license if either of the following criteria were met:

-- The vendor had a limited lines producer license that authorized its employees or authorized representatives to sell or offer portable electronics insurance.
-- The insurer issuing the insurance coverage either directly supervised or appointed a supervising entity to supervise the administration of the portable electronics insurance coverage program, including development of a training program for employees and authorized representatives of the vendors.

The training would have to be delivered to employees and authorized representatives who were engaged directly in the activity of selling or offering portable electronics insurance coverage.

The training could be provided in electronic form. In that case, the supervising entity would have to implement a supplemental education program regarding portable electronics insurance that was conducted and overseen by licensed employees of the supervising entity.

The training also would have to provide basic instruction about the insurance coverage offered to customers and the disclosures required under the bill.

An employee or authorized representative of a vendor could not advertise, represent, or otherwise hold himself or herself out as a limited lines licensed insurance producer.

Collection & Billing

A vendor could bill and collect the charges for portable electronics insurance coverage, and would have to itemize separately on the enrolled customer's bill any charge for coverage that was not included in the cost associated with the purchase or lease of a portable electronic device or related services. If the coverage were included with the purchase or lease of a device or related services, the vendor clearly and conspicuously would have to disclose that to the customer.

A vendor billing and collecting these charges would not have to maintain the proceeds in a segregated account if the vendor were authorized by the insurer to hold the proceeds in an alternative manner and remitted them to the supervising entity within 60 days after receiving them. All money a vendor received from an enrolled customer from the purchase of portable electronics insurance would be considered money held in trust by the vendor in a fiduciary capacity for the insurer's benefit. A vendor could receive compensation for billing and collection services.

Violations & Penalties

If a vendor or an employee or authorized representative violated proposed Chapter 29A, after notice and hearing, the OFIR Commissioner could impose an administrative fine of up to $500 for each violation. The Commissioner, however, could not assess administrative fines against any person that in the aggregate were more than $5,000 for multiple violations that involved the same conduct, action, or practice.

In addition, after notice and hearing, the Commissioner could impose other penalties that he or she considered necessary and reasonable to carry out the purpose of Chapter 29A, including either of the following:

-- Suspending the privilege of transacting portable electronics insurance at specific locations where violations had occurred.
-- Suspending or revoking the ability of individual employees or authorized representatives to act under the vendor's license.

Termination of Policy

Generally, an insurer could terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only if it gave at least 30 days' notice to the vendor that was the policyholder and enrolled customers. If the insurer changed the terms and conditions, the insurer would have to give the vendor a revised policy or endorsement, and give each enrolled customer a revised certificate, endorsement, updated brochure, or other evidence indicating that a change had occurred and a summary of material changes.

An insurer could terminate a customer's enrollment 15 days after notifying the customer if the insurer discovered fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

An insurer could terminate enrollment immediately if the premium were not paid, or if the enrolled customer ceased to have an active service with the vendor of the device.

An insurer also could terminate enrollment immediately if the customer had exhausted the aggregate limit of liability, if any, under the terms of the policy and the insurer had sent notice of termination within 30 calendar days after exhaustion of the limit. If notice were not sent in a timely manner, however, enrollment would have to continue even though the aggregate limit of liability had been exhausted until the insurer sent notice of termination to the customer.

If a portable electronics insurance policy were terminated by a vendor policyholder, the vendor would have to mail or deliver written notice to each enrolled customer advising him or her of the termination and its effective date. The notice would have to be mailed or delivered to the customer at least 30 days before the termination.

A required notice would have to be in writing. An insurer could mail or deliver a notice to a vendor at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If a notice were mailed, the insurer or vendor that sent the notice would have to maintain proof of mailing in a form authorized or accepted by the U.S. Postal Service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder could comply with any notice requirement by giving notice to a vendor or its affected enrolled customers, as applicable, by electronic means. If electronic notice were given, the insurer or vendor would have to maintain proof that it was sent.

License Application & Fee

A person seeking a license under proposed Chapter 29A would have to file a sworn application with OFIR on forms prescribed and furnished by OFIR. An application would have to provide the location of the applicant's home office, and provide the name, residence address, and other information required by OFIR for an employee or officer whom the applicant designated as the person responsible for the vendor's compliance with Chapter 29A.

If the vendor derived more than 50% of its revenue from the sale of portable electronics insurance, the vendor would have to give the name, residence address, and other information required by OFIR of all of the vendor's officers, directors, and shareholders of record who had beneficial ownership of at least 10% of any class of securities registered under Federal securities laws.

An application would have to be made within 90 days after OFIR made the application available.

An initial license issued under Chapter 29A would expire 24 months after the issue date assigned by OFIR.

Each licensed vendor would have to pay OFIR a fee in amount determined by the Office. The fee could not exceed $1,000 for an initial portable electronics limited lines license or $500 for each renewal. If a vendor were engaged in portable electronics device transactions at not more than 10 Michigan locations, however, the fee could not exceed $100 for an initial license or a renewal.

MCL 500.1201 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). Administering a licensing program for vendors of portable electronics insurance would introduce some new costs to the Department. The bill would establish a schedule of fees for the licenses in the bill, which could not exceed $1,000 for the first year, or $500 for renewal each subsequent year. If a vendor sold portable electronic device insurance at 10 or fewer locations, that fee could not be set higher than $100 annually.

The bill also would establish administrative fines for violations of the proposed chapter. Those fines would be not more than $500 for each violation, or a maximum of $5,000 for multiple violations that were similar in nature. Revenue from these fines would be deposited in the Insurance Bureau Fund, which supports the operation of the Office of Financial and Insurance Regulation.

Fiscal Analyst: Josh Sefton