

Licensing Requirements: Portable Electronics Insurance License

Chapter 13 of the Acts of 2014 (the “Act”) regulates the sale of Portable Electronics Insurance. Portable Electronics Insurance is defined in the Act as “insurance providing coverage for the repair or replacement of portable electronics which may provide coverage for portable electronics 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.” The Act can be found in Massachusetts General Laws Chapter 175, §162Y.

Portable Electronics Insurance does not include: (i) a service contract governed by sections 149M to 149X, inclusive, of chapter 175; (ii) a policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or (iii) a homeowner’s, renter’s, private passenger automobile, commercial multi-peril, or similar policy.

LICENSE REQUIREMENT

Vendors in the business of engaging in portable electronics transactions directly or indirectly must be licensed to offer or sell Portable Electronics Insurance. A “Portable electronics transaction” is “the sale or lease of portable electronics by a vendor to a customer; or (b) the sale of a service related to the use of portable electronics by a vendor to a customer.”

The Act authorizes the Division of Insurance to issue a limited lines license to sell Portable Electronics Insurance to vendors. The license is valid for a 2-year period and no examination is required for licensure. The Portable Electronics Insurance limited lines license issued to a vendor of portable electronics authorizes the sale of Portable Electronics Insurance and no other line of insurance.

A Portable Electronics Insurance limited lines license issued to a vendor authorizes “any employee or authorized representative” of the vendor to sell Portable Electronics Insurance at each location where the vendor engages in portable electronics transactions provided the vendor meets the requirements of the new law.

Any vendor engaging in portable electronics insurance transactions *on or before* April 23, 2014 must apply for licensure within 90 days of the application being made available by the Commissioner of Insurance. Any applicant commencing operations *after* the effective date of the Act, April 23, 2014, must obtain a limited lines license prior to offering portable electronics insurance. The provisions of Massachusetts General Laws Chapter 175, §177 shall apply to all persons not authorized to sell or offer portable electronics insurance pursuant to a license issued under the Act.

THE LICENSE APPLICATION

An applicant for a limited lines Portable Electronics Insurance license shall submit:

1. A complete Portable Electronics Insurance license application;
2. A check payable to the Commonwealth of Massachusetts for the application fee of \$1,000 per initial license or \$500 per renewal. Checks are to be made payable to the Commonwealth of Massachusetts.
3. Massachusetts-domiciled corporate applicants (corporations, LLCs) must be registered and in good standing with the Massachusetts Secretary of State and are to submit a current Certificate of Existence along with the initial application.
4. Non-resident corporate applicants must be registered with the Massachusetts Secretary of State and authorized to transact business in the Commonwealth. Non-resident applicants must submit a current Certificate of Existence from the Massachusetts Secretary of State, along with a Certificate of Good Standing from its resident state with the initial application and licensing fee.

The application must include the name and residential address of the officer or employee designated by the applicant as the person who will be responsible for the vendor's compliance with the portable electronics insurance law and/or other information required by the Commissioner of Insurance.

INSURANCE PRODUCER LICENSE NOT REQUIRED

The employees and authorized representatives of a portable electronics vendor may sell or offer portable electronics insurance to customers and shall not be subject to licensure under the new law provided:

1. The vendor obtains a Portable Electronics Insurance limited lines license to authorize its employees or authorized representatives to sell or offer portable electronics insurance; and
2. The insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the vendor. The training required by this paragraph shall comply with the following:
 - (i) Training shall be delivered to employees and authorized representatives of a vendor who are directly engaged in the activity of selling or offering portable electronics insurance;
 - (ii) Training may be provided in electronic form; provided, however, if conducted in an electronic form the insurer or a supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity; and
 - (iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required; and
3. No employee or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself out as a non-limited lines licensed insurance producer.

CONSUMER DISCLOSURE REQUIREMENTS

At each location where Portable Electronics Insurance is offered to customers; brochures and other written materials must be made available that include the following:

1. Disclosure 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 entity;
 - c) the amount of any applicable deductible and how it is to be paid;
 - d) the 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 non-original manufacturer parts or equipment;
4. Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

5. State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund or credit of any applicable unearned premium.

BILLING AND COLLECTION OF PREMIUM BY LICENSED VENDORS

Charges for Portable Electronics Insurance coverage may be billed and collected by a licensed vendor of portable electronics. Any charges to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the enrolled customer's bill. 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 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics 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. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics, the vendor shall clearly disclose to the enrolled customer that the coverage is included with the portable electronics.

SANCTIONS

The provisions of Chapter 176D (Unfair Practices in Business of Insurance) shall apply to any person engaged in the business of Portable Electronics Insurance. In addition, if a vendor of portable electronics or its employee or authorized representative violates any provision of the Portable Electronics Insurance Law, the Commissioner of Insurance may, after notice and hearing, impose fines, suspend or revoke the privilege of transacting Portable Electronics Insurance at specific locations, or suspend or revoke the ability of individual employees or authorized representatives to act under the license.