

Assembly Bill No. 690

CHAPTER 165

An act to amend Sections 1758.6, 1758.61, 1758.62, 1758.63, 1758.64, 1758.65, 1758.66, 1758.661, 1758.67, 1758.68, 1758.69, 1758.691, and 1758.692 of the Insurance Code, relating to portable electronics insurance.

[Approved by Governor August 3, 2011. Filed with
Secretary of State August 3, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 690, Solorio. Portable electronics insurance.

(1) Existing law provides for the Insurance Commissioner to issue a communications equipment insurance agent license to a communications equipment vendor, as defined, authorizing the vendor to sell or offer to its customers insurance covering communications equipment and the sale or provision of services for communications equipment. Existing law authorizes employees and franchisees of the vendor to be listed as endorsees on the license for the purpose of selling or offering communications equipment insurance under the authority of the agent's license. Existing law imposes certain requirements on the licensees and endorsees with respect to training and other related matters. Existing law makes it a crime to sell or offer for sale communications equipment insurance without a production agency license.

This bill would revise and recast the above provisions by deleting the term communications equipment and replacing it with the term portable electronics, as defined. The bill would authorize endorsees, defined as employees and authorized representatives of the portable electronics vendor, to sell or offer portable electronics insurance pursuant to the authority of the vendor's portable electronics insurance agent license, as provided. The bill would also make changes to vendor reporting, endorsee compensation, and recordkeeping requirements, and would expand the types of products for which a license is required in order to sell portable electronics insurance.

Because this bill would expand the scope of a crime by expanding the scope of the products for which portable electronics insurance license is required, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1758.6 of the Insurance Code is amended to read:

1758.6. No portable electronics vendor shall offer or sell any form of portable electronics insurance in this state unless that person is licensed as an insurance agent or broker pursuant to Article 3 (commencing with Section 1631) or has complied with the requirements of this article and has been issued a license by the commissioner as provided in this article.

SEC. 2. Section 1758.61 of the Insurance Code is amended to read:

1758.61. The commissioner may issue to an applicant that has complied with the requirements of this article a portable electronics insurance agent license that authorizes the licensee and its endorsees to offer or sell insurance in connection with, and incidental to, the sale of portable electronics or the sale or provision of accessories or services related to the use of portable electronics.

SEC. 3. Section 1758.62 of the Insurance Code is amended to read:

1758.62. (a) An applicant for a portable electronics insurance agent license under this article shall submit all of the following to the commissioner:

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

(2) A certificate by the insurer that is to be named in the portable electronics insurance agent license, stating that the insurer has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent 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 article, if the portable electronics insurance agent 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.

(3) An application fee and, for each license period thereafter, a renewal fee, in an amount or amounts determined by the department as sufficient to defray the department's actual cost of processing the application or renewal and implementing this article. The limitation on fee increases of 10 percent without prior approval of the Legislature set forth in Section 12978 shall not apply to the application or renewal fee set forth in this subdivision during the years 2003, 2004, and 2005.

(b) Notwithstanding any other provision of law to the contrary, the provisions set forth in Sections 1667, 1668, 1668.5, 1669, 1670, 1738, and 1739 apply to any application for or issuance of a license pursuant to this article.

(c) Costs associated with any enforcement action or investigation shall be paid for by the person or organization licensed pursuant to this article.

SEC. 4. Section 1758.63 of the Insurance Code is amended to read:

1758.63. An endorsee of a portable electronics vendor that has been issued a portable electronics insurance agent license pursuant to this article may sell or offer insurance products under the authority of the vendor's

portable electronics insurance agent license if all of the following conditions have been met:

(a) The endorsee is 18 years of age or older.

(b) The portable electronics vendor, at the time it submits its portable electronics insurance agent's license application pursuant to Section 1758.62, also establishes a list of all locations in this state at which it offers 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 and shall be updated annually. The list shall be maintained by the portable electronics vendor and made available to the commissioner for review and inspection upon request.

(c) Each portable electronics vendor licensed pursuant to this article shall provide for the training of its endorsees under a program developed by a licensed property and casualty broker or agent prior to allowing its endorsees to offer or sell insurance products. The training shall meet the following minimum standards:

(1) Each endorsee shall receive instruction about the types of insurance specified in subdivision (e) of Section 1758.69 that are offered for sale to prospective customers.

(2) Each endorsee shall receive training about ethical sales practices.

(3) Each endorsee shall receive training about the disclosures to be given to prospective customers pursuant to Section 1758.66.

(4) 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.

SEC. 5. Section 1758.64 of the Insurance Code is amended to read:

1758.64. An endorsee may act on behalf of and under the supervision of the portable electronics insurance agent in matters relating to transacting insurance under that agent's license. The conduct of an endorsee of a portable electronics insurance agent acting within the scope of employment or agency shall be deemed the conduct of the portable electronics insurance agent for purposes of this article.

SEC. 6. Section 1758.65 of the Insurance Code is amended to read:

1758.65. (a) If a licensee or endorsee violates any provision of this article or any other provision of this code, the commissioner may do any of the following:

(1) After notice and hearing, suspend or revoke the license of the portable electronics insurance agent.

(2) After notice and hearing, impose fines on the portable electronics insurance agent for its conduct or that of its endorsees.

(3) After notice and hearing, impose other penalties that the commissioner deems necessary and convenient to carry out the purpose of this code, including suspending the privilege of transacting portable electronics insurance pursuant to this article at specific business locations where violations have occurred, imposing fines on the portable electronics insurance

agent, and suspending or revoking the ability of individual endorsees to act under the vendor's license.

(b) 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 himself or herself or an organization out as a portable electronics insurance agent without obtaining the license required by this article, or as being licensed pursuant to Chapter 5 (commencing with Section 1621) without obtaining that license, the commissioner may issue a cease and desist order pursuant to Section 12921.8.

(c) Notwithstanding any other provision of law to the contrary, the provisions of Section 1748.5 are applicable to both the organization issued a license pursuant to this article and any endorsee to that license.

SEC. 7. Section 1758.66 of the Insurance Code is amended to read:

1758.66. A portable electronics insurance agent shall not sell insurance pursuant to this article by unsolicited telephone calls or otherwise 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:

(a) The portable electronics insurance agent provides brochures or other written materials to the prospective purchaser that do all of the following:

(1) Summarize the material terms and conditions of coverage offered, including the identity of the insurer.

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

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

(4) Provide the name, address, telephone number, and license number of the licensee or the property and casualty broker-agent appointed by the insurer issuing portable electronics insurance coverage to the licensee, as well as the department's toll-free consumer hotline.

(b) The portable electronics insurance agent or its endorsees make all of the following disclosures, which shall be acknowledged in writing by the purchaser, or displayed by clear and conspicuous signs that are posted at every location where contracts are executed, such as the counter where the purchaser signs the service agreement, or provided in writing to the purchaser:

(1) That the purchase by the customer of the kinds of insurance prescribed in this article is not required in order to purchase portable electronics, accessories, or related services.

(2) That the insurance policies offered by the portable electronics insurance agent may provide a duplication of coverage already provided by other insurance policies covering the purchaser.

(3) That the endorsee of the portable electronics insurance agent is not qualified or authorized to evaluate the adequacy of the purchaser's existing insurance coverages, unless that person is licensed pursuant to Article 3 (commencing with Section 1631).

(4) That the customer may cancel the insurance at any time. If the customer cancels any unearned premium will be refunded in accordance with applicable law.

(c) The material terms and conditions of coverage are provided to every person who elects to purchase that coverage.

(d) Costs for the insurance are separately itemized in any billing statement for the insurance. However, if the portable electronics coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that the coverage is included with the purchase of the portable electronics or related services.

(e) The insurance is provided under an individual policy issued to the purchaser, or under a group or master policy issued to an organization licensed as a portable electronics insurance agent by an insurer authorized to transact the applicable kinds or types of insurance in this state.

SEC. 8. Section 1758.661 of the Insurance Code is amended to read:

1758.661. Charges for portable electronics insurance may be billed and collected by a portable electronics insurance agent licensee. A licensee shall not be required to maintain those funds in a segregated account if the insurer represented by the licensee has provided in writing that the funds need not be segregated from funds received by the portable electronics vendor on account of the sale or lease of portable electronics or related services or accessories. All funds received by a vendor from a 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. Licensees may receive compensation for billing and collection services.

SEC. 9. Section 1758.67 of the Insurance Code is amended to read:

1758.67. Under the authority of the portable electronics insurance agent license, a portable electronics insurance agent 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 broker-agents.

(c) Pay any endorsee compensation based primarily on the number of customers electing coverage under the portable electronics insurance agent's license. However, nothing in this code shall prohibit the payment of compensation to an endorsee of a portable electronics insurance agent for activities under the agent's license that is incidental to their overall compensation. The incidental compensation shall not exceed fifteen dollars (\$15) per customer who purchases portable electronics insurance coverage.

(d) Unless lawfully transacting the business of insurance pursuant to a certificate of authority issued pursuant to Section 700 for the appropriate class, a person obligated to perform under a contract offered in or from this state that meets the definition of portable electronics insurance as set forth in Section 1758.69 shall be deemed to be unlawfully transacting the business

of insurance and shall be subject to subdivision (b) of Section 700 and Section 12921.8.

SEC. 10. Section 1758.68 of the Insurance Code is amended to read:

1758.68. Any insurer that provides insurance to be sold by an organization licensed as a portable electronics insurance agent shall file a copy of any individual policy issued to a purchaser, or any policy or certificate issued under a group or master policy to an organization licensed as a portable electronics insurance agent, with the commissioner, who shall make that policy available to the public.

SEC. 11. Section 1758.69 of the Insurance Code is amended to read:

1758.69. As used in this article, the following definitions have the following meanings:

(a) “Endorsee” means an unlicensed employee or authorized representative of a portable electronics vendor.

(b) “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.

(c) (1) “License period” means all of that two-year period beginning as described in subparagraph (A) or (B) of paragraph (2), as applicable, and ending the second succeeding year on the last calendar day of the month in which the initial license was issued.

(2) A license period shall be determined for each person as follows:

(A) Upon initial licensing, the license period shall start on the date the license is issued.

(B) For a subsequent license, the license period shall start on the first day following the month in which the initial license was issued.

(3) A license shall be renewed on or before the expiration date of the license period.

(d) (1) “Portable electronics” means all of the following:

(A) 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, automatic answering devices, their accessories, and service related to the use of those devices.

(B) Any other electronic device that is portable in nature that the commissioner approves.

(2) “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.

(e) (1) “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.

(2) “Portable electronics insurance” does not include any of the following:

(A) A service contract governed by Article 4.5 (commencing with Section 9855) of Chapter 20 of Division 3 of the Business and Professions Code.

(B) A policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty.

(C) A homeowner’s, renter’s, private passenger automobile, commercial multiperil, or similar policy.

(f) “Portable electronics insurance agent license” means an agent license issued to an individual or organization for the enrollment and sale of portable electronics insurance.

(g) “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 customers.

SEC. 12. Section 1758.691 of the Insurance Code is amended to read:

1758.691. Nothing in this article 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. 13. Section 1758.692 of the Insurance Code is amended to read:

1758.692. (a) Not less than 60 days before a permanent license will expire, the commissioner may use an electronic delivery method, including e-mail or other similar electronic method of delivery, to deliver, or may mail, to the latest e-mail or mailing address appearing on his or her records, an application to the licensee to renew the license of a portable electronics insurance agent for the appropriate succeeding license term. It is the licensee’s responsibility to renew, whether or not a renewal notice is received.

(b) 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.

(c) An application for renewal of a license may be filed on or before the expiration date. 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.

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

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

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