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## **OLR Bill Analysis**

**sHB 5107 (File 96, as amended by Senate "A")\***

### ***AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.***

#### **SUMMARY:**

This bill establishes licensing and regulatory requirements for portable electronics insurance. It prohibits a seller's employees or representatives from leasing or selling portable electronics without the seller first obtaining a portable electronics insurance license. It (1) requires the seller to make certain information about portable electronics insurance available to prospective buyers and (2) specifies that buyers, insurers, or sellers may cancel coverage under certain conditions. It establishes the following fees: \$100 for filing an application for an initial license, \$500 for the initial license, and \$450 for a license renewal.

The bill exempts specified portable electronics insurance claims employees from the casualty adjuster licensing requirements and makes technical and conforming changes.

Additionally, the bill makes a change with respect to captive insurance companies ("captives"). PA 11-1, October Special Session, revised and expanded the laws governing captives, which are wholly owned subsidiaries of other companies that formed the captives to insure all or part of the other companies' risks. It created a separate, nonlapsing captive insurance regulatory and supervisory account for depositing Insurance Department fees and assessments related to captives and 11% of captive premium taxes.

This bill eliminates the account, requires the revenue to be deposited in the Insurance Fund instead, and makes conforming technical changes. It also limits the statutory limits on captives' risks to risk retention groups, a type of captive insurer formed under the federal Products Liability Risk Retention Act, instead of all captives.

\*Senate Amendment "A" adds the licensing and regulatory requirements for portable electronics insurance and exempts portable electronics claim employees from the casualty adjuster requirements.

EFFECTIVE DATE: July 1, 2012 for the captive insurance provisions, with the provisions eliminating the captive insurance regulatory and supervision account applying to calendar years beginning on or after January 1, 2012, and October 1, 2012 for the portable electronics insurance provisions.

## **PORTABLE ELECTRONICS INSURANCE**

### ***Definitions***

The bill defines "portable electronics insurance" as insurance coverage for (1) the repair or replacement of a portable electronic device and related accessories due to loss, theft, mechanical failure, malfunction, damage, or other similar causes of loss and (2) Internet, video, audio, or telephone service related to the use of the device. It excludes an extended warranty; an insurance policy covering a seller's or manufacturer's obligations under a warranty; and a homeowners, renters, or other insurance policy that includes similar coverage.

A "portable electronic device" is any self-contained, easily carried, battery-operated electronic equipment for personal use for communicating, viewing, listening, recording, playing video games, computing, or global positioning. It includes a cellular or satellite telephone, paging device, personal global positioning system unit, portable computer, audio listening or recording device, digital camera, portable video game system, telephone answering machine, docking or charging station for a portable electronic device, and similar devices.

A "seller" is a person in the business of direct or indirect portable electronic transactions (i.e., leasing or selling portable electronic devices).

### ***Seller Must Obtain License***

The bill prohibits a seller from offering or selling portable electronics in Connecticut without first obtaining a portable electronics

insurance license from the insurance commissioner. The license must authorize the seller's employees or representatives to offer or sell portable electronics insurance at each of the seller's locations. "Location" includes any physical location in Connecticut or Internet website or call center site directed at Connecticut residents.

The seller's employees or representatives do not have to be individually licensed as insurance producers in the state if:

1. the seller obtains and maintains a portable electronics insurance license,
2. the insurer or its supervising entity oversees the administration of the seller's portable electronics insurance program, and
3. the employees and representatives do not hold themselves out as licensed insurance producers.

### ***Licensing Process and Fees***

A seller seeking a portable electronics insurance license must submit a sworn license application to the insurance commissioner with a \$100 filing fee. A seller offering or selling portable electronics insurance in Connecticut before October 1, 2012 must apply for a license within 90 days after the commissioner makes the application available. Beginning October 1, 2012, a seller (presumably one who has not been offering or selling such insurance previously) must obtain a license before offering or selling portable electronics insurance here.

The application must include the (1) applicant's home office address and (2) name, home address, and other information the commissioner may require for the seller's officer or employee who is responsible for the seller's compliance with the bill. If the seller derives more than 50% of its revenue from selling portable electronics insurance, the application must include the name, home address, and other information the commissioner may require for the seller's (1) shareholders who own 10% or more of the affected company's stock and (2) officers and directors.

The bill does not explicitly (1) state what the commissioner must do upon receipt of an application, (2) specify conditions for license issuance, or (3) give him latitude to disapprove an application. Presumably, if the commissioner accepts an application, he must issue an initial license to the seller.

The bill requires the seller to pay a \$500 fee for the initial license. It specifies that a license is valid for two years. A seller who wants to renew a license must provide the Insurance Department with any changes to the initial application, other information the commissioner may require, and a \$450 fee.

***License Suspension and Revocation; Cease and Desist Orders***

The bill authorizes the commissioner, after notice and hearing, to suspend or revoke a portable electronics insurance license for cause shown. In addition to or in lieu of such a suspension or revocation, he may impose a fine of up to \$5,000.

In lieu of a suspension or revocation, he may issue a cease and desist order suspending the seller's ability to offer or sell portable electronics insurance at specific locations or through specific employees or representatives.

***Insurance Disclosure***

The bill requires a seller, at each location where he or she offers or sells portable electronics insurance, to make specified information available to prospective buyers in writing. The information must disclose:

1. that portable electronics insurance may duplicate insurance coverage already provided by a buyer's homeowners', renters', or other insurance policy;
2. that a buyer need not buy portable electronics insurance to lease or purchase portable electronics;
3. how to file a claim, including how to return a portable electronic device, and the maximum fee applicable if the buyer does not

comply with the return requirements;

4. that a buyer who buys portable electronics insurance may cancel the coverage at any time and have the person who paid the premium receive a refund of any applicable unearned premium;
5. the identity of insurer and any supervising entity (see below) for the insurance program;
6. any applicable deductible and how the deductible is paid; and
7. the insurance benefits, key terms, and conditions, including whether portable electronic devices can be repaired or replaced with similar make and model reconditions or nonoriginal manufacturer parts or equipment.

Additionally, if the insurance is included at no charge with the lease or purchase of a portable electronic device, the seller must clearly and conspicuously disclose this (presumably in writing) with the lease or purchase.

### ***Premium Payments***

The bill authorizes a seller to bill for and collect premium payments for portable electronics insurance if (1) premium payments are itemized separately on the buyer's invoice and (2) the seller remits premiums to the insurer within 60 days after collection.

The insurer may compensate the seller for this service as mutually agreed. The seller can commingle premiums collected with other accounts if the insurer allows it to do so. But the seller must hold all premium payments collected in a fiduciary capacity for the benefit of the insurer.

### ***Insurer and Supervising Entity***

Portable electronics insurance cannot be issued, sold, or offered unless the policy is issued by an insurer authorized to sell that line of business in Connecticut. A portable electronics insurance policy may be issued as a group policy or master commercial inland marine policy

to a seller for buyers who enroll in the insurance program (i.e., enrolled buyers).

A portable electronics insurer must file the policy form with the insurance commissioner for his approval.

If a portable electronics insurer does not directly supervise the administration of a seller's insurance program, the insurer must appoint a supervising entity and provide the commissioner and the seller with the entity's name and contact information. A "supervising entity" is a Connecticut-licensed (1) insurer authorized to write personal or commercial risk insurance here or (2) insurance producer appointed by an insurer to supervise the insurer's portable electronics insurance program.

A supervising entity must maintain a registry of seller locations in the state that are authorized to offer or sell the insurer's portable electronics insurance policies here. The entity must make the registry available to the insurance commissioner or his designee during regular business hours for inspection and examination upon 10 days notice.

### ***Cancellation Provisions and Insurer Policy Changes***

The bill specifies that buyers, insurers, and sellers may cancel coverage under certain conditions. It also allows an insurer to change the policy terms with notice to the policyholders and enrolled buyers.

***Buyers.*** The bill allows an enrolled buyer to cancel coverage under a portable electronics insurance certificate at any time orally or in writing. An oral cancellation must be made to the seller at the location where the buyer elected coverage or to a telephone number specified for such purpose. A written cancellation must be sent to the (1) insurer if premiums are paid to the insurer or (2) seller if premiums are paid to the seller.

If cancellation is made to the seller, the seller must notify the insurer of the cancellation within three days after receiving the cancellation from the enrolled buyer.

The insurer must refund, within 60 days after receiving a cancellation, any unearned premium to the person who paid the premium.

**Insurers.** The bill allows an insurer to cancel, terminate, or change the terms and conditions of a portable electronics insurance policy upon at least 30 days' written notice to the policyholders (i.e., sellers) and buyers who enroll in a policy (i.e., enrolled buyers). If the insurer is changing the policy terms and conditions, it must provide (1) the policyholder with a revised insurance policy or endorsement and (2) each enrolled buyer a revised insurance certificate, endorsement, updated brochure, or other document that summarizes the material changes.

An insurer may cancel a portable electronics insurance policy or certificate with 15 days' written notice to the policyholder and enrollees, respectively, for nonpayment of premiums by an enrolled buyer. A policyholder or enrollee may avoid cancellation by paying premium in full before the cancellation effective date. The bill prohibits an insurer from cancelling a buyer's insurance on the basis of nonpayment of premium if the buyer paid premiums on time to the seller.

Additionally, an insurer may cancel a portable electronics insurance certificate with 15 days' written notice to the policyholder and enrolled buyer for fraud or material misrepresentation by the enrolled buyer in obtaining the insurance coverage or in making a claim.

Lastly, an insurer may cancel an enrolled buyers' portable electronics insurance certificate immediately if the buyer (1) cancels Internet, video, audio, or telephone service from the seller or (2) exhausts the insurance coverage limit, if the insurer sends the buyer a written cancellation notice within 30 days after the buyer exhausts the coverage limit. If notice is not sent in time, coverage must continue regardless of the limit until the insurer sends notice to the enrolled buyer.

**Sellers.** The bill allows a seller to terminate a portable electronics

insurance policy at any time, if it provides at least 30 days' written notice before the termination to the insurer or supervising entity and each enrolled buyer. The notice must include the termination effective date.

**Written Notices.** All written notices referred to above must be sent by first class mail or electronically. They must be sent to the (1) buyer's last-known mailing or e-mail address on file with the insurer or seller and (2) insurer's or seller's mailing or e-mail address specified for such purpose. An enrolled buyer who provides an insurer or seller with an e-mail address consents to receiving correspondence electronically.

Each seller, insurer, or supervising entity acting on behalf of an insurer must keep, for at least three years, proof that the notices were sent.

### ***Casualty Adjuster Licensing Exemption***

The bill exempts certain portable electronics insurance claim employees from the casualty adjuster licensing requirement. The law already exempts Connecticut attorneys in the general practice of law who are in good standing. Unless exempt, no one may adjust casualty claims without a license from the insurance commissioner. By law, a violator is fined up to \$2,000, imprisoned up to one year, or both.

Specifically, the bill exempts from the casualty adjuster licensing requirement a Connecticut-licensed casualty adjuster's or affiliate's employee who collects or furnishes claim information and enters data into an automated claims adjudication system for portable electronics insurance claims. The employee must be one of no more than 25 such employees under the supervision of the licensed casualty adjuster or affiliate.

The bill defines "automated claims adjudication system" as a preprogrammed computer system designed for the collection, data entry, calculation, and resolution of portable electronics insurance claims. The system must be used only by a supervised employee of a Connecticut-licensed casualty adjuster or insurance producer. It must

comply with all claims payment requirements under Connecticut law. Lastly, if the casualty adjuster using the system is a business entity, an officer of the entity who is licensed as a casualty adjuster in Connecticut must certify that the system complies with the bill.

**COMMITTEE ACTION**

Commerce Committee

Joint Favorable Change of Reference  
Yea 16 Nay 0 (03/01/2012)

Insurance and Real Estate Committee

Joint Favorable Substitute  
Yea 19 Nay 0 (03/13/2012)

Finance, Revenue and Bonding Committee

Joint Favorable  
Yea 50 Nay 0 (04/16/2012)