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An Overview of Portable Electronics Insurance

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Portable electronics insurance is a relatively new classification of insurance products that provide coverage to a wide array of electronic devices for different causes of loss, including loss, theft and malfunction. We will get into the particulars regarding what is a portable electronic device and the covered causes of loss in more detail below. As of the writing of this article, portable electronics insurance legislation has been enacted or is pending in almost every state and the District of Columbia.

According to an Office of Legislative Research report prepared for the Connecticut Legislature, as of August 2013, 40 states and the District of Columbia had enacted PEI legislation. Of the 10 states identified in the report as not having PEI legislation, nine had already either passed legislation that had not yet taken effect or were considering PEI legislation in the state legislature. New York is the only state where I could not find any indication that PEI legislation had at least been introduced in the state legislature.

While this recent spate of regulation largely follows a model act and seems driven by consumer protection concerns, the individual requirements and exemptions vary greatly from state to state. Even more so than with most model acts where there is invariably variation from one state to another, PEI legislation is most certainly not a one-size-fits-all regulatory scheme. One of the primary reasons for this is that the PEI legislation typically contains an exemption for service contracts or extended warranties, which tap into existing state laws on the subject of service contracts and warranties.

And that is where things get interesting. While service contract laws generally focus on protecting consumers and trying to delineate what is and is not insurance, there is wide variation between the states when it comes to how service contracts are handled and enforced.

Portable electronics insurance is thought of most notably in connection with cellphones, smartphones, tablets and laptops. However, the definition of a portable electronic device is much broader and encompasses almost any device that can be carried and operates on batteries (whether rechargeable or disposable). The breadth of applicability of the PEI legislation to different types of electronics is one of the few similarities across different acts. Pennsylvania defines portable electronics in part as "personal, self -contained, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices that are easily carried by an individual," in 40 P.S. § 4202. Thus, phones, tablets, GPS devices, gaming devices, portable computers, digital cameras and camcorders, to name a few, all fall within the ambit of the act and are in fact expressly listed as part of the definition. And while the formulation of the definition varies from state to state—Alabama, for instance, simply refers to an electric device that is portable—the scope is equally broad.

Portable electronics insurance in turn, is then defined as insurance providing coverage for the repair or replacement of portable electronics that may include coverage for one or more of the following causes of loss: loss, theft, inoperability due to mechanical failure, malfunction, damage or other similar

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causes of loss. In the cases of Pennsylvania (40 P.S. § 4202), Alabama (Code of Ala. § 27-22A-1) and Georgia (O.C.G.A. § 33-23-12), all three states also exempt service contracts from the definition of portable electronics insurance.

The basic purpose of the portable electronics insurance acts is to control the sale of "insurance products" for portable electronics by requiring a limited lines insurance license to be able to sell PEI. This typically is a relatively simple process requiring submission of an application and payment of an annual fee and is covered by states' existing regulations covering insurance. There are certain training requirements for employees, but compliance is generally the responsibility of the insurance company issuing the policies.

There are also requirements that written materials be available at every location where portable electronics insurance is sold that contain various disclosures, including: that the coverage may be duplicative of coverage provided in a homeowner's, renter's or similar policy; that enrollment is not necessary to activate service on the device; that summarize material terms of coverage, including the identity of the insurer, the amount of any deductible and how it is to be applied, benefits of coverage, and key terms and conditions, such as whether a device may be repaired or replaced with similar make and model reconditioned or non-original parts or equipment; that summarize process for filing a claim; and that coverage may be canceled at any time. In short, PEI legislation creates a method for regulating portable electronics insurance that ties into a state's existing regulatory scheme for insurance.

At first look, the different states' PEI legislation can appear to be substantially similar, with only minor variations on reporting and registration requirements associated with obtaining a limited lines license to be able to sell portable electronics insurance per a particular state's insurance regulations. What is not readily apparent from the face of PEI legislation is that there is great variance from state to state regarding the treatment of service contracts.

Alabama and Pennsylvania provide a good example how seemingly identical PEI legislation can have very different impacts because of the differing treatment of service contracts. Pennsylvania exempts service contracts from regulation as insurance. Pennsylvania defines a service contract in relevant part as "a contract or an agreement for a separately stated consideration for a specific duration to perform the service, repair, replacement or maintenance of property or indemnification for service, repair, replacement or maintenance, for the operational or structural failure due to a defect in materials, workmanship or normal wear and tear."

Alabama also exempts service contracts from regulation as insurance and its definition of service contract is nearly identical. However, Alabama has a detailed scheme for regulating service contracts. This scheme includes provisions designed to ensure the fiscal stability of entities providing service contracts by requiring that the entity meet and maintain certain levels of capital or insure its obligations under the service contract under a reimbursement insurance policy.

There are also registration requirements and specific terms that must be included in the service contract. Alabama also exempts service contracts on items costing $250 or less sold at the point of sale or within 60 days. Pennsylvania, on the other hand, has no other legislative or administrative provisions governing the regulation of service contracts.

While Pennsylvania and Alabama are two ends of the spectrum in terms of the regulation of service contracts, there is plenty of variation among states in between. Many states have particularized language or requirements for service contracts. In addition, the lack of clarity and straightforward organization of relevant statutes and regulations combined with a lack of relevant case law can make finding and understanding all relevant provisions a difficult and time-consuming process.

What a careful review of PEI legislation indicates is that insurance regulation remains very much a creature of state law that can and does vary widely from state to state. As with any other aspect of insurance regulation, it is necessary to closely examine the intricacies of different states' PEI legislation to avoid potential pitfalls and unwittingly exposing yourself or your client to regulatory violations when dealing with portable electronic products and services in multiple states.

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