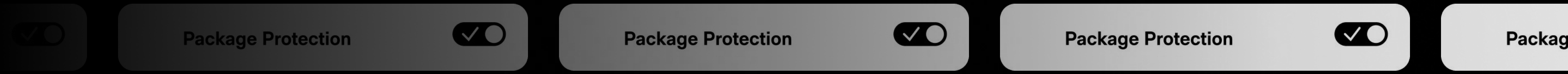
Guide:
Package Protection Offerings

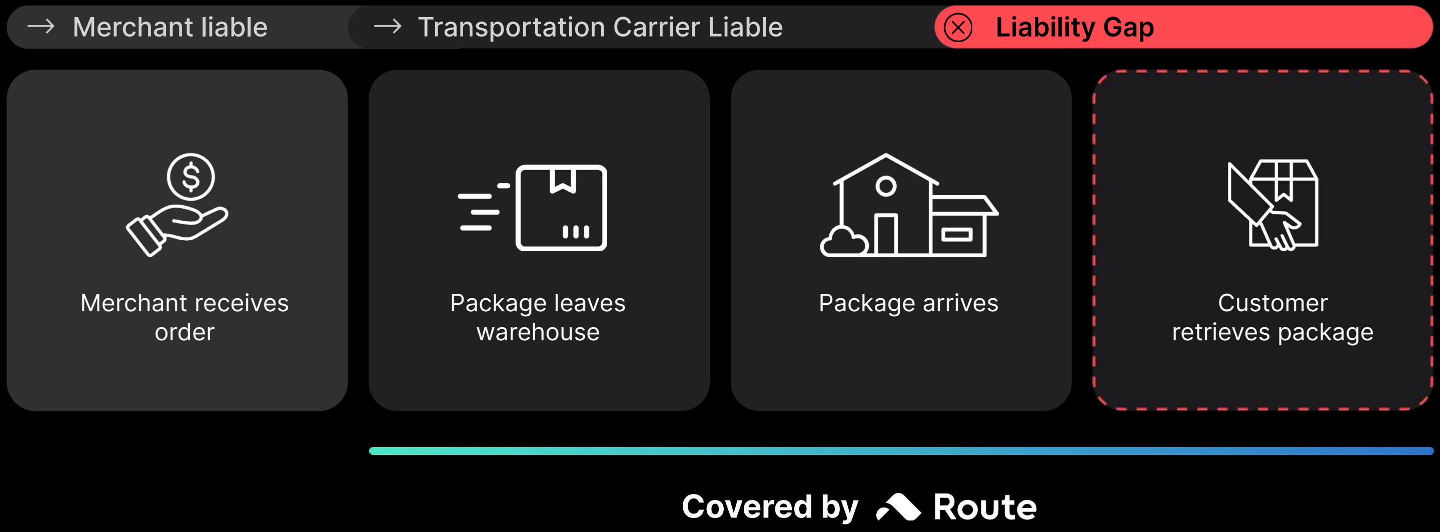
Route
2024



Background

- In the U.S. alone, over 268 million people shopped online in 2022. That's 81% of the American population. With the explosion of e-commerce and online shopping, so too has come an explosion of porch piracy.
- Nearly 50 million Americans have had at least one package stolen in the last 12 months – with a total of 260 million stolen packages.
- The annual amount lost to package theft is an estimated $19.5 billion.
- Because merchant liability typically ends when a package is transferred to a transportation carrier - and the transportation carrier's liability typically ends when the package is delivered - a post-delivery liability gap exists for the time between a package being delivered and the time a package is retrieved by the customer.
- Conventional transportation carrier liability does not extend coverage to this period as the transportation carrier's responsibility ends when it completes delivery service. Furthermore, theft by porch piracy is a "fortuitous event" outside of the transportation carrier's control.
- Homeowners insurance, if present, may cover loss by porch piracy, but standard deductibles typically render homeowners coverage moot.
- Merchants and their customers often turn to shipping insurance to fill the coverage/liability gap.

The liability gap



Types of Package Protection

Online shopping platforms and merchants offer what today is most often referred to as “package protection” to consumers in one of the following manners:

i. Package protection backed by a shipping insurance policy offered by a licensed providers;
ii. Package protection offered by/through unlicensed 3rd-party providers and apps; or
iii. Do it Yourself (“DIY”) package protection offerings that are made directly by unlicensed merchants.

Options (ii) and (iii) fail to comply with state insurance regulation as they are not backed by a shipping insurance policy offered by a licensed provider - as required by all states.

These unauthorized offerings are part of an alarming trend of offerings seeking to obfuscate state insurance regulation by calling these offerings something other than insurance or by arguing the coverage is merely a “tech solution,” “guaranty,” “warranty,” “promise,” “protection plan” or a form of “self-insurance.”

Types of Package Protection (cont.)

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(i) Shipping Insurance

Package protection backed by an **insurance policy** that's issued by a legitimate insurance company.

Pros

- ✓ Merchant does not pay claims
- ✓ Zero regulatory or financial risk passed on to merchant
- ✓ Insurance company assumes liability for paying claims

Cons

- ✗ Protection fees retained by insurer to pay claims

ILLEGAL

(ii) 3rd Party Protection

Package protection offered by an **unlicensed** 3rd party provider.

Pros

- ✓ Unlicensed 3rd party provider may (or may not) assume liability for paying claims (legally unlicensed to offer this)

Cons

- ✗ Clear regulatory risk
- ✗ Possible financial risk passed on to merchant

ILLEGAL

(iii) Package protection software

Unlicensed DIY package protection enabled by a software company.

Pros

- ✓ Merchant retains protection fees (because there is no insurance)

Cons

- ✗ Merchant pays the claims
- ✗ Merchant assumes liability (legally unlicensed to do so)
- ✗ Regulatory and financial risk passed on to merchant
- ✗ Software subscription fee

Insurance Generally

The term "insurance" is often defined as one party paying another party consideration (i.e., "premium") in exchange for assuming risk of loss that is outside the assuming party's control.

- New York, for example, defines "insurance" as "any agreement . . . whereby one party, the 'insurer,' is obligated to confer benefit of pecuniary value upon another party, the 'insured' . . . dependent upon the happening of a fortuitous event in which the insured . . . has . . . a material interest which will be adversely affected by the happening of such event." See e.g., NY Ins. Law § 1101(a).
- A "fortuitous event" generally means any occurrence or failure to occur which is, or is assumed by the parties to be, to a substantial extent beyond the control of either party. Theft is a textbook example of a fortuitous event.
- In some states, the definition of insurance is not limited to the concepts of fortuitous or unknown events. For example, in Georgia, "insurance" is broadly defined as "a contract which is an integral part of a plan for distributing individual losses whereby one undertakes to indemnify another or to pay a specified amount or benefits upon determinable contingencies." GA Ins. Code § 33-1-2(2).
- Regardless of the definition applied, shipping insurance is clearly an insurance product subject to state insurance regulation - including producer licensing requirements.

Shipping Insurance

Shipping insurance is a type of insurance specifically designed to protect shippers, merchants and consumers against loss or damage caused by acts that are beyond the control of the merchant or transportation carrier.

- Coverage for losses resulting from porch piracy - which is clearly outside the control of the shipper or transportation carrier - is, by definition, insurance.
- Depending on its structure, certain forms of shipping insurance (e.g., “marine” insurance) are exempt from some insurance regulation (such as rate and form filings). However, no state entirely exempts shipping insurance from regulation.
- For the last four years, guidance issued by the Oklahoma Insurance Department (DOI) specifically advises consumers to consider protecting themselves against losses resulting from porch piracy by purchasing shipping insurance. This year, the Department issued guidance clarifying that package protection offerings must be made through a licensed insurance provider. (OK DOI Consumer Alert 11/28/23.)
- Unfortunately, many package protection offerings made through apps, shopping platforms and merchants do not include licensed providers.
- These offerings often involve neither a licensed insurance producer nor an actual insurance policy/insurer standing behind the risk - and are nothing short of fraud and the unauthorized transaction of insurance.

Regulatory Guidance for Shipping Insurance

Guidance from the Oklahoma Insurance Department issued on 11/28/23 provides as follows (OK DOI Consumer Alert 11/28/23):

Consumer Alert: Beware of Fake Shipping Insurance This Holiday Season

OKLAHOMA CITY – The Oklahoma Insurance Department is warning consumers of unlicensed insurance providers offering "package protection" that includes stolen-item protection this holiday season. These providers facilitate the unauthorized sale of insurance, which can cost consumers money while not providing protection for stolen items.

"When shopping online for the holidays, pay close attention to your shipping protection options and who is offering the coverage," Insurance Commissioner Glen Mulready said. "Legitimate shipping insurance providers will be licensed companies or producers."

Unauthorized insurance sales are illegal and happen outside the control of regulatory agencies. If these providers become insolvent or are unable to pay for consumer claims, the Oklahoma Insurance Department may not be able to intervene.

Consumers can protect themselves by checking to see if providers listed on the web are licensed insurance entities through the Licensee Lookup tool on our website. Be sure to follow the bulleted guidance on this page to find the company or insurance producer offering shipping protection in Oklahoma.

Homeowners policies might help cover the theft of an online purchase left on your porch. This is best for high-value items worth more than a policy deductible.

For any questions about the unauthorized sale of insurance or to report suspected insurance fraud by a licensed producer, please contact OID at 800-522-0071 or visit oid.ok.gov/file-an-online-complaint/.

Licensee Lookup

How to look up whether a package protection provider is authorized:

Step 1: Visit the National Association of Insurance Commissioners lookup: https://sbs.naic.org/solar-external-lookup/

Step 2: Complete the form as follows:

Select any state →

Select "Licensee" →

Select "Business Entity" →

Enter the name →

Route *provides access to shipping insurance through its licensed subsidiary,* ***Route Insurance Solutions*** *(formerly* ***Safe Order Solutions****).*

Lookup Search
How Do I?

Jurisdiction REQUIRED
Missouri
Search Type REQUIRED
Licensee
Entity Type REQUIRED
Business Entity

Enter one or more additional fields:

License Number

NPN

Business Name
route

Advanced Criteria

I agree to the NAIC's Terms and Conditions

Search Reset

License Number	NPN	Name	License Type - Status	License Effective Date	Expiration Date	Is Resident?	LOAs	Alias Names	Business Address	Business Phone	Designated Home State	License Manager
3001280335	17889416	ROUTE INSURANCE SOLUTIONS, LLC	Business Entity Producer-Active	04/27/2023	04/26/2025	No	NO LINES ASSIGNED		LEHI, UT 84043	(801) 529-6351		License Manager

Step 3: The License Type - Status should say "Active." If it doesn't, they are likely not authorized to sell insurance.

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Unlicensed 3rd-Party Offerings

Although some shopping platforms and individual online merchants partner with legitimate shipping insurance offerings, many do not – and may not even know so.

- Some merchants use unlicensed shipping protection apps (examples: Order Protection, Corso, Convoy and Guardia1) that assume shipping insurance risks. Although risk is transferred to, and assumed by, these unlicensed apps, it does so without the benefit of a licensed insurance producer, actual insurance policy, insurer or licensed adjusters.

- Other merchants use unlicensed shipping protection apps (examples: Navidium, ShipAid, and EcomSurance) without the benefit of any risk transfer. These unlicensed app developers require merchants to set their own rates, adjudicate/settle claims, manage claims payouts, handle suspected insurance fraud and more – all without the involvement of an insurer or any licensed insurance professionals. The merchants simply make up whatever rates they wish to charge and pay claims as they see fit.

- Navidium markets its "shipping protection app" to merchants as a "tech solution" for "self-insurance" or an "alternative" to legitimate shipping insurance offerings.

- Navidium affirmatively encourages merchants to "ditch" legitimate insurance offerings for illusory insurance coverage. When merchants raise concerns regarding compliance, Navidium falsely touts that its unlicensed structure has been vetted with and approved by dozens of state departments of insurance.

“DIY” Offerings

Some merchants bypass unlicensed apps and implement their own “DIY” models to offer fake insurance coverage to consumers.

- As is the case with unlicensed apps, neither a licensed insurance producer nor actual insurance policy is involved.
- Again, merchants simply make up whatever rates they wish to charge and pay claims as they see fit.
- These offerings are often characterized as a form of “self-insurance”- a characterization that is disingenuous – if not fraudulent.
    - Self-insurance is a form of risk management whereby a party decides not to buy insurance to cover their own losses, but instead to pay for such losses as they arise out of operating funds.
    - Self-insurance is not the collection of premiums from unrelated consumers in exchange for the assumption of risk for fortuitous losses outside the control of the assuming party.
- Regardless of the regulatory risk, is selling insurance really the best and highest use of your organization's time? Is your staff qualified to price the insurance, settle claims and identify fraud?

Transportation Carriers

Some merchants believe package protection is similar to the non-insurance liability assumed by transportation carriers. This is not accurate.

- Under federal law (the "Carmack Amendment"; 49 U.S.C. §14706), transportation carriers are permitted to limit their liability for their negligence to $100. The Carmack Amendment also allows transportation carriers to expand such liability for an extra cost without triggering insurance regulation.
- However, in order to be excluded from insurance regulation, this carrier liability (referred to as "declared value" liability) must be assumed directly by the transportation carrier – not a merchant – and is limited to losses resulting from the transportation carrier's negligence.
- When properly structured, such offerings by transportation carriers do not run afoul of state insurance law.
- That said, even when transportation carriers wish to expand declared value liability to include coverage for losses resulting from fortuitous events such as theft, they do so via legitimate insurance offerings.
- UPS, for example, offers such coverage through its licensed insurance producer subsidiary - UPS Capital Insurance Agency, Inc.

Insurance vs. Warranties

While some merchants affirmatively position their offerings as shipping insurance, others characterize the coverage as a shipping "warranty" or "guaranty." This characterization fails for a number of reasons.

- First, neither the merchants nor the platforms are transportation carriers – meaning it is not within their control to mitigate the risk of loss during shipping.
- Second, a warranty (as opposed to an extended warranty or service contract - the marketing of which also requires licensure) must be provided to consumers free of charge.
- Furthermore, it is well-settled that protection against a fortuitous event such as theft is not appropriate for inclusion within the context of a warranty or guaranty. New York has been particularly detailed in providing the following legal distinctions between insurance and warranties.
- To avoid characterization as insurance, warranty coverage must not extend to loss or damage attributable to fortuitous events or circumstances [such as theft]. See, Ollendorff Watch Co. v. Pink, 279 N.Y. 32 (1938); NY OGC Opinion Nos. 09-09-01, 92-99, 92-108, 2003-140 and 07-09-15; and WA AGLO Opinion No. 17 (1976).
- Neither a warranty nor a service contract can provide coverage for theft or loss as such coverages are insurance coverages. OGC Opinion Nos. 92-99, 92-108 and 2003-140.

What does all this mean for merchants?

- If a package protection offering includes coverage for theft or the merchant charges a fee for such package protection, the only compliant structure is package protection backed by a shipping insurance policy offered by/through a licensed provider.
- Regardless of whether risk is transferred, unlicensed apps and similar "tech only solutions" that include neither a licensed insurance producer nor legitimate insurer are not compliant insurance offerings. These offerings simply shift the risk of engaging in the unlicensed transaction of insurance to merchants.
- Calling the coverage a warranty, promise, guaranty or deeming it a self-insured offering does not change the fact that you are engaging in the unauthorized sale of insurance.
- Potential penalties for the unauthorized transaction of insurance include cease and desist orders, per-violation (*i.e.*, per consumer transaction) fines and other civil/criminal penalties.
- Unauthorized programs expose merchants to heightened risk of class action litigation. *See,* https://www.taulersmith.com/shipping-insurance-claims-and-ucl/.
- Unauthorized programs also expose merchants to heightened risk of consumer fraud. *See,* https://www.socure.com/news-and-press/first-party-fraud-runs-rampant-in-america.
- In summary, using an unauthorized provider, or implementing a DIY solution, presents unmanageable regulatory, litigation and reputational risks - as well as increased risk of consumer fraud - for merchants.

What should merchants ask package protection providers?

1. **Does your solution include a licensed insurance producer in any/all U.S. States?** *(Route's does.)*
    - **What is the name of your licensed producer entity?** *(Route's is "Safe Order Solutions.")*
2. **Does your solution assume risk for losses?** (Route's insurance policy does.)
3. **Does your solution include proper fraud prevention?** (Route's does.)
4. **Is your offering backed by an insurer/insurance policy?** (Route's is.)
5. **Does your solution include the use of licensed insurance adjuster staff?** (Route's does)
6. **Questions specific to unlicensed providers and tech-only solutions:**
    a. If you are not licensed or backed by an insurer/insurance policy, can you provide us with copies of written legal guidance (either from legal counsel or state departments of insurance) confirming that neither a licensed insurance producer nor actual insurer is needed to offer your package protection?
    b. Are you willing to indemnify us if any state department of insurance or court order determines that we are engaged in the unauthorized transaction of insurance by virtue of the provider not being licensed to offer an insurance product?

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What should merchants consider before implementing a DIY solution?

1. **Have you consulted with an attorney about the risks associated with having an in-house solution?**
   - Route's Chief Compliance Officer is available to have a call with your internal/external counsel. Alternatively, we can refer you to an experienced insurance regulatory counsel for guidance.
2. **Have you spoken with the Department of Insurance in your state?**
   - We can introduce you to regulators in your home state. They can advise you on the legality of offering package protection without the involvement of either a licensed insurance producer or an actual insurer.
3. **Regulatory risk aside, is your staff qualified to handle claims and identify fraud?**
   - If you're like most brands, the answer is no. With Route, your staff won't have to manage tickets, pay out claims, or work to identify fraud — Route takes care of everything to protect your brand and customers.
4. **In almost any industry, it's always tempting to cut corners to save money, but that doesn't make it right—and it almost never pays off in the long run.**

For more information:

route.com/compliance

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