

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 535
Final Reading

Introduced by Utter, 33.

Read first time January 18, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend section 44-102.01, Reissue
2 Revised Statutes of Nebraska; to adopt the Portable
3 Electronics Insurance Act; to redefine service contract;
4 to provide an operative date; and to repeal the original
5 section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Portable Electronics Insurance Act.

3 Sec. 2. For purposes of the Portable Electronics
4 Insurance Act:

5 (1) Customer means a person who purchases portable
6 electronics;

7 (2) Covered customer means a customer who elects coverage
8 pursuant to a portable electronics insurance policy issued to a
9 vendor of portable electronics;

10 (3) Director means the Director of Insurance;

11 (4) Location means any physical location in this state or
12 any web site, call center, or other site or similar location to which
13 Nebraska customers may be directed;

14 (5) Portable electronics means a device that is personal,
15 self-contained, easily carried by an individual, and battery-operated
16 and includes devices used for electronic communication, viewing,
17 listening, recording, computing, or global positioning. Portable
18 electronics does not include telecommunications switching equipment,
19 transmission wires, cellular site transceiver equipment, or other
20 equipment or system used by a telecommunications company to provide
21 telecommunications service to consumers;

22 (6)(a) Portable electronics insurance means insurance
23 that provides coverage for the repair or replacement of portable
24 electronics and may provide coverage for portable electronics that
25 are lost, stolen, damaged, or inoperable due to mechanical failure or

1 malfunction or suffer other similar causes of loss; and

2 (b) Portable electronics insurance does not include:

3 (i) A service contract under the Motor Vehicle Service
4 Contract Reimbursement Insurance Act;

5 (ii) A service contract or extended warranty providing
6 coverage as described in subdivision (2) of section 44-102.01;

7 (iii) A policy of insurance providing coverage for a
8 seller's or manufacturer's obligations under a warranty; or

9 (iv) A homeowner's, renter's, private passenger
10 automobile, commercial multiperil, or other similar policy;

11 (7) Portable electronics transaction means the sale or
12 lease of portable electronics by a vendor to a customer or the sale
13 of a service related to the use of portable electronics by a vendor
14 to a customer;

15 (8) Supervising entity means a business entity that is a
16 licensed insurance producer or insurer; and

17 (9) Vendor means a person in the business of engaging in
18 portable electronics transactions directly or indirectly.

19 Sec. 3. (1) A vendor shall hold a limited lines insurance
20 license issued under the Portable Electronics Insurance Act to sell
21 or offer coverage under a policy of portable electronics insurance.

22 (2) The director may issue a limited lines insurance
23 license under the act. Such license shall authorize an employee or
24 authorized representative of a vendor to sell or offer coverage under
25 a policy of portable electronics insurance to a customer at each

1 location at which the vendor engages in a portable electronics
2 transaction.

3 (3) The vendor shall submit an application for a limited
4 lines insurance license pursuant to section 4 of this act to the
5 director, and a list of all locations in this state at which the
6 vendor intends to offer such insurance coverage shall accompany the
7 application. A vendor shall maintain such list and make it available
8 for the director upon request.

9 (4) Notwithstanding any other provision of law, a limited
10 lines insurance license issued under the act shall authorize the
11 vendor and its employees or authorized representatives to engage in
12 the activities permitted by the act.

13 Sec. 4. (1) An application for a limited lines insurance
14 license shall be made to and filed with the director on forms
15 prescribed and furnished by the director.

16 (2) An application for an initial or a renewal license
17 shall:

18 (a) Provide the name, residence address, and other
19 information required by the director for an employee or authorized
20 representative of the vendor that is designated by the vendor as the
21 person responsible for the vendor's compliance with the Portable
22 Electronics Insurance Act. If the vendor derives more than fifty
23 percent of its revenue from the sale of portable electronics
24 insurance, the information required by this subdivision shall be
25 provided for all persons of record having beneficial ownership of ten

1 percent or more of any class of securities of the vendor registered
2 under federal securities law; and

3 (b) Provide the location of the vendor's home office.

4 (3) Any application for licensure under the act for an
5 existing vendor shall be made within ninety days after the
6 application is made available by the director.

7 (4) An initial license issued pursuant to the act shall
8 be valid for one year and expires on April 30 of each year.

9 (5) Any vendor licensed under the act shall pay an
10 initial license fee to the director in an amount prescribed by the
11 director but not to exceed one hundred dollars and shall pay a
12 renewal fee in an amount prescribed by the director but not to exceed
13 one hundred dollars.

14 Sec. 5. (1) At each location at which portable
15 electronics insurance is offered to a customer, a brochure or other
16 written material shall be available to the customer which:

17 (a) Discloses the fact that portable electronics
18 insurance may provide a duplication of coverage already provided by a
19 customer's homeowner's insurance policy, renter's insurance policy,
20 or other similar insurance coverage;

21 (b) States that the enrollment by the customer in a
22 portable electronics insurance coverage program is not required in
23 order to purchase or lease portable electronics or services;

24 (c) Summarizes the material terms of the portable
25 electronics insurance, including:

- 1 (i) The identity of the insurer;
2 (ii) The identity of the supervising entity;
3 (iii) The amount of any applicable deductible and how it
4 is to be paid;
5 (iv) The benefits of the coverage; and
6 (v) The key terms and conditions of the coverage,
7 including whether portable electronics may be repaired or replaced
8 with a similar reconditioned make or model or with nonoriginal
9 manufacturer parts or equipment;
10 (d) Summarizes the process for filing a claim, including
11 a description of how to return the portable electronics and the
12 maximum fee applicable if the customer fails to comply with any
13 equipment return requirements; and
14 (e) States that the customer may cancel enrollment for
15 portable electronics insurance coverage at any time and receive any
16 applicable unearned premium refund on a pro rata basis.
17 (2) Portable electronics insurance may be offered on a
18 month-to-month or other periodic basis as a group or master
19 commercial inland marine policy issued to a vendor for its covered
20 customers. A covered customer who elects to enroll for coverage shall
21 receive a certificate of insurance and an explanation of coverage or
22 instructions on how to obtain such materials upon request.
23 (3) Eligibility and underwriting standards for customers
24 who elect to enroll in portable electronics insurance coverage shall
25 be established by the insurer for each portable electronics insurance

1 program.

2 Sec. 6. (1) An employee or authorized representative of a
3 vendor may sell or offer for sale portable electronics insurance to
4 customers and shall not be subject to licensure as an insurance
5 producer if:

6 (a) The vendor obtains a limited lines insurance license
7 pursuant to section 3 of this act that authorizes its employees or
8 authorized representatives to sell or offer for sale portable
9 electronics insurance under this section;

10 (b) The insurer issuing the portable electronics
11 insurance directly supervises or appoints a supervising entity to
12 supervise the administration of the insurance program, including
13 development of a training program for employees and authorized
14 representatives of a vendor. The training required by this
15 subdivision shall comply with the following:

16 (i) The training shall be delivered to employees and
17 authorized representatives of a vendor who are directly involved in
18 the activity of selling or offering for sale portable electronics
19 insurance;

20 (ii) The training may be provided in electronic form. If
21 the training is provided in electronic form, the supervising entity
22 shall implement a supplemental education program that is conducted
23 and overseen by licensed employees of the supervising entity; and

24 (iii) Each employee and authorized representative shall
25 receive basic instruction on the portable electronics insurance

1 offered to customers and the disclosures required by section 5 of
2 this act; and

3 (c) The vendor does not advertise, represent, or
4 otherwise hold itself or any of its employees or authorized
5 representatives out as authorized insurers or licensed insurance
6 producers.

7 (2) The charges for portable electronics insurance
8 coverage may be billed and collected by the vendor. Any charge to the
9 customer for coverage that is not included in the cost associated
10 with the purchase or lease of portable electronics shall be
11 separately itemized on the covered customer's bill. If the portable
12 electronics insurance coverage is included in the purchase or lease
13 of portable electronics or related services, the vendor shall clearly
14 and conspicuously disclose to the customer that portable electronics
15 insurance coverage is included with the portable electronics or
16 related services. No vendor shall require the purchase of any kind of
17 insurance specified in this section as a condition of the purchase or
18 lease of portable electronics or services. If such insurance is
19 purchased, the portable electronics insurance coverage offered by the
20 limited lines insurance licensee to a customer is primary over any
21 other insurance coverage applicable to the portable electronics. A
22 vendor who bills and collects such charges shall not be required to
23 maintain such funds in a segregated account if the vendor is
24 authorized by the insurer to hold such funds in an alternative manner
25 and remits such amounts to the supervising entity within sixty days

1 after receipt. All funds received by a vendor from a covered customer
2 for the sale of portable electronics insurance shall be considered
3 funds held in trust by the vendor in a fiduciary capacity for the
4 benefit of the insurer. A vendor may receive compensation for billing
5 and collection services.

6 Sec. 7. If a vendor violates any provision of the
7 Portable Electronics Insurance Act, the director may, after notice
8 and a hearing:

9 (1) Revoke or suspend a limited lines insurance license
10 issued under the act;

11 (2) Impose such other penalties, including suspension of
12 the transaction of insurance at specific vendor locations where
13 violations have occurred, as the director deems necessary or
14 convenient to carry out the purposes of the act; and

15 (3) Impose an administrative fine of not more than one
16 thousand dollars per violation or five thousand dollars in the
17 aggregate.

18 Sec. 8. Notwithstanding any other provision of law:

19 (1) An insurer may terminate or otherwise change the
20 terms and conditions of a policy of portable electronics insurance
21 only upon providing the vendor and enrolled customers with at least
22 sixty days' notice, except that:

23 (a) An insurer may terminate an enrolled customer's
24 insurance policy upon fifteen days' notice for:

25 (i) Discovery of fraud or material misrepresentation in

1 obtaining coverage or in the presentation of a claim under such
2 policy; or

3 (ii) Nonpayment of premium; or

4 (b) An insurer may immediately terminate an enrolled
5 customer's insurance policy:

6 (i) If the enrolled customer ceases to have active
7 service with the vendor of portable electronics; or

8 (ii) If an enrolled customer exhausts the aggregate limit
9 of liability, if any, under the portable electronics insurance policy
10 and the insurer sends notice of termination to the customer within
11 thirty days after exhaustion of the limit. If such notice is not sent
12 within the thirty-day period, the customer shall continue to be
13 enrolled in such insurance policy notwithstanding the aggregate limit
14 of liability until the insurer sends notice of termination to the
15 customer;

16 (2) If the insurer changes the terms and conditions, the
17 insurer shall provide the vendor with a revised policy or endorsement
18 and each enrolled customer with a revised certificate, endorsement,
19 updated brochure, or other evidence indicating a change in the terms
20 and conditions has occurred and a summary of the material changes;

21 (3) If a portable electronics insurance policy is
22 terminated by a vendor, the vendor shall mail or deliver written
23 notice to each enrolled customer at least thirty days prior to the
24 termination advising the customer of such termination and of the
25 effective date of termination; and

1 (4) If notice is required under this section, it shall
2 be:

3 (a) In writing and may be mailed or delivered to a vendor
4 at the vendor's mailing address and to an enrolled customer at such
5 customer's last-known mailing address on file with the insurer. The
6 insurer or vendor, as applicable, shall maintain proof of mailing in
7 a form authorized or accepted by the United States Postal Service or
8 a commercial mail delivery service; or

9 (b) In electronic form. If notice is delivered in
10 electronic form, the insurer or vendor, as applicable, shall maintain
11 proof that the notice was sent.

12 Sec. 9. Any records pertaining to transactions under the
13 Portable Electronics Insurance Act shall be kept available and open
14 to inspection by the director or his or her representatives with
15 notice and during business hours. Records shall be maintained for
16 three years following the completion of transactions under the act.

17 Sec. 10. Section 44-102.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-102.01 For purposes of Chapter 44, insurance ~~shall~~
20 does not include a service contract. For purposes of this section,
21 service contract ~~shall mean means~~ (1) a motor vehicle service
22 contract as defined in section 44-3521 or (2) a contract or
23 agreement, whether designated as a service contract, maintenance
24 agreement, warranty, extended warranty, or similar term, whereby a
25 person undertakes to furnish, arrange for, or, in limited

1 circumstances, reimburse for service, repair, or replacement of any
2 or all of the components, parts, or systems of any covered
3 residential dwelling or consumer product when such service, repair,
4 or replacement is necessitated by wear and tear, ~~by failure,~~
5 malfunction, inoperability, inherent defect, or ~~by the failure~~ of an
6 inspection to detect the likelihood of failure.

7 Sec. 11. This act becomes operative on January 1, 2012.

8 Sec. 12. Original section 44-102.01, Reissue Revised
9 Statutes of Nebraska, is repealed.