

## LEGISLATIVE BILL 535

Approved by the Governor May 11, 2011

Introduced by Utter, 33.

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

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

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

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

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

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

(3) Director means the Director of Insurance;

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

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

(6) (a) Portable electronics insurance means insurance that provides coverage for the repair or replacement of portable electronics and may provide coverage for portable electronics that are lost, stolen, damaged, or inoperable due to mechanical failure or malfunction or suffer other similar causes of loss; and

(b) Portable electronics insurance does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Provide the name, residence address, and other information required by the director for an employee or authorized representative of the vendor that is designated by the vendor as the person responsible for the vendor's compliance with the Portable Electronics Insurance Act. If the vendor derives more than fifty percent of its revenue from the sale of portable electronics insurance, the information required by this subdivision shall be provided for all persons of record having beneficial ownership of ten percent or more of any class of securities of the vendor registered under federal securities law; and

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

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

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

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

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

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

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

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

(i) The identity of the insurer;

(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) The benefits of the coverage; and

(v) The key terms and conditions of the coverage, including whether portable electronics may be repaired or replaced with a similar reconditioned make or model or with nonoriginal manufacturer parts or equipment;

(d) Summarizes the process for filing a claim, including a description of how to return the portable electronics and the maximum fee applicable if the customer fails to comply with any equipment return requirements; and

(e) States that the customer may cancel enrollment for portable electronics insurance coverage at any time and receive any applicable unearned premium refund on a pro rata basis.

(2) Portable electronics insurance may be offered on a month-to-month or other periodic basis as a group or master commercial inland marine policy issued to a vendor for its covered customers. A covered customer who elects to enroll for coverage shall receive a certificate of insurance and an explanation of coverage or instructions on how to obtain such materials upon request.

(3) Eligibility and underwriting standards for customers who elect to enroll in portable electronics insurance coverage shall be established by the insurer for each portable electronics insurance program.

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

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

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

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

(ii) The training may be provided in electronic form. If the training is provided in electronic form, the supervising entity shall

implement a supplemental education program that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction on the portable electronics insurance offered to customers and the disclosures required by section 5 of this act; and

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

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor. Any charge to the customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics shall be separately itemized on the covered customer's bill. If the portable electronics insurance coverage is included in the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the customer that portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. If such insurance is purchased, the portable electronics insurance coverage offered by the limited lines insurance licensee to a customer is primary over any other insurance coverage applicable to the portable electronics. A vendor who bills and collects such charges shall not be required to maintain such funds in a segregated account if the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty days after receipt. All funds received by a vendor from a covered 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. A vendor may receive compensation for billing and collection services.

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

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

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

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

Sec. 8. Notwithstanding any other provision of law:

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

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

(i) Discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under such policy; or

(ii) Nonpayment of premium; or

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

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

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

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

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

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

(a) In writing and may be mailed or delivered to a vendor at the vendor's mailing address and to an enrolled customer at such customer's

last-known mailing address on file with the insurer. The insurer or vendor, as applicable, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or a commercial mail delivery service; or  
(b) In electronic form. If notice is delivered in electronic form, the insurer or vendor, as applicable, shall maintain proof that the notice was sent.

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

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

44-102.01 For purposes of Chapter 44, insurance ~~shall~~ does not include a service contract. For purposes of this section, service contract ~~shall mean~~ means (1) a motor vehicle service contract as defined in section 44-3521 or (2) a contract or agreement, whether designated as a service contract, maintenance agreement, warranty, extended warranty, or similar term, whereby a person undertakes to furnish, arrange for, or, in limited circumstances, reimburse for service, repair, or replacement of any or all of the components, parts, or systems of any covered residential dwelling or consumer product when such service, repair, or replacement is necessitated by wear and tear, by failure, malfunction, inoperability, inherent defect, or by ~~the~~ failure of an inspection to detect the likelihood of failure.

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

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